

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

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 165/Rjt/2022

(निर्धारण वर्ष / Assessment Year : 2017-18)

<b>Shri Chandulal Dahyabhai Zaloriya</b> C/o Patel Wire Agency, Station Road, Halvad, Dist. Morbi, Gujarat	<b>बनाम/ Vs.</b>	<b>Principal Commissioner of Income Tax</b> Rajkot-1
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACEPP2130L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri R. K. Takvani, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Shramdeep Sinha, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	16/10/2023
घोषणा की तारीख /Date of Pronouncement	31/10/2023

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal at the instance of the assessee is directed against the order dated 10.03.2022 passed by the Principal Commissioner of Income Tax, Rajkot-1 (in short ‘PCIT’) arising out of the order dated 10.12.2019 passed by the ITO, Ward-2, Morbi under Section 143(3) of the Income Tax Act, 1961, (hereinafter referred to as ‘the Act’) for Assessment Year 2017-18.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The brief facts leading to the case is this that the assessee, an individual, filed his return of income declaring total income at Rs.73,75,490/- and agriculture income at Rs.25,52,111/- on 27.10.2017 through electronic media. The case of the assessee was selected for scrutiny to verify “share capital/capital”. Notice under Section 143(2) of the Act dated 25.08.2018 was issued and served upon the assessee followed by notice under Section 142(1) r.w.s. 129 dated 23.08.2019 alongwith questionnaire, upon which the assessee filed the written submission alongwith supporting documents being the return of income alongwith computation of income, P&L account, balance sheet and audit report, list of bank account details, bank statements, bank book, share transfer details, and also submitted required details from time-to-time as was asked. The scrutiny proceeding, thereafter, was finalized upon accepting the return of income filed by the assessee.

4. However, the Ld. PCIT, Rajkot initiated revisional proceeding and passed order under Section 263 of the Act dated 10.03.2022 with a direction upon Ld. AO for fresh assessment, mainly, for “cash deposit during demonetization”. The Ld. Counsel appearing for the assessee joins issues here to this effect that the case of the assessee once selected for scrutiny on the issue of “share capital/capital”, which was, in turn, examined by the Ld. AO and found to be not true and only thereupon after due application of mind accepted the return of income so filed by the assessee, the same cannot be reopened by exercising jurisdiction under Section 263 of the Act with the

finding that the order passed by the Ld. AO was erroneous and prejudicial to the interest of the Revenue.

5. Ld. DR, on the other hand, failed to controvert such submissions made by the Ld. Counsel appearing for the assessee.

6. It is a fact that the order passed under Section 143(3) of the Act in limited scrutiny in respect of the issue of “share capital/capital” was finalized by the Ld. AO upon making requisite enquiry in the matter and finally accepted the returned income filed by the assessee. The Ld. PCIT failed to observe any negative finding in regard to such issue involved in the said scrutiny proceeding. Therefore, the order passed by the Ld. AO under Section 143(3) of the Act dated 10.12.2019 cannot be said to be erroneous so far as it is prejudicial to the interest of Revenue. The power vested with the Ld. PCIT under the provision of Section 263 of the Act is not sufficient enough to reopen the scrutiny proceeding on a different issue other than the one posed to the Ld. AO in limited scrutiny. We, therefore, find substance in the submissions made by the Ld. AO. We also find that the Ld. DR has failed to bring any such judicial pronouncement in support of the order passed by the Ld. PCIT under Section 263 of the Act in the present facts and circumstances of the case. The power vested with Ld. PCIT in terms of the provision of Section 263 of the Act does not permit him to hold the order passed under Section 143(3) of the Ld. AO erroneous and prejudicial to the interest of Revenue in the case in hand; the Ld. PCIT travelled beyond the scope of the issue only selected for the limited scrutiny. In that view of the matter, we do not hesitate to hold that the order passed by the Ld. PCIT under Section 263 of the Act setting aside the assessment framed under Section 143(3) of the Act as

erroneous and prejudicial to the interest of the Revenue is without jurisdiction, bad in law and void ab initio. The same is, thus, quashed.

7. In the result, assessee's appeal is allowed.

**This Order pronounced on 31/10/2023**

Sd/-

(ANNAPURNA GUPTA)

**ACCOUNTANT MEMBER**

Ahmedabad; Dated 31/10/2023

S. K. SINHA

True Copy

Sd/-

(MADHUMITA ROY)

**JUDICIAL 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 प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar  
ITAT, Rajkot