

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 37/Asr/2021
Assessment Year: 2015-16

Subash Chander Gupta & Sons Bari Brahmana, Jammu 181 133, Jammu and Kashmir [PAN: AAFFS2030M] (Appellant)	Vs.	Pr. Commissioner of Income Tax, Srinagar (Respondent)
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Appellant by	:	Sh. Vinamar Gupta, CA
Respondent by	:	Sh. Hitendra Bhauraoji Ninawe, CIT DR
Date of Hearing	:	31.08.2023
Date of Pronouncement	:	13.09.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal is filed by the assessee against the order of the Id. Pr. Commissioner of Income Tax, Srinagar dated 29.03.2021 for Assessment Year: 2015-2016 wherein the appellant has filed revised grounds of appeal as under:

- “1. That the Learned Principal CIT, Srinagar has erred in law and facts and circumstances of the case by passing order u/s 263 without assuming jurisdiction and passing order on the basis of issue of show cause notice issued by office of and under name and designation of DCIT/ACIT Srinagar and issued from email ID: SRINAGAR.DCIT@INCOMETAX.GOV.IN
2. That the Learned Principal CIT has erred in law and facts and circumstances of the case by passing order u/s 263 by misstating in Para 4 of his order that undersigned (i.e. Principal CIT) has issued show cause notice.
3. That the Learned Principal CIT has erred in law and facts and circumstances of the case by issuing order without signing the order manually or digitally.
4. That the Learned Principal CIT has erred in law and facts and circumstances of the case by stating that repeated opportunities have been given to the appellant in spite the fact that no opportunity has been given by him to the appellant.
5. That the Learned Principal CIT has erred in law and facts and circumstances of the case by passing order without assuming jurisdiction.
6. That the Learned Principal CIT has erred in law and facts and circumstances of the case by passing order u/s 263 without mentioning how the conduct of AO is prejudicial to the interest of revenue.
7. That the Learned Principal CIT has erred in law and facts and circumstances of the case by passing order u/s 263 without examining that difference in MSTC account has matching difference available in Vat receivable and CTO Receivable accounts and therefore there is no revenue implication involved.
8. That the Learned Principal CIT has erred in law and facts and circumstances of the case by not serving show cause notice and order on the last available email ID mentioned in the ITRs filed by the assessee.

9. *That the appellant craves leave to add, alter, amend or vary the grounds of appeal here in above at or before hearing of appeal."*

2. At the outset, the learned counsel for the appellant has submitted that as per the language of the section 263 it is apparently clear that opportunity of being heard has to be provided by Commissioner himself by way of issue of notice and show cause notices under section 263 of the Act and no other officer can perform this obligation. In this case, the show cause notice dated 17.02.2021 was issued for initiating proceedings u/s 263 of the Act by the office of DCIT/ACIT Circle, Srinagar under its signature, name with designation (APB Pgs.1 to 3). A brief synopsis filed by the assessee is reproduced as under:

- * *At PB 1 to 3, show cause notice dated 17.02.2021 issued for initiating proceedings u/s 263 has been appended.*
- * *PB-1 shows that SCN u/s 263 has been issued by "**Office of DCIT/ACIT Circle, Sri Nagar**".*
- * *At PB-03, SCN has been signed under name and designation of ACIT/DCIT Circle, Sri Nagar.*
- * *Email Don SCN mentioned is SRINAGAR>DCIT(S) INCOMETAX>GOV>IN*
- * *As per section 263:*

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the

record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer **or the Transfer Pricing Officer, as the case may be**, is erroneous in so far as it is prejudicial to the interests of the revenue, **he may, after giving the assessee an opportunity of being heard** and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify

- From the language of the section 263 it is clear that opportunity of being heard has to be provided by Commissioner himself and no other officer can perform this obligation.
- **Nazir Ahmad vs. King Emperor, AIR 1936 PC 253(2) and In State of Uttar Pradesh Vs Singhara Singh & Ors, AIR 1964 SC 358**

where it was held that the confession recorded by First class magistrate without following the manner provided in Section 164 of Criminal Procedure Code 1898, is not tenable

- ".....it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. The rule adopted in Taylor v. Taylor(3) is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of th act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted....."
- **Commissioner of Income Tax Vs Anjum M.H. Ghaswala, (2002) 1 SCC633**

"....."

"Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper

*administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. **It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the stated itself. ...**"*

- **Captain Sube Singh &Ors Vs. Lt. Governor of Delhi, (2004) 6 SCC 440**

*"29. In Anjum M.H. Ghaswala [CIT v. Anjum M.H. Ghaswala, (2002) 1 SCC 633] a Constitution Bench of this Court **reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.** The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit."*

- **Kunwar Pal Singh vs State of U.P &Ors, (2007) 5 SCC 85**

".....16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act."

Hence the show cause notice has been issued by non jurisdictional officer and no jurisdiction has been assumed by Pr. CIT Srinagar in the subject case to pass an order u/s 263.

Further Pr. CIT in Para 4 of his order has stated that undersigned issue: statutory notice to assessee on 17/02/2021 in his unsigned order containing name and designation of CIT. The facts of the matter is no show cause notice has been issued to the assessee on 17/02/2021 and therefore there in factual

infirmity in the order of Pr. CIT who has proceeded to pass the order by clothing the notice issued by DCIT/ACIT Sri Nagar as his own notice.

Hence the order has been passed by Pr. CIT without assuming any jurisdiction.”

3. Per Contra, the learned CIT (DR) stands by the impugned order however, he failed to rebut the contentions of the council of the assessee.

4. We have heard both the sides, perused the record, impugned orders and case law cited before us. Admittedly, the show cause notice dated 17.02.2021 has been issued by non-jurisdictional officer the DCIT/ACIT Circle, Srinagar under its signature, name with designation. The observation and discussion of the Ld. Pr. CIT in Para 4 of his order that undersigned issued statutory notice to assessee on 17/02/2021 is factually incorrect. Since, there was no show cause notice issued to the assessee on 17/02/2021 by the Pr. CIT and hence, there is factual infirmity in the impugned order of Pr. CIT who has proceeded to pass the order based on the notice issued by DCIT/ACIT Sri Nagar. In our view, The Ld. Pr. CIT Srinagar failed to assume jurisdiction in the subject case to pass an order u/s 263. On the similar facts, over view get support from the judgment of apex court in the case of “Kunwar Pal Singh vs State of U.P &Ors”, (Supra).

5. Accordingly, we hold that the order passed by Pr. CIT u/s 263 of the Act is without jurisdiction and as such, it is quashed being invalid and void ab initio.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 13.09.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

Sd/-
(Dr. M. L. Meena)
Accountant Member

True Copy

By Order