

IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "DB" JABALPUR

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA No. 24/JAB/2022
Assessment Year: 2017-18

Sajal Nema,
01, Jalgaon Jewellers, Sunka
Chouraha, Kandeli,
Narsinghpur-487001.

PAN No. AEPPN 9632 Q
Appellant

Pr. CIT, Jabalpur-1,
Annexe Building, Aayakar
Bhavan, Napier Town,
Jabalpur-482001.

Vs.

Respondent

Assessee by : Mr. Dhiraj Ghai, FCA
Revenue by : Mr. Saad Kidwai, DR

Date of Hearing : 22/09/2023
Date of pronouncement : 20/10/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 18.01.2022 passed by the Ld. Pr. Commissioner of Income-tax-1, Jabalpur (in short 'the Ld. PCIT') for assessment year 2017-18 u/s 263 of the Income-tax Act, 1961 (in short 'the Act') setting aside the order of the Assessing Officer, which was passed u/s 143(3) of the Act on 9.12.2019.

2. The assessee has raised many grounds challenging this revision order mainly that sufficient inquiry were made by the



Assessing Officer on the issue of cash deposits. The relevant grounds raised by the assessee are reproduced as under:

1. *On the facts and circumstances of the case, the order passed by the learned Principal Commissioner of Income Tax (Pr. CIT) under Section 263 of the Act is bad, both in the eyes of law and on facts.*

2. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT under Section 263 of the Act is bad, both in the eyes of law and on facts, having been passed without giving assessee an opportunity of being heard on adverse opinion drawn from the reply submitted to notice under section 263 in violation of principle of natural justice.*

3. *On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law assuming jurisdiction under section 263 in the absence of twin conditions of the order passed by the A.O. being erroneous as well as prejudicial to the interest of the Revenue, being satisfied.*

4. *On the facts and circumstances of the case, the order passed by the learned Pr.CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only and merely on presumption and assumptions.*

5. *On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in ignoring the fact that the issue raised by her in notice under Section 263 was before the A.O. and as such the jurisdiction on this issue under Section 263 cannot be assumed by him.*

6. *On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the PCIT.*

7. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of lack of enquiry, not in the case of inadequate enquiry.*

8. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in setting aside the matter to the file of the AO without giving a finding as to the error and prejudice caused to the revenue by the assessment order, and as such the order passed is bad in law and liable to be quashed.*

9. *On the circumstances of the case, Pr CIT has erred both on facts and in law in setting aside the issue of cash deposition during demonetization period to the file of the Ld AO without properly appreciating the explanation of assessee given during the assessment*



proceedings brought on record to prove source of cash in hand available including that of cash withdrawal on 8/12/16 itself.

10. Considering the fact that the assessment order dated 19/12/19 is not erroneous so far as prejudicial to the interest of revenue hence the ld Pr. CIT-was not justified in initiating revision proceeding by issuing show cause notice on 15/7/21.

11. The revision order dated 18/01/2022 is bad in law for other reasons also hence may kindly be cancelled.

3. Briefly stated facts of the case are that the return of income filed by the assessee was selected for scrutiny on two grounds. One of the ground was for verification of the undisclosed income for cash deposits during demonetization of currency notes of Rs. 500/- and Rs. 1000/-by the Reserve Bank of India. The Assessing Officer completed the assessment u/s 143(3) of the Act on 19.12.2019 after accepting the explanation of the assessee regarding source of the cash deposits. Subsequently, the Ld. PCIT called for record and after examination the same, issued show cause notice to the assessee as why the order passed by the Assessing Officer might not be held as erroneous in so far as prejudicial to the interest of the Revenue. After considering the submission of the assessee, the Ld. PCIT invoked Explanation -2 below section 263 of the Act holding that the Assessing Officer has not carried out the inquiry which sould have been carried out in the facts and circumstances of the case and set aside the order of the Assessing Officer for de novo consideration by the Assessing Officer and pass a fresh assessment order. The finding of the Ld. PCIT is reproduced as under:



“9. I have considered the written submission of the assessee and have perused the documents available on records. On perusal of the written submission of the assessee and on examination of records, it is seen that during the course of assessment proceedings, the A.O. has enquired about the cash deposits in Bank during the F.Yr. 2015-2016 and F.Yr. 2016-2017 vide notice under section 142(1) dated 04/10/2019, the said information was sought for in certain predefined formats wherein it was specifically asked to provide the details of "Total cash deposit in Bank from 01/04/2016 to 08/11/2016 & Total cash deposit in Bank from 09/11/2016 to 31/12/2016 in column number (b) & (c) of point number 1.2 of table number 1 respectively".

It is worthwhile to mention here that the information sought for about total cash deposit during the period mentioned therein irrespective to the cash available/cash-in-hand consisting of / sourced from sales or sourced from receipts of sundry creditors or even from the customers being advance in cash, whatever the source it may be. In the said table, the A.O. nowhere restricted to the assessee to furnish the desired details of total cash deposit after excluding the cash received from sundry creditors and advance received from the customer in cash.

In continuation to the above, the assessee failed to furnish the true and correct information of cash deposit during demonetization period because the simple question was asked wherever applicable either in ITR or in response form) that the quantum of cash deposit during demonetization period irrespective to the cash deposit in old currency or in new/valid currency, the said information was called for without any categorization.

10. In the light of the aforesaid facts and circumstances of the case and legal findings, as the Assessing Officer has failed to make enquiries as well as apply his mind and proper application of law, it is held that the assessment order passed u/s 143(3) of the Income Tax Act, 1961 on 19/12/2019 is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the said order is SET ASIDE FOR DE-NOVO CONSIDERATION, with the direction to the Assessing Officer to pass a fresh Assessment Order. The A.O. is further directed to pass a suitable order by making proper investigation and enquiries and applying the correct provisions of the Act, after giving adequate opportunities of being heard to the assessee.

The assessment order is accordingly set-aside with the above directions.”

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Ld. PCIT has invoked Explanation-2 to section 263 of the Act. According to said explanation if the Assessing Officer has not carried out the



inquiry which ought to have been carried out in the facts and circumstances of the case, the assessment order is deemed to be erroneous in so far as prejudicial to the interest of the Revenue. But we find in the case of the assessee, the Ld. Assessing Officer issued query letter u/s 142(1) of the Act on 30.08.2019 wherein he raised specific query regarding the source of the cash deposits. The copy of the relevant query available on page 78 of paper book is reproduced as under:

“17. Please furnish the detail of cash deposit during demonetisation period i.e. 08/11/2016 to 31/12/2016. Source of money be provided, copy of bank account also be furnished. Also furnish the reason for large value of cash deposit during demonetisation period as compared to average rate of cash deposit during pre-demonetization period.”

4.1 Further, the assessee responded the said query, a copy of which is available on page 81 of the Paper Book. For ready reference same is reproduced as under:

“17. The details of cash deposit along with copy of relevant bank account in which cash was deposited during demonetization period i.e. 08/11/2016 to 31/12/2016 is enclosed herewith as page no. 70 & 100 to 109 of this reply. The total deposits under relevance was from cash balance in hand as on 07/11/2016. That there was no large value of cash deposit during demonetization period as compared to average rate of cash deposit during pre-demonetization period.”

4.2 Further, the Assessing Officer also asked the detail of the position of the stock, sales bills and reason for increase in the sales as compared to the financial year 2015-16 and 2016-17. A copy of



the said query raised, available on PB-234 ,is reproduced for ready reference:

1. Please furnish position of stock monthwise from 01.04.2016 to 31.03.2017.
2. Please furnish copy of all the sale bills of month of october 2016.
3. Please furnish reason for increase in sales in comparison to FY 2015-16 to 2016-17.

4.3 The assessee duly responded above queries raised by the Assessing Officer, details of which are available on paper book page 235 to 237. For ready reference, the said reply filed by the assessee is reproduced as under:

Subject - Reply to notice under section 142(1) of Income Tax Act, 1961 dated 09/11/2019

In context to above subject please find para wise reply as under:-

1. That stock position for the financial year 2016-17 monthly basis is enclosed as Page no. 4 of this reply.
2. Copy of sale bill of month of October 2016 is enclosed herewith as Annexure 1 to 16 of this reply.
3. That sales for financial year 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 was as under:-

Year	Sales	QTY Gold	Average Gold Rate	QTY Silver	Average Silver Rate
2014-15	2,74,03,582.00	8,343.231	2903.26	43,265.855	39.99
2015-16	5,80,54,665.49	23,164.500	2171.42	1,26,483.098	38.25
2016-17	9,42,02,857.92	29,286.789	3068.20	96,504.883	44.48
2017-18	17,73,85,786.20	57,402.021	2958.53	1,72,401.760	41.04
2018-19	18,97,86,201.72	55,147.671	3295.88	186017.110	40.93

From the above chart it is apparent that the assessee firm is regularly increasing its sale year by year and not only in financial year 2016-17 only. However as far as financial year 2015-16 and 2016-17 are concern the reason for increasing sale was on two accounts viz



1. Rates of Gold has increased from Rs. 2171/42 in 2015-16 to Rs. 3068/20 in 2016-17 and silver of Rs. 38/25 in 2015-16 to Rs. 44/48 in 2016-17. Accordingly there was almost 41.30% of increase in gold rates and 16.28% of increase in silver rates. Henceforth the reason for increase in sales is increase in rates of gold and silver.
2. That the assessee business is continuously growing from assessment year 2014-15 to 2019-20 on account of good quality and range available in shop. Accordingly the profit earn by assessee and tax paid thereupon has increased manifolds as per details below:-

Year	Profit Earned	Tax Paid	Returned Income
2014-15	26,89,129.22	3,83,829.00	18,25,500.00
2015-16	2,11,45,934.78	52,18,619.00	1,48,04,203.00
2016-17	1,36,08,588.94	44,17,424.00	1,27,67,214.00
2017-18	1,65,46,449.40	54,46,613.00	1,55,77,461.00
2018-19	1,58,38,365.89	52,18,619.00	1,48,04,203.00

3. From the explanation given in para 1 and 2 above it is clear that the assessee sale in 2015-16 and 2016-17 has increased on account of increase in rates followed by increase in number of customers due to good quality products in shop. Even the profit for financial year 2015-16 was more than 2016-17 henceforth no adverse view may kindly be taken.
We hope above reply will satisfy your good self and in case if any further information is required the same may kindly be informed for onward submission.”

4.4 Further, the Assessing Officer also asked the details of the percentage increase in cash deposits and comparison of the sales and cash deposits with the earlier years. The reply filed by the assessee is available on page 242 and 244 of the Paper Book. The relevant details are reproduced as under:

- “1. Detail of cash deposit in bank is ad under :-

Details of Cash Deposit in Bank		
		Jalgaon Jewellers
1.1	(a) Total cash deposits in Bank in F.Y. 2015-16	4,63,11,910/-
	(b) Total cash deposits in Bank from 01.04.2015 to	2,30,55,900/-



	08.11.2015	
	(c) Total cash deposit in Bank from 09.11.2015 to 31.12.2015	1,05,02,000/-
1.2	(a) Total cash deposits in Bank in F.Y. 2016-17	5,89,41,850/-
	(b) Total cash deposits in Bank from 01.04.2016 to 08.11.2016	2,53,10,350/-
	(c) Total cash deposit in Bank from 09.11.2016 to 31.12.2016	1,29,80,000/-
1.3	(a) Percentage increase between 1.2(a) and 1.1(a)	27.27%
	(b) Percentage increase between 1.2(b) and 1.1(b)	9.78%
	(c) Percentage increase between 1.2(c) and 1.1(c)	23.59

2. Details of Cash Sales is as under:-

Details of Cash Deposit in Bank		
2.1	(a) Total cash sales in F.Y. 2015-16	3,14,79,738/-
	(b) Total cash sales from 01.04.2015 to 08.11.2015	2,16,22,493/-
2.2	(a) Total cash sales in E.Y. 2016-17	7,53,74,277/-
	(b) Total cash sales from 01.04.2016 to 08.11.2016	4,69,51,488/-
2.3	(a) Percentage increase between 2.2(a) and 2.1(a)	139.44%
	(b) Percentage increase between 2.2(b) and 2.1(b)	117.14%

3. Analysis of month wise cash sales and cash deposits from 01.04.2015 to 08.11.2015 is as under:

Month Wise	Op. Cash in hand	Cash Sales	Cash deposited in Bank	Cash withdrawal from the bank	Closing cash on hand
April, 2015	5,30,441/-	56,37,611/-	59,74,700/-	10,40,000/-	32,93,562/-
May, 2015	32,93,562/-	26,66,990/-	45,49,900/-	0/-	16,01,281/-
June, 2015	16,01,281/-	27,14,980/-	18,46,400/-	23,55,000/-	32,14,287/-
July, 2015	32,14,287/-	11,69,715/-	27,39,900/-	15,50,000/-	35,02,965/-
August, 2015	35,02,965/-	47,23,320/-	28,50,000/-	25,000/-	5,391,469/-
September, 2015	53,91,469/-	22,94,780/-	40,20,000/-	4,78,000/-	34,75,478/-
October, 2015	34,75,478/-	6,06,632/-	7,10,000/-	19,20,000/-	51,55,420/-
November	51,55,420/-	18,08,465/-	3,65,000/-	15,66,000/-	63,56,420/-



till 08.11.2015					
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4. Analysis of month wise cash sales and cash deposits from 01.04.2016 to 08.11.2016 is as under:

Month Wise	Op. Cash in hand	Cash Sales	Cash deposited in Bank	Cash withdrawal from the bank	Closing cash on hand
April, 2016 2,24,235.09	5,07,074/-	15,04,890/-	6,40,000/-	10,19,701/-	18,93,228/-
May, 2016	18,93,228/-	38,62,765/-	44,99,350/-	0/-	20,445/-
June, 2016	10,26,557/-	35,52,016/-	3,20,000/-	13,85,000/-	17,16,076/-
July, 2016	17,16,076/-	34,00,835/-	1,31,800/-	11,10,000/-	42,42,683/-
August, 2016	42,42,683/-	26,67,832/-	2,36,000/-	1,50,000/-	50,50,160/-
September, 2016	50,50,160/-	44,77,155/-	61,28,200/-	1,70,000/-	9,66,454/-
October, 2016	9,66,454/-	2,55,72,270/-	1,01,20,000/-	0/-	1,40,30,062/-
November till 08.11.2016	1,40,30,062/-	19,13,685/-	32,35,000/-	4,30,000/-	1,12,25,062/-

4.5 On verification of the details filed for explanation of cash deposits, we find that the assessee was regularly showing the cash deposits and even it has shown substantial sales in pre demonetization period. Further the assessee has filed a detail of the amount which was deposited in the new currency notes. The relevant details filed by the assessee are reproduced as under:



(24)

यूनियन बैंक Union Bank of India

Narsinghpur Branch Jabalpur
Email Id:narsinghpur@unionbankofindia.com

Dated: 17/08/2021

To
M/s Jalgaon Jewellers
Prop:-Mr.Sajal Kumar Nema
Sunka choraha
Narsinghpur madhay pradesh

Subject: Details of amount and denominationwise notes deposited during demonctization period in accounts

Kindly note that as per your request the details of amount and notes deposited during demonctization period in the accounts of M/s Jalgaon Jewellers and Sajal Kumar Nema are provided below:

s.no.	account no.	name of account	date of deposit	details (no. of notes*denomination)	total amount deposited
1	420605040050119	M/s Jalgaon Jewellers	26/12/2016	150*2000 (LTN)	300000/-
2	420605040050119	M/s Jalgaon Jewellers	11/11/2016	1500*1000 14000*500 (OLD NOTES)	8500000/-
3	420605040050119	M/s Jalgaon Jewellers	13/11/2016	3000*1000 1000*500 (OLD NOTES)	3500000/-
4	420605040050119	M/s Jalgaon Jewellers	30/12/2016	200*2000 (LTN) 800*100 (LTN)	480000/-
5	420602010108798	SAJAL KUMAR NEMA	26/12/2016	1000*100 (LTN)	100000/-
6	420602010108798	SAJAL KUMAR NEMA	24/11/2016	100*1000 (OLD NOTES)	100000/-

Chief Manager
CERTIFIED TRUE COPY

4.6 In view of the above questionnaires and the replies filed by the assessee, we are of the opinion that the Assessing Officer has made the inquiry on the issue of cash deposit, which ought to have made in the case of the assessee. Therefore, the Explanation-2 to section 263 of the Act invoked by the Ld. PCIT is not justified. In the facts and circumstances of the case, we set aside the order of the Ld.



PCIT passed u/s 263 of the Act and restore the assessment order dated 9.12.2019 passed u/s 143(3) of the Act by the Assessing Officer.

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

Order pronounced under Rule 34(4) of the ITAT Rules, 1963 by way of result of appeal displayed on the Notice Board at ITAT Office, Jabalpur on 20/10/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 20/10/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai