

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND MRS. MADHUMITA ROY, JUDICIAL MEMBER**

*(through web-based video conferencing platform)*

**ITA No. 91/Rjt/2021**

**निर्धारणवर्ष/Assessment Year: 2015-16**

Mrs. Trushaba C. Manek, L/h. of Late Shri Chandrasinh P. Manek (Prop. Of Dwarkesh Enterprise), Bazar Lane, Raghunath Road, Okha, Gujarat PAN : AIJPM 0949 F	Vs.	Principal Commissioner of Income-tax, Jamnagar
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Dushyant Maharshi, AR
Revenue by :		Shri Shramdeep Sinha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 22.08.2023

घोषणा की तारीख /Date of Pronouncement: 29.08.2023

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income-Tax, Jamnagar [hereinafter referred to as "PCIT"] dated 30.03.2021, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year 2015-16.

2. The assessee has raised the following grounds:-

*"1. Hon'ble Pr. CIT had issued notice u/s. 263 in the name of deceased person, therefore notice issued u/s. 263 is not valid in the eyes of law and hence required to be quashed.*

*2. Hon'ble Pr. CIT, Jamnagar has erred in law and in facts in invoking his revisionary powers u/s. 263 without having valid jurisdiction for addition of income u/s. 2(24)(x) r.w.s. 36(1)(va) of the Act for EPF for Rs. 8,35,800/- whereas case was selected for Limited Scrutiny on the following grounds:*

- a) Contract Receipts/Fees Mismatch
- b) Sales Turnover Mismatch
- c) Tax Credit Mismatch

Hence, revision powers u/s. 263 of the IT Act cannot be invoked on the issues other than the limited grounds under limited scrutiny which were subject matter of Assessment Order u/s. 143(3) dated 31.08.2017.

*3. Without prejudice to above ground, Hon'ble Pr. CIT, Jamnagar has erred in law and in facts in invoking his revisionary powers u/s. 263 in this case where there were two views possible for allowability of EPF contribution 36(1)(va) of the Act and particularly when the Ld. AO while framing the assessment u/s 143(3) had considered the favourable view and accepted the returned income."*

3. The first argument raised by the ld. Counsel for the assessee was that that there was no error in the assessment order since the assessment was a limited scrutiny assessment and the error noted by the ld. PCIT was beyond the scope of limited scrutiny of the AO. In this regard, he drew our attention to the notice issued to the assessee, during the assessment proceedings, under Section 143(2) of the Act mentioning that it is a limited scrutiny assessment for examination of the following issues:-

- a) Contract Receipts/Fees Mismatch
- b) Sales Turnover Mismatch
- c) Tax Credit Mismatch

3.1 He further pointed out that the error noted by the ld. PCIT in the assessment order was that the employees' contribution of EPF deposited late by the assessee were not disallowed by the Assessing Officer as per the provisions of Section 36(1)(va) r.w.s 2(24)(x) of the Act. Ld. Counsel for the assessee pointed out that this issue was not within the purview of examination of the Assessing Officer in the limited scrutiny assessment and, therefore, the Assessing Officer having not made any disallowance on this score, there was no error in his order. In this regard, he drew our attention to the following

decisions of both the Hon'ble High Courts and Co-ordinate Benches of the ITAT holding that where an error noted by the Id. PCIT in the assessment order related to an issue which was beyond the scope of limited scrutiny for which the assessment was picked up, the revisionary order was not sustainable in law and liable to be quashed:-

*"a) Hon'ble High Court of Calcutta in the case of Principal Commissioner of Income-tax v. Naga Dhunseri Group Ltd. [2023] 146 taxmann.com 424 (Calcutta) has held in Para 6 that where Principal Commissioner invoked revisionary proceedings on grounds that disallowance under section 14A in respect of exempt income was not considered by AO even when assessee's case was selected for limited scrutiny to verify introduction of capital in NBFC/investment companies which was linked to such disallowance, since issue of disallowance under section 14A was not an issue selected for limited scrutiny. Principal Commissioner could not make a roving enquiry in guise of a limited scrutiny and thus, impugned revisionary order was to be quashed.*

*b) Hon'ble High Court of Orissa in the case of Principal Commissioner of Income-tax v. Shark Mines and Minerals (P.) Ltd. [2023] 151 taxmann.com 71 (Orissa) has held in Para 10 that It is not open to Commissioner while exercising power under section 263 to find fault with assessment order on ground of its being erroneous on an issue not covered by limited scrutiny when Assessing Officer could not have possibly examined such issue.*

*c) Hon'ble ITAT Ahmedabad Bench in the case of Dr. Chaitnya B. Nagori's Institute for infertility & IVF vs. Principal Commissioner of Income Tax-4, Ahmedabad in I.T.A. No. 377/Ahd/2020;*

*d) Hon'ble ITAT Pune Bench 'B' in the case of The Deccan Paper Mills Co Ltd vs. The Commissioner of Income Tax IV, Pune in ITA Nos 1013& 1635/PUN/2014;*

*e) Hon'ble ITAT Mumbai Bench 'D' in the case of M/s 1. & 11. Property vs. Pr. CIT-11, Mumbai in ITA No. 1906/Mum/2019;*

*f) Sanjeev Kr. Khemka vs. Pr. CIT in ITA No. 1361/Kol/2016 A.Y. 2011-12 dated 02.06.2017;*

*g) Sonali Hemant Bhavsar v. Pr. CIT-29, Mumbai in ITA No. 742/M/2019*

*h) M/s Chengmari Tea Co. Ltd. Vs. ACIT Kolkata in ITA V. No.812/Kol/2019*

i) *Sahita Construction Company vs Pr. CIT (ITAT Indore) in ITA No. 119/Ind/2021*

j) *Rajani Venkata Naga Annavarapu Narayana Vs PCIT-20 (ITAT Delhi) in ITA No. 1817/Del/2020*

k) *M/s. Duckwoo Autoind Pvt. Ltd. vs The Principal Commissioner of Income Tax-1, Chennai in ITA No.232/Chny/2021*

l) *Shri Arun Kumar Palawat vs. PCIT, Jaipur-1 in ITA No. 144/JP/2022.*

m) *NagjiKeshavji Rita vs. Pr.CIT, Mumbai in I.T.A. No. 612/Mum/2021.*

4. The Id. DR was unable to controvert both the factual contentions of the assessee that the assessment in the present case was a limited scrutiny assessment and the error noted by the Id. PCIT in the assessment order was beyond the scope of limited scrutiny; nor was he able to controvert the proposition of law laid down by the various courts in this regard as pointed out by the Id. Counsel for the assessee before us that there cannot be any error in the assessment framed in limited scrutiny on issues which were beyond the scope of limited scrutiny. In view of the above, we are in complete agreement with the Id. Counsel for the assessee that the impugned order passed by the Id. PCIT under Section 263 of the Act is not sustainable in law, and it is, therefore, directed to be quashed.

5. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 29/08/2023 at Ahmedabad.**

Sd/-

**(MADHUMITA ROY)  
JUDICIAL MEMBER**

Ahmedabad; Dated 29/08/2023

\*\*%

Sd/-

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Rajkot