

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.160/Ran/2018  
Assessment Year: 2013-14**

M/s. Krishna Kumar Singh Belwatika, Daltonganj, Palamau- 822101, Jharkhand. <b>PAN: AAFFK 6976 N</b> (Appellant)	Vs.	ACIT, Circle-3, Ranchi (Respondent)
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**Present for:**

Appellant by : Shri M.K. Choudhury, Advocate  
Respondent by : Smt. Rinku Singh, CIT, DR

Date of Hearing : 06.09.2023  
Date of Pronouncement : 25.10.2023

**ORDER**

**PER SONJOY SARMA, JM:**

The present appeal has been preferred by the assessee against the order dated 26.03.2018 of Pr. Commissioner of Income Tax, Ranchi passed u/s 263 of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] pertaining to A.Y. 2013-14.

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2013-14 subsequent to that a scrutiny assessment order was framed on 08.09.2015 u/s 143(3) of the Act by assessing total income of Rs. 1,04,09,930/- as against the return of income of Rs. 45,27,610/-. Consequently, an additional demand was raised of Rs. 21,04,970/- against the assessee. Against the order of the Id. AO, assessee did not prefer any appeal u/s 250 of the Act before the appropriate forum and accepted the order passed by the AO. The Id. PCIT while going through the assessment order, he finds that in the case of assessee enquiry was inadequate and assessment was

erroneous. The ld. PCIT issued a show cause notice to the assessee. However, the ld. PCIT did not find any merit in the objection of the assessee and he hold that the assessment order was erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Act read with Explanation 2 below section 263. The ld. PCIT set aside the assessment order on the issue forming the subject matter of the impugned order and direct the AO to pass a fresh assessment order in line with the observation made by the ld. PCIT.

3. Aggrieved by the above order, assessee has now approached this Tribunal challenging the exercise of powers u/s 263 of the Act by raising the following grounds of appeal:

*i. For that the order dated 26.3.2018 as passed u/s 263 of the I.T. Act, 1961 is not at all maintainable under the facts and circumstances of the case and so it is fit to be dropped and set aside.*

*ii. For that the order as passed u/s 263 of the I.T. Act is neither erroneous nor prejudicial to the interest of revenue under the facts and circumstances of the case.*

*iii. For that the learned Pr. CIT, Ranchi has been pleased to repeat the points which have already been considered, examined and scrutinized by the learned assessing officer vide assessment order dated 08.09.2015.*

*iv. For that the learned assessing officer has been pleased to point out more points i.e. fifteen in number and more on several days in comparison to learned Pr. CIT.*

*v. For that the ld. assessing officer has imposed more tax in comparison to returned income and assessment order has been passed after thoroughly examining the books of accounts*

4. At the time of hearing, the ld. AR submitted that the main argument in the captioned appeal would be centering around the plea that due enquiries and application of mind was made by the assessing officer during the course of assessment proceeding. It was also

submitted that in the case assessee scrutiny assessment order was framed on 08.09.2015 u/s 143(3) of the Act on total income of Rs. 1,04,09,930/- as against return of income of Rs. 45,27,610/- and additional demand was raised against the assessee by the ld. AO wherein all the details were examined while framing the assessment order. The ld. AR further submitted that the assessing officer was very much conscious of the fact of the case and enquired the assessee on the various issues on which assessment was made and assessee also responded to such queries made by the AO while framing the assessment. It was submitted by the ld. AR that the ld. PCIT had completely chosen to ignore the fact that the ld. AO had made proper and adequate enquiries and in response to the same, assessee had given proper reply which were duly considered by the AO and only after consideration of such evidence, ld. AO had completed the assessment proceeding. It was argued that the ld. PCIT had merely acted on surmises and conjectures and had completely ignored the record before him while passing the revisionary order u/s 263 of the Act. In such a situation proceedings u/s 263 of the Act was bad in law which is liable to be quashed. It was also contended that where the assessing officer has specifically raised queries during the assessment proceeding which proves the application of mind then such assessment proceeding cannot be held to be erroneous and prejudicial to the interest of revenue in terms of section 263 of the Act. Reliance was placed on the order of the Co-ordinate Bench of Chandigarh in the case of Shri Surinder Pal Singh in ITA No. 57/Chd/2021 vide order dated 31.01.2022 wherein after examining the various case laws and the latest judgements, the order passed by the ld. PCIT u/s 263 of the Act was set aside.

5. We have heard rival submission and perused the material available on record. We have also given a thoughtful consideration to

the various judicial precedents which have been cited by the AR of the assessee. We have also gone through the submission filed by the assessee wherein the assessee has sought to demonstrate with evidence that the AO had already made requisite enquiries on the issues raised by the ld. PCIT during the course of assessment proceedings and also assessee had duly complied with the enquiries made by the AO by replying in details and by furnishing various documents and evidences in support of its claim. At this juncture, it would be relevant to make reference to the judgement of Hon'ble Delhi High Court in the case of CIT vs Sunbeam Auto Ltd. reported in (2011) 332 ITR 167 (Del.) wherein the Hon'ble Delhi High Court has ruled that one has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry' and further if there was any inquiry even inadequate that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter. It was further held that Hon'ble Delhi High Court that if any assessing officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the commissioner simply because, according to him, the order should have been written more elaborately.

6. In the present case also, the ld. AO made requisite enquiries, therefore, it is not a case of no enquiry and if the ld. PCIT was not satisfied with the enquiries made by the AO. It cannot be termed as the order passed by the AO was erroneous and prejudicial to the interest of revenue. Therefore, on the facts of the case, we have no hesitation in holding that the assumption of jurisdiction u/s 263 on the ground that there was no enquiry by the AO and on the ground of non-application of mind by the AO is bad in law and cannot be upheld.

7. We, therefore, by following the ratio laid down by the Hon'ble High Court in the aforesaid referred case as well as are of the view that the ld. PCIT was not justified in exercising his power to invoke the provision of section 263 of the Act on the views taken by him. Therefore, we hold that the impugned action u/s 263 of the Act was not justified both on the allegation of lack of enquiry by the AO as well as on the allegation of non-application of mind by the AO. We also hold the impugned action u/s 263 of the Act to be bad in law. Accordingly, we quash the impugned order.

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

**Order pronounced in the open court on 25.10.2023**

**Sd/-**

**(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated: 25.10.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Krishna Kumar Singh.
2. The Respondent: ACIT, Circle-3, Ranchi.
3. The CIT, Concerned,
4. The CIT (A) Concerned,
5. The DR Concerned Bench.

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata