

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. 24/RAN/2022
Assessment Year : 2017-18

Amit Kumar Agarwal (PAN: ABMPA 3672 P)	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 30.03.2022 for the assessment year 2017-18.

2. The only issue raised by the assessee in the various grounds of appeal is against the invalid exercise of jurisdiction u/s 263 of the Act by Id. Pr. CIT and passing an

order u/s 263 of the Act thereby setting aside the assessment framed u/s 143(3) of the Act dated 19.12.2019.

3. Facts in brief are that the assessee filed return of income on 16.10.2017 declaring total income of Rs. 1,06,34,010/-. Subsequently the case of the assessee was selected for scrutiny and income was assessed at returned income. Thereafter the Pr. CIT, on perusal of the assessment records, observed that during the year under consideration the assessee has deposited huge cash in the bank account and has not furnished the comparative chart of the cash deposits. The Pr. CIT observed that the assessee has given wrong explanation with regard to month-wise receipts and deposits of cash from 1.4.2016 to 8.11.2016 by extracting the details of cash deposits furnished by the assessee month wise on the first and second page of the revisionary order. The Id. Pr. CIT noted that the AO ought to have examined and verified the same however the AO has failed to do so in the assessment framed u/s 143(3) of the Act dated 19.12.2019 thereby rendering the assessment framed as erroneous and prejudicial to the interest of the revenue and accordingly issued notice u/s 263 of the Act to the assessee. The said notice was replied by the assessee submitting that the assessee is a proprietor of Shree Durga Enterprises, a contractor firm and has filed the details as regards cash receipts as furnished before the AO and submitted that there was no wrong doing on the part of the assessee on the filing of these details. The assessee submitted before Pr. CIT that books of account were produced before the AO and AO has verified the cash and bank book and all the deposits and withdrawal from the said books of accounts and only thereafter accepted the deposits of cash into the bank account of the assessee. The assessee submitted before the Pr. CIT that during demonetization period the assessee deposited of Rs. 3,60,00,000/- in his Axis Bank account which has been duly dealt with in second para of AO's order examining the cash however the contentions of the assessee did not find favour with the Pr. CIT and Pr. CIT revised and cancelled the assessment and directed the AO to verify and conduct enquiries after affording reasonable opportunity to the assessee and frame the assessment afresh.

4. The Ld. A.R submitted before the Bench that the assessee is a proprietor of M/s Shree Durga Enterprises which is carrying on business as contractor. The Ld. A.R submitted that the case of the assessee was selected for scrutiny through CASS and all the details were submitted before the AO during assessment proceedings which stood duly noted in the assessment order itself. The Ld. A.R. submitted that during the assessment proceedings, the AO has called for various details, books of accounts in order to verify the cash availability and cash deposits in the bank account of the assessee and only , after doing extensive verification and enquiry, accepted the contentions of the assessee and gave a very detailed findings in the assessment order to that effect. The Ld. A.R referred to para 2 of the assessment order in which the AO has appended the details of cash deposited in the bank account by the assessee in AY 2016-17 & 2017-18 and also the details of receipts from July, 2016 to November, 2016 at page 3 in the last para. As per details extracted in the assessment order at the total receipt from July , 2016 to November, 2016 from contractual works were Rs. 24,04,70,898/-, receipt in bank from two contractee companies namely BKB Transport and Emvees of Rs. 35,44,07,856/-. The Ld. A.R submitted that the assessee withdrew the amount from July, 2016 to November, 2016 from the bank aggregating to Rs. 7,98,04,000/- for payment and the total payments were made of Rs. 4,36,17,933/-. The Ld. A.R also submitted that the AO analysed the opening cash in hands,contract works, receipts during the year, cash deposited during the year and cash withdrawals from the bank and gave a findings of fact that the assessee has sufficient closing cash in hand till 8th November, 2016 out of which he deposited cash into the bank account. The Ld. AO also noted that there was regular withdrawal from the bank for making payment of expenses for truck, lorry and others etc and withdrawals are matching with the business profile of the assessee. The Ld. AO also stated in the assessment order that bank accounts were also verified. Finally after doing all these verification and examination, the income of the assessee was accepted by the AO. The Ld. A.R therefore prayed that the jurisdiction exercised by the Pr. CIT u/s 263 of the Act and consequent order was passed by the Pr. CIT directing the AO to examine the issue in detail after calling for necessary details and books of

account from the assessee and after examining the same frame the assessment order . 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 Id 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 Id 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 Id 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 Id 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 has been given by the AO in para 2 at page 2 of assessment order. We observe that the total cash deposits during the year were Rs. 6,23,50,000/- and cash deposited from 9th November to 31st December was Rs. 3,60,00,000/-. The AO called for the details from the assessee which were duly filed before the AO including books of account, bank accounts, bills and vouchers. The AO analyzed the total receipts from contractual work and also analyzed the receipts in the bank from BKB transport and Emvees two contractees ,the table whereof has been given on page 3 of the assessment order. We observe that during the year the contracts were executed by the

assessee. And after analyzing this receipts, the AO has recorded a conclusion in the assessment order that the assessee has sufficient cash available in the books of account and cash was deposited out of available cash into the books of the assessee. The AO also recorded a finding in the assessment order there were frequent withdrawals from the bank account for making labour payments, truck and lorry expenses etc. matching with business profile of the assessee. According to the Pr. CIT, the AO has not verified the details furnished by the assessee qua the opening balance, receipts, cash deposits, cash withdrawals and closing balance as per the books of accounts of the assessee in respect of various months. The Pr. CIT noted that the cash deposited by the assessee in the bank account was abnormally high and should have raised suspicion of the AO and AO should have done the necessary enquiry and thus 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 that there was sufficient cash available in the books of the assessee and the deposits were out of the books of account of the assessee 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 even if one of the two condition is satisfied but in the present case the twin conditions were 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 correct view based on his examination of records furnished by the assessee. 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 can not 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 has not conducted any enquiry himself to record a finding as to who the order is erroneous and prejudicial which is not correct and as per the ratio 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 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- Amit Kumar Agarwal, Vrindavan Chhatrapati Shivaji Marg, Harihar Singh Road, Bariatu, Ranchi-834001.
2. Respondent – PCIT -Ranchi
3. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata