

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.3560/DEL/2019
Assessment Year 2009-10

Sunil Kumar, H.No. 921/21, Prem Nagar, Jail Road, Rohtak Haryana.	Vs.	Principal Commissioner of Income Tax, Rohtak
TAN/PAN: ATWPK1908N		
(Appellant)		(Respondent)

Appellant by:	Shri Navin Gupta, Adv.		
Respondent by:	Shri T. James Singson, CIT-DR		
Date of hearing:	10	10	2023
Date of pronouncement:	16	10	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal by the assessee is directed against the revisional order passed by the Principal Commissioner of Income Tax, Rohtak (Pr.CIT) dated 26.03.2019 whereby the assessment order passed by the Assessing Officer dated 28.12.2016 under Section 143(3) r.w. Section 147 of the Act has been held to be erroneous in so far as it is prejudicial to the interest of the Revenue within the meaning of Section 263 of the Act.

2. Facts in brief are that assessment under Section 143(3) r.w. Section 147 of the Act for AY 2009-10 was computed by the Assessing Officer determining the total income of the assessee at Rs.3,73,530/- as against the returned income of Rs.2,22,530/-. Thereafter, the Pr.CIT in exercise of revisionary power, issued

notice under Section 263(1) of the Act dated 14.02.2019 requiring the assessee to show cause as to why the assessment so framed under Section 143(3) r.w. Section 147 should not be set aside or modified. It was alleged by the Pr.CIT that examination of records revealed that the re-assessment order so passed is erroneous in so far as prejudicial to the interest of the Revenue for the reasons that Assessing Officer has failed to conduct inquiry / examination towards purchase of land in cash amounting to Rs.25 lakhs. The show cause notice referred above is reproduced hereunder:

“1. In this regard, it is to inform you that original assessment in your case was completed at an income of Rs.3,73,530/- as against returned income of Rs.2,22,530/- by the then AO vide order passed u/s. 143(3)/147 on 28.12.2016 for the above mentioned assessment year.

2. The assessment of your case for the AY 2009-10 was made u/s. 143(3)/147. During the course of examination of the details furnished by you, it is noticed that you are doing the job of property dealer and purchased agricultural Land for Rs.25,00,000/- in cash on 1.11.2018 and returned the same amount in cash on 03.02.2019. Since you deals in sale and purchase of property, it is usual business of your and thus you cannot make purchase of exceeding Rs. 20,000/- in cash. The purchase in cash of land amounting to Rs.25,00,000/- needs to be added back to your taxable income. The A.O. seems to not verified and made enquiry about such fact resulting thereby revenue loss to the government.

3. You are, therefore, given an opportunity of being heard and requested to attend my office at Room No. 101, Aayakar Bhawan, Opposite Mansarovar Park, Rohtak on 20-03-2019 at 11.30 a.m. to show cause as to why an appropriate order under section 263 of the Income Tax Act, 1961 not be passed setting aside/modifying the order u/s 143(3) passed in your case for the assessment year 2009-10. In case you do not wish to avail the opportunity of being heard in person or through authorized representative in support of your claim, you may send your written reply so as to reach this office on or before the stipulated date, which will be duly considered before any such order is passed. In case of failure, the decision would be taken on merits.”

3. In response, the assessee filed a reply and submitted that the show cause notice issued seeking to revise the re-assessment order is premised on fundamental error in appreciation of facts correctly. It was submitted before the Pr.CIT that while the show cause notice refers to alleged purchase of agricultural land in cash, the assessee

has never purchased any land. The assessee has rather obtained advance for sale of ancestral land which was eventually returned as the deal could not materialize. The reply of the assessee before the Pr.CIT is reproduced hereunder:

“Further to your query regarding purchase of agriculture land for Rs. 25.00 Lakhs, it is hereby clarified that no agriculture land was ever purchased by the assessee during the relevant previous year. The whole agreement has been misunderstood and has been turned upside down by the learned departmental auditor. The agreement was not for purchase but for sale of ancestral agriculture land situated at Village Khanda Kheri, district Hissar. The assessee along with his mother Smt. Rajbala and his brother Late Sh. Dinesh jointly inherited parental agriculture land of around 9.50 Acres. The agreement was done for sale of part of this ancestral agriculture land and the amount of Rs.25.00 Lakhs was received as an advance against the sale agreement of this very piece of ancestral. “Later on the deal went sour and the advance received was returned by the assessee to the intended purchaser. The copy of sale agreement, copy of confirmation of accounts from the intended buyer and Jamdbandi of the ancestral agriculture land depicting share of the assessee, his mother Smt. Rajabala and his brother Late Sh. Dinesh was produced to the assessing officer at the time of scrutiny proceedings and were accepted. The same documents are reproduced here as well for your ready reference.

The sale of ancestral agriculture land having joint ownership of other family members cannot be treated as sale of stock in trade. Further invoking of sec. 40A(3) is not valid at all as section 40(3) is applicable on cash purchase of business goods wherein in this case there is no purchase but agreement for sale of agriculture land. I, therefore would request your good self not to add the amount of Rs.25.00 Lakhs to the taxable Income.”

4. The Pr.CIT however held that the re-assessment order dated 28.12.2016 is erroneous in so far as prejudicial to the interest of the Revenue and consequently set aside the re-assessment order with a direction to make fresh assessment after making proper inquiries/investigations.

5. Aggrieved by the revisional order of the Pr.CIT under Section 263, the assessee preferred appeal before the Tribunal.

6. The Id. counsel for the assessee reiterated the submissions made before the Pr.CIT and pointed out that the whole proceedings

under Section 263 is based on erroneous assumption of facts and Section 40A(3) applicable to cash purchases of business goods, is apparently not applicable since there is no purchase but an MOU was prepared for sale of agricultural land. The Id. counsel submitted that wrong assertions were admittedly made in audit enquiry subsequent to re-assessment order by the representative of the assessee, out of inadvertence and factual mistake. The current version of the assessee towards proposed sale of land in any case is backed by documentary evidences and a mere error in representation *dehors* the facts on record, carries no weight in the eyes of law. Such assertions disregarding the facts is not decisive in determining the issue and the assessee is entitled to demonstrate the correct facts which the assessee has done in the instant case. The Id. counsel thus submitted that no prejudice was caused to the Revenue *per se* while framing the re-assessment order and therefore, the revisionary power exercised under Section 263 is outside the sanction of law.

7. The Id. DR for the Revenue, on the other hand, heavily relied upon a reply dated 14th June, 2018 after the closure of the assessment in response to audit query wherein the representative of the assessee has stated in unequivocal terms that assessee paid advance in cash of Rs.25 lakhs for purchase of agricultural land during the Financial Year 2009-10. The Id. CIT-DR thus submitted that in the wake of such assertions, the Pr.CIT was justified in setting aside the erroneous re-assessment order framed without enquiry to the prejudice of the Revenue.

8. We have carefully considered the rival submissions.

9. The Pr.CIT in the present case has purported to act in exercise of power under Section 263 on the ground that re-assessment order accepting the cash advance in a commercial and business transaction

is without proper inquiry having regard to the provisions of Section 40A(3) of the Act and therefore erroneous in so far as prejudicial to the interest of the Revenue. The assessee has strongly contested the show cause notice issued in the impugned revisionary proceedings and asserted that an erroneous reply in a post re-assessment proceedings before the Assessing Officer by itself, is not capable of determining the issue.

9.1 We observe that the assessee has pointed out the correct facts before the Pr.CIT without any shield. In the circumstances where the genesis of action under Section 263 is based on a correspondence after the re-assessment order has been framed, a minimal inquiry by the Pr.CIT was incumbent before setting aside the re-assessment order and providing any direction to the Assessing Officer.

9.2 In terms of Explanation-I to Section 263 of the Act, an independent and a new proceedings sets in motion on receipt of new material (communication to Assessing Officer post re-assessment) coming on record post assessment and hence the responsibility of revisionary authority towards observance of principles of natural justice, in such situation, would be akin to that of Assessing Officer. The Pr.CIT cannot merely set aside the assessment on the basis of a new fact (albeit incorrect) coming on record without exerting himself and provide some basis to dislodge the response of the assessee on such new material. The Pr.CIT, under the circumstances, is under bounden duty to take into account the perspective of the assessee on such fresh material and is required to pass a speaking order thereon. The Pr.CIT thus is not expected to sit solely in the capacity of revisionary authority *qua* the new fact coming to the light post assessment/re-assessment order but is required to assume the task of Assessing Officer in tandem and discharge *quasi judicial* functions in a reasonable manner.

9.3 The Pr.CIT, in the instant case, has failed to do so. There is not even an iota of any discussion as to how reply of the assessee is without any substance particularly when the assessee has furnished evidences to corroborate his version before the Pr.CIT.

9.4 In paragraph 3 of the revisionary order, the Pr.CIT has abruptly observed that the re-assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue “in view of following observations” but however no observations thereafter has been found to be made. Thus, findings of Pr.CIT suffer from apparent error and incompleteness. The Pr.CIT has summarily set aside the re-assessment order and shifted the responsibility on the Assessing Officer to examine or verify the facts. The opportunity contemplated under Section 263 is thus rendered illusory and merely an empty formality resulting in miscarriage of justice in contravention of express intendment of provision of Section 263 of the Act.

10. Looking from any angle, the directions towards verification of impugned transactions without observance of natural justice and without speaking order on the point based on some degree of inquiry by Pr.CIT himself, are unsustainable in law and deserves to be quashed.

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

Order pronounced in the open court on 16/10/2023

Sd/-

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: /09/2023

Prabhat