

**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. 23/RAN/2022  
Assessment Year : 2017-18**

Ajay Kumar Singh (PAN: AGJPS 5089 E)	Vs.	PCIT(Central)-Patna
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	18.08.2023
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(Central)- Patna [hereinafter referred to as ‘ Ld. PCIT ’] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 27.03.2022 for the assessment year 2017-18.

2. The only issue raised by the assessee is against the invalid exercise 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 27.12.2019 assessing the total income at Rs. 50,29,890/-. The assessee filed return of income on 15.09.2017 showing total income at Rs. 50,29,890/-. The case was selected for limited scrutiny for abnormal increase in cash deposits during demonetization period. The Pr. CIT upon perusal of the assessment records observed that the total cash deposited in the bank account for FY 2016-17 was Rs. 6,72,48,950/- on the basis of details of cash sales and cash debtors collections during the year filed by the assessee. The Id. Pr.CIT however found from the submissions of the assessee dated 5.12.2019 and cash flow statement for FY 2016-17 that cash deposited in the bank was Rs. 6,44,36,450/- with opening balance of Rs. 1,33,297.46 and closing cash balance 2,66,993.54 which mean that Rs. 28,12,500/- which was calculated by subtracting (6,72,48,950 – 6,44,36,540) was not taken into account which the AO has not verified. The Pr. CIT further noted that the assessee has shown introduction of capital in the cash flow statement in FY 2016-17 however in the balance sheet the same is not shown in the capital introductions. With these observations , the Pr. CIT concluded that the assessment framed by the AO, without taking any account on this issue, is prima facie erroneous insofar as prejudicial to the interest of the revenue. Accordingly a show cause notice was issued u/s 263 of the Act which was duly replied by the assessee. Finally the Id. Pr. CIT , after rejecting the reply of the assessee, revised the assessment order framed u/s 143(3) dated 27.12.2019 and directed the AO to reframe the assessment afresh after affording a reasonable opportunity of hearing to the assessee.

4. The Ld. A.R vehemently submitted before us that the jurisdiction exercised by the Pr. CIT u/s 263 of the Act and consequent order passed u/s 263 of the Act dated 27.12.2019 are invalid and bad in law as the assessment framed by the AO u/s 143(3) did not suffer any mistake nor is prejudicial to the interest of the revenue. The Ld. A.R

,while referring to this issue raised in show cause notice issued u/s 263 of the Act, submitted that the first issue was in respect of not taking into account cash of Rs. 28,12,500/- which was a factual mistake which has occurred by showing the amount of deposits in the bank at Rs. 76,57,430/- in the month of May, 2016 instead of Rs. 48,44,930/- and hence the difference of Rs. 28,12,500/-. The Ld. A.R submitted that even in the assessment proceedings this issue was clarified by the assessee vide letter dated 10.12.2019 filed with the office of AO and it was only after accepting the explanation of the assessee the issue was accepted in the assessment. The Ld. A.R furnished before the Bench that the copy of said letter dated 10.12.2018 to corroborate his arguments in respect of alleged non consideration of cash of Rs. 28,12,500/- which was the issue on which the revisionary jurisdiction was exercised. On the second issue the Ld. A.R submitted that the assessee has shown introduction of capital of Rs. 10,00,000/- in the cash flow statement for FY 2016-17 but in the balance sheet for the year ending 31.03.2017 while preparing the balance sheet the introduction and withdrawal were netted and net amount of Rs. 1,22,266/- was shown as withdrawal. This issue was also explained before the AO vide letter dated 10.12.2019. The Ld. A.R therefore prayed that the issue raised by the Pr. CIT were fully examined by the AO in the assessment proceedings and a correct and possible view was taken. The Ld. A.R therefore prayed that the jurisdiction exercised by the Pr. CIT is bad in law. The Ld. A.R submitted that in order to exercise the jurisdiction u/s 263 of the Act the twin conditions have to be satisfied as envisaged u/s 263 of the Act i.e. the assessment order has to be erroneous and second that the error has caused prejudice to the interest of the revenue and even if one of the two conditions is satisfied the jurisdiction u/s 263 of the Act was not available. The Ld. A.R submitted that this is the ratio laid down by the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC). Accordingly the Ld. A.R prayed that the order passed u/s 263 of the Act may kindly be quashed.

5. The Ld. D.R on the other hand relied the order of Pr. CIT.

6. We have heard the rival contentions and perused the material on record. We have perusal of the notice issued u/s 263 of the Act and observe that the revisionary jurisdiction was exercised by the Pr. CIT on two counts, one that cash was not taking into account the cash of Rs. 28,12,500/- and second not showing Rs. 10,00,000/- as capital introduction of balance sheet where the same appeared in the cash flow statement filed by the assessee. We observe that both these issues were examined in detail by the AO during the assessment proceedings after calling for information/details from the assessee vide letter dated 10.12.2019. The assessee filed before the AO detailed reply submitting that due to typographical mistake in the month of May, 2016 the cash deposited in the bank account was wrongly shown as Rs. 76,57,430/- instead of Rs. 48,44,930/- which has resulted into difference of Rs. 28,12,500/-. This being a factual mistake and was accepted by the AO after the explanation of the assessee as filed on 10.12.2019. Similarly in respect of capital introduction of Rs. 10,00,000/- the assessee has filed necessary details and proved that the capital introduced and drawings were netted for and net amount of Rs. 1,22,262/- was shown as withdrawals in the capital account which has been verified and accepted by the AO. Accordingly in our opinion, the assessment framed by the AO u/s 143(3) dated 27.12.2019 is not suffering from any mistake and therefore cannot be said to be erroneous. Considering this 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 order has to be erroneous insofar as prejudicial to the interest of the revenue. In our opinion, the twin conditions have to be satisfied concurrently and the 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 not satisfied as the order is neither erroneous nor prejudicial to the interest of the revenue as both these issues were explained before the AO, he has taken a correct view on the basis of evidences and explanation of the assessee which are factually correct. The case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. (supra) wherein the same ratio has been laid. We, therefore

respectfully following the 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 6<sup>th</sup> November, 2023

Sd/-

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

Sd/-

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

Dated: 6<sup>th</sup> November, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ajay Kumar Singh, Baidyanath Medical Agencies, Old Commissioner Compound, Ranchi-834001.
2. Respondent – PCIT (Central)- Patna
3. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata