

IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH: RANCHI
VIRTUAL HEARING AT KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 22/RAN/2022
Assessment Year : 2017-18

Gudia Singhania (PAN: CZEPS 0974 E)	Vs.	PCIT, Ranchi
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	17.08.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	06.11.2023
For the Appellant / निर्धारिती की ओर से	Shri R. R. Mittal, CA
For the Respondent / राजस्व की ओर से	Smt. Rinku Singh, CITDR

ORDER/ आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Principal Commissioner of Income Tax- Ranchi [hereinafter referred to as ‘ Ld. PCIT’] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 29.03.2022 for the assessment year 2017-18.

2. The only issue raised by the assessee is against the invalid jurisdiction u/s 263 of the Act consequently passing revisionary order u/s 263 of the Act which is invalid and void ab-initio.

3. Facts in brief are that the assessment in this case was framed u/s 143(3) of the Act vide order dated 24.12.2019 as determining the total income of Rs. 4, 46,70,490/- . The Pr. CIT upon perusal of the assessment records observed that there was abnormal increase in cash deposits into the bank account of the assessee during the year especially during the demonetization period. The Ld. Pr. CIT observed that there was

no cash sales from April to July, 2016 however in August the cash sales were only 5.00 lacs which rose to Rs. 11.00 lacs in September and fell back to Rs. 1.60 lakhs in October. However in November, sales were more than Rs. 7.00 crores and in December the cash sales have been shown at Rs. 3.00 crores which fell back to Rs. 5.00 lakhs in January, 2017. According to the Pr. CIT the AO did not make any verification/enquiry regarding the cash sales during demonetization period with corresponding purchases/ stocks and evidences of receipt of actual stocks by not verifying the stock register. According to Pr. CIT, since the AO has failed to make necessary verification, the order passed by the AO u/s 143(3) dated 24.12.2019 was erroneous and prejudicial to the interest of the revenue. Accordingly a notice u/s 263 of the Act was issued on 22.03.2022 which was replied by the assessee electronically. The assessee replied and submitted before the Pr. CIT the reasons for abnormal sales during November and December, 2016 due to the reason that Zarda was prohibited in Bihar till June, 2016. However thereafter the sale was allowed since July, 2016 onwards. The assessee submitted that because of festive season there were very high sale in November and December, 2016.

4. The Id AR has raised this issue before the Pr. CIT by filing all the details such as purchase and sales bills and receipt of cash in the normal course of business. The AR stated that the AO has not made any error or mistake in the examination of books of account of the assessee and the assessment was framed after accepting the contentions of assessee qua the increase in sales. The Pr. CIT however was not convinced with reply of the assessee and he accordingly revised and set aside the assessment on the ground that the AO has not done proper enquiry and verification. The Ld. A.R vehemently submitted before us that case of the assessee was selected for scrutiny through CASS and notice u/s 143(2) was issued on 16.08.2018 which was duly served on the assessee during the assessment proceedings. A detailed questionnaire was issued 27.09.2019 along with notice issued u/s 142(1) of the Act which was finally replied by the assessee on 21.10.2019 by furnishing the details of cash deposited during demonetization period, details of bank statement, details of sundry creditors etc. The Ld. A.R also submitted the copy of acknowledgment of

return, audit report, details of expenses along with ledger accounts. The AO has recorded a finding in the assessment order that during the demonetization period assessee has deposited huge cash as compared to pre-demonetization period and this was the reason that the case of the assessee was selected for scrutiny under CASS. The A.R also pointed out that the details of cash deposited for during two years .e.i. FY 2015-16 and 2016-17 was furnished after AO asked for the same. The AR submitted that the assessee Smt. Gudia Singhania is a proprietor of two proprietary concern namely M/s Aariket Traders & M/s Aariket Enterprises which are authorized traders of Pan Masala & Zarda and accordingly filed return of income of Rs. 4,46,70,490/-. The Ld. A.R submitted that during demonetization period from 09.11.2016 to 31.12.2016 assessee deposited demonetized currencies in the case of Aariket Traders of Rs. 5,63,50,000/- and in the case of Ariket Enterprises of Rs. 3,50,00,000/- and assessee deposited in its bank accounts cash aggregating to Rs. 2,28,94,660/-. The Ld. A.R stated that the assessee is a CSA (Consignee Sales Agent) of the DS group Delhi who is in the business of pan masala, jarda, supari for the state of Bihar. The Ld. A.R stated that the money received by the assessee in the proprietary concern was immediately transferred to D.S. group on which the assessee received commission. The Ld. A.R submitted that the bank statements corroborating the deposits and transfers to the main account. The AO after analyzing all the fact in great depth and details accepted the explanation of the assessee and made no addition while framing the assessee. The Ld. A.R therefore submitted that the AO has taken a plausible and possible view on the basis of evidences/explanation furnished by the assessee r after doing necessary verification and examination of the same. The Ld. A.R submitted that where the Pr. CIT was of the view that the AO has not conducted proper enquiry then the Pr. CIT is under obligation to conduct an enquiry and come to a definitive conclusion as to how the assessment framed is erroneous and prejudicial to the interest of the revenue. But the ld Pr. CIT has revised the assessment with himself conducting enquiry and stating as to how the assessment is erroneous and prejudicial which is not correct. The ld AR relied on the decision of Delhi High Court in the case of D. G. Housing vs. ITO 343 ITR 329(Del) in defense

of his arguments. The Ld A.R also submitted that the order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue and therefore squarely covered by the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. vs. CIT in [2000] 243 ITR 83 (SC). The Ld. A.R therefore prayed that the order passed u/s 263 of the Act by the Pr. CIT may kindly be quashed.

5. The Ld. D.R on the other hand relied on the order of PCIT. The ld DR submitted that the assessee is not prejudiced in any manner with the exercise of jurisdiction u/s 263 of the Act by Pr. CIT as in the set aside proceedings also the assessee would be given fair opportunity to explain the issues and only thereafter the assessment would be framed. Therefore the ld DR prayed that the appeal of the assessee may be dismissed as without any merit.

6. After hearing the rival contentions and perusing the material on record, we find that the assessee has deposited cash into the bank, details whereof were furnished before the AO. The AO called for the reasons and details of abnormal increase in cash deposits during demonization period vis-a-vis pre-demonitisation period which were duly filed before the AO including books of account, bank accounts, bills and vouchers. The AO analyzed the total receipts from the sale of zarda and gutka and also took note of the prohibition in the States of Bihar on sale of these items which was lifted from July, 2016 onwards and sales were spurred besides the sales push due to festive season. We note that the AO has recorded a finding in the assessment order that during the demonetization period assessee has deposited huge cash as compared to pre-demonetization period and this was the reason that the case of the assessee was selected for scrutiny under CASS. We also note that comparative details of cash sales and cash deposited for during two years i.e. FY 2015-16 and 2016-17 were furnished after AO asked for the same. Smt. Gudia Singhania, the assessee, is a proprietor of two proprietary concern namely M/s Aariket Traders & M/s Ariket Enterprises which are authorized traders of Pan Masala & Zarda and accordingly filed return of income of Rs. 4,46,70,490/-. The Ld. A.R submitted that during demonetization period from 09.11.2016 to 31.12.2016

assessee deposited demonetized currencies in the case of Aariket Traders of Rs. 5,63,50,000/- and in the case of Ariket Enterprises of Rs. 3,50,00,000/- and assessee deposited in her bank accounts cash aggregating to Rs. 2,28,94,660/-. The Ld. A.R stated that the assessee is a CSA (Consignee Sales Agent) of the DS group Delhi who is in the business of pan masala, jarda, supari for the state of Bihar. We note that the money received by the assessee in the proprietary concern was immediately transferred to D.S. group on which the assessee received commission. The AO, after analyzing all these facts in details, accepted the explanation of the assessee and made no addition while framing the assessment. The Ld. A.R therefore submitted that the AO has taken a plausible and possible view on the basis of evidences/explanation furnished by the assessee after doing necessary verification and examination of the same. According to the Pr. CIT, the AO has not verified the details furnished by the assessee qua the spike in the sales of the assessee during various months particularly during demonetization. The Pr. CIT noted that the cash deposited by the assessee in the bank account was abnormally high and should have raised suspicion in the mind of the AO and AO should have done the necessary enquiry which he has failed to do so. In our opinion, the said observations of the Pr. CIT is factually wrong and contrary to the facts on records. The AO has examined the issue in detail and after analyzing the details filed by the assessee with the documents, bank book and cash book, a conclusion has been recorded in the assessment order para nos. 2,4 and 5 and only thereafter accepted the plea of the assessee and framed the assessment accordingly. Considering these fact, we are of the view the conditions as envisaged u/s 263 of the Act have not been fulfilled i.e. for invoking jurisdiction u/s 263, the assessment order has to be erroneous insofar as prejudicial to the interest of the revenue. In our opinion, the twin conditions have to be satisfied in absence of which the revisionary jurisdiction is not available to the Pr. CIT and even if one of the two condition is satisfied. But in the present case the twin conditions were not satisfied as the order is neither erroneous nor prejudicial to the interest of the revenue as all the facts were examined by the AO on the basis of details and explanation of the assessee before the AO and he has taken a possible view based on his examination of records

furnished by the assessee which is neither based upon incorrect facts nor is against the law. The case of the assessee squarely covered by the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. (supra), wherein it has been held that the jurisdiction is not available to the Pr. CIT where the twin conditions as envisaged by section 263 of the Act were not satisfied. The Hon'ble Court has even held that where one of the two conditions are satisfied, the provisions of section 263 of the Act cannot be invoked. In the instant case the Id Pr. CIT has revised the assessment on the ground that the AO has not conducted proper enquiry on the cash deposits in the bank account but Ld. PCIT has not conducted any enquiry himself to record a finding as to how the order is erroneous and prejudicial which is not correct and as per the ratio laid down by Hon'ble Delhi High Court in the case of D. G. Housing vs. ITO (Supra) whereas according to him the AO has not conducted proper enquiry into the matter of cash deposits into the bank. The case of the assessee is squarely covered by the above decision of D.G. Housing Vs. ITO (supra) wherein similar ratio has been laid by the Hon'ble Delhi High Court. We, therefore respectfully following the ratios as laid by the Hon'ble Apex Court and Hon'ble Delhi High Court in the decisions as discussed above same, quash the revisionary order passed u/s 263 of the Act.

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

Order is pronounced in the open court on 6th November, 2023

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 6th November, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Gudia Singhania, J.J. Road, Upper Bazar, Ranchi-834001.
2. Respondent – PCIT, Ranchi
3. PCIT- , Ranchi
4. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata