

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.162/SRT/2022 (AY 2017-18)

(Hearing in Physical Court)

Shri Bharatkumar R Soni Patwa Sheri, Nr. Kansarawad, Moti Bazar, Navsari-396445 PAN : AGUPS 8224 Q	Vs	Principal Commissioner of Income-tax, Valsad, Income Tax Office, Palak Arcade, Shanti Nagar, Tithal Road, Valsad-396001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Rohit K.Taja, CA
राजस्व की ओर से /Revenue by	Shri Ashish Pophare, CIT-DR
सुनवाई की तारीख/Date of hearing	20.11.2023
उद्घोषणा की तारीख/Date of pronouncement	20.11.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of learned Principal Commissioner of Income tax-Valsad [for short to as 'Ld. PCIT'] passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.03.2022 for assessment year (AY) 2017-18. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned Principal Commissioner of Income Tax has erred in passing the impugned revision order under section 263 of the I.T. Act, 1961, by holding that the original assessment order passed the Ld. A.O. Ward-1, Navsari, under section 143(3) of the Act dated 30.12.2019 is erroneous and prejudicial to the interest of the revenue.

2. On the facts and circumstances of the case as well as law on the subject, the learned Principal Commissioner of Income Tax has failed to appreciate that the assessment order was neither erroneous nor prejudicial to the interest of the revenue and thus order u/s 263 is bad in law, illegal, ultra-vires, in excess of and/or in want of jurisdiction and otherwise void.

3. It is therefore prayed that the original assessment order under section 143(3) was passed after full satisfaction of the Ld. A.O. Hence, the impugned revision order passed under section 263 may please be quashed.”

2. Brief facts of the case are that assessee is a proprietor of B.R. Jewellers, engaged in the jewellery business. For the assessment year 2017-18, the assessee filed his return of income on 30.10.2017 declaring income of Rs.10,12,150/-. The case was selected for scrutiny on the issue of “huge cash” deposited during demonetization period. The Assessing Officer during assessment proceedings issued various notices under section 142(1) seeking various details. The Assessing Officer also obtained direction under section 144A from Range head /Joint Commissioner of Income-tax, Navsari vide order / letter dated 27.12.2019. The Assessing Officer ultimately completed assessment proceedings by making addition on account of low gross profit for the year under consideration. The Assessing Officer made addition of 2.50% on account of difference of lower gross profit vis-à-vis earlier years. For the year under consideration, the assessee has shown turnover of Rs.5.90 crores and Assessing Officer made addition of 2.50% of turnover thereby making addition of Rs.14,77,417/-. The assessment order was revised by Ld.PCIT in exercising his jurisdictional power under section 263. Before revising the

assessment order, Ld. PCIT issued show cause notice dated 17.03.2022 under section 263. The contents of show cause notice is recorded in para-4 of his order. The Ld.PCIT in para-5 of his order recorded that notice was sent on e-mail i.e., sanjay_1278@yahoo.co.in on 17.03.2022 through ITBA portal. However, the said notice was not delivered. The ld PCIT scanned the screen shot of ITBA portal in para-5 of his order. The Ld.PCIT further noted that on verification of last return of income filed by assessee, a new e-mail id brgoldnew2020@gmail.com was found and fresh show cause notice was served on said e-mail id through ITBA portal. The Ld. PCIT further recorded that the assessee neither furnished any explanation to the show cause notice nor sought any adjournment till passing the order of Ld.PCIT. The Ld. PCIT by referring certain decisions of superior courts held that the assessment order passed under section 143(3) by Assessing Officer is without making any enquiry for verification on the issue, which ought to have been made in this case. The assessment order was held to be erroneous and in so far as prejudicial to the interest of Revenue and was set aside with the direction to frame *de novo* assessment after making proper enquiry on the issue identified by Ld. PCIT. Aggrieved by the order of Ld. PCIT the assessee has filed present appeal before the Tribunal.

3. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-Tax-Departmental Representative (Ld.CIT-DR) for the Revenue. The Ld.AR for the assessee submits that assessee has not received show cause

notice issued by Ld. PCIT. The assessee came to know about the about the show cause notice after passing the order under section 263 of the Act. The Ld. AR for the assessee submits that Ld.PCIT passed the order without giving any opportunity of being heard to assessee and order passed by Ld.PCIT is against the statutory provision of under section 263. Granting of opportunity of hearing is mandatory under section 263. The action of Ld. PCIT in passing the order is not legal and subsequent action thereto is *void ab initio*. The Ld.AR for the assessee submits that since assessee was not given any opportunity of hearing therefore the matter may be restored back to the file of Ld. PCIT with a direction to grant assessee opportunity and to pass order afresh in accordance with law.

4. The Ld. AR for the assessee in his alternative submission, submitted that the Assessing Officer passed the assessment order after verification of fact and considering the entire material received in response to the show cause notice and material on record accepted the explanation of assessee on the issue of cash deposit. Even the Ld. PCIT in his show cause notice has duly mentioned / accepted that Assessing Officer has examined the issue. The Ld. AR for the assessee further submits that before passing the assessment order, the Assessing Officer obtained direction from JCIT/ Range Head and passed the assessment order. Merely there is no detailed discussion in the assessment order on the issue, which is otherwise plausible and reasonable, cannot be branded as has erroneous and prejudicial to the interest of revenue. The Assessing Officer applied his mind and

passed the assessment order. The Ld. AR for the assessee submits that he has filed detailed written submission regarding on the issues raised in the present appeal and also rely on various case laws mentioned therein. The Assessing Officer has examined the entire facts and circumstances of the case and took one of the possible view, which cannot be considered as erroneous and prejudicial to the interest of revenue. Merely, the Ld. PCIT has taken another view, which cannot be a ground for revising the assessment order. The Ld. AR for the assessee thus submitted that he has a good case on merit and the appeal of assessee may be accepted.

5. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld. PCIT. The Ld.CIT-DR submits that assessee was given opportunity to contest his proceedings and Ld. PCIT in his order has categorically recorded that show cause notice was served upon the assessee and assessee has not filed any response thereto. The Ld. PCIT independently examined the assessment record and identified the issue in the show cause notice that during the demonetization period, the assessee has made huge cash deposit of Rs.49.06 lakh, which consists mainly on specified currency note. The Assessing Officer has not verified the issue about cash deposit as per the standard operating procedure (SOP) issued by Central Board of Direct Tax (CBDT) from time to time. Thus, the Assessing Officer in without verifying the fact in a proper manner has accepted the claim of assessee about sales and cash received by assessee. The action of Assessing Officer is not in accordance with law and guidelines

prescribed and instruction issued by the Central Board of Direct Tax to clean the black-money deposited in bank account during demonetization period. The Ld. CIT-DR for the Revenue submits that he fully supported the order of Ld. PCIT and prayed that appeal of assessee may be dismissed. Ld.CIT-DR for the Revenue further submits that Assessing Officer has already passed assessment order giving effect the assessee has not given any explanation to contest the issue. Thus, the issue attained finality.

6. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We have also gone through the written submission filed by the Ld.AR for the assessee, though filed by Ld.AR for the assessee without seeking any permission of this Bench. We find that Ld. PCIT in his show cause notice identified the issue of cash deposit of Rs.49.06 lakh on 10.11.2016 in assessee's bank account which maintained with Central Bank of India. The Ld. PCIT on perusal of record also found that opening cash balance as on 01.04.2016 was received at Rs.6,80,737/- and closing cash-in-hand on 31.10.2016 was at Rs.23,06,985/-. During 31.10.2016 to 01.11.2016, the assessee has shown substantial cash sales which was claimed for depositing in his bank account. The Ld. PCIT was of the view that Assessing Officer has not examined the issue of cash deposit as per SOP issued by CBDT vide Instruction NO.3/2017 dated 21.02.2017, Instruction No.04/2017 dated 03.03.2017, SOP dated 15.11.2017, SOP dated 05.03.2019 internal Guidance Note issue vide F.No.225/145/2019-ITA-II, dated

13.06.2019. We further find that Ld.PCIT in para-5 noted that show cause notice issued on 17.03.2022 at the e-mail id of assessee sanjay_1278@yahoo.co.in was not delivered to assessee's e-mail id. The Ld. PCIT further noted that new e-mail id. was searched on the latest return of income of assessee i.e. brgoldnew2020@gmail.com and that on such e-mail id show cause notice under section 263 was served. The assessee has not filed any response. The Ld. PCIT thereafter considering the material on record was of the view that Assessing Officer passed assessment without making any enquiry or verification of fact on the issue, which ought to have been made by Assessing Officer.

7. We find that show cause notice issued under section 263 was allegedly sent on the latest e-return filed by assessee through new e-mail id. Before us Ld. AR for the assessee fairly accepted that such notice was received belatedly i.e., after passing the 263 order by Ld. PCIT. In our view, the granting fair and proper opportunity is the primary and statutory conditions stipulated under section 263 of the Act. We find that assessee has not received fair and proper opportunity in the present matter and the Ld. PCIT has passed *ex parte* order passed under section 263 in absence of respondent / assessee. Therefore, in our considered view, the assessee deserves one more opportunity for contesting his revision proceedings, hence, the impugned order passed by Ld .PCIT under section 263 on 27.03.2022 is set aside and the matter is restored back to the file of Ld.PCIT with a direction to pass the order afresh on being heard to assessee in accordance with law.

The Ld.AR for the assessee is also directed to provide telephone and e-mail id of assessee as well as his Authorized Representative which is active and are used in a ready for day-to-day business or communication. The assessee is further directed to be more vigilant in making proper compliance of notice issued by Ld.PCIT as and when called for. With the direction above, the appeal of assessee is allowed for statistical purposes in above terms. Considering the facts that we have restored the matter back to the file of ld PCIT, thus, consideration of the alternative submissions of Ld. AR for the assessee have become academic in nature.

8. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 20/11/2023.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBER]

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 20 /11/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Sr.P.S./Assistant Registrar, ITAT, Surat