

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.37/JAB/2022  
Assessment Year:2015-16

Shri Ambika Charan Dixit, 82, Narmada Road, Jabalpur PAN:AEDPD2251F	Vs.	Pr. Commissioner of Income Tax, Jabalpur.
(Appellant)		(Respondent)

Appellant by	Shri G. N. Purohit, Sr. Advocate
Respondent by	Smt. Garima Chaudhary, CIT (D.R.)
Date of hearing	21/11/2023
Date of pronouncement	24/11/2023

**ORDER**

**PER YOGESH KUMAR U.S.:J.M.**

The present appeal has been filed by the assessee against the order of learned Pr. CIT, Jabalpur-1 dated 19/03/2021 pertaining to assessment year 2015-16 passed u/s 263 of the Act. In this appeal, the assessee has raised the following grounds:

- "1. *The learned PCIT has erred in law and on facts of the case in cancelling the assessment for AY 2015-16 for de novo assessment u/s 263 of The Income Tax Act. The conditions for invoking section 263 are not satisfied. The order made is without jurisdiction should be quashed.*
2. *That, The learned PCIT has failed to record specific finding based on case specific facts that the order made u/s 143(3) by AO is erroneous and prejudicial to the interest of revenue. The order should be annulled.*

3. *The learned PCIT has failed to record any direction in the 263 order that how the assessment should be framed by AO and manner of enquiry to be conducted. The order is bad in law and should be quashed.*
4. *The applicant reserves his right to raise additional ground or grounds of appeal those may arise at the time of hearing of this appeal."*

2. The brief facts of the case are that the assessee filed return of income of Rs.5,68,270/- and agriculture income of Rs.2,02,500/- for the assessment year 2015-16. The case of the assessee was selected for limited scrutiny to examine the following reasons:

1. Income/Capital gain on sale of land or building
2. Income from real estate business
3. Sundry creditors
4. Large increase in sundry creditors with respect to turnover as compared to preceding year
5. Large increase in sundry creditors and reduction in business income as compared to preceding year
6. Low Capital gain with respect to sale consideration (higher or AIR and ITR).

3. The assessment u/s 143(3) of the Act was completed on 14/08/2013 by determining the total income of Rs.8,74,550/- by making addition of Rs.2,56,280/- and Rs.50,000/- u/s 43CA and disallowed the expenses respectively. The learned Pr. CIT is of the opinion that the Assessing Officer did not enquire about the genuineness of the transactions made with Nemi Kochar and also failed to obtain copy of agreement in support of determining the Fair Market Value of the property u/s 43CA of the Act in the financial year 2009-10 and also failed to verify the genuineness of the sundry creditors/customers booking advances by making third party enquiries and simply accepted the assessee's version on the basis of confirmation letters filed by the assessee during the course of assessment

proceedings and since the very reason for selection of the case under scrutiny was to examine the veracity of the sundry creditors appearing in the balance sheet but no enquiries were conducted by the Assessing Officer. Therefore, the Pr. CIT vide order dated 19/03/2021 set aside the assessment order for de novo consideration with the direction to the Assessing Officer to pass fresh assessment order by making proper investigation and enquiry. Aggrieved by the order of learned Pr. CIT dated 19/03/2021, the assessee preferred the present appeal on the grounds mentioned above.

4. The learned counsel for the assessee submitted that the learned Assessing Officer, during the course of assessment proceedings, initiated u/s 143(3) of the Act, made enquiry and after the enquiry, the Assessing Officer was satisfied with the evidences produced before him. Further submitted that the twin conditions of section 263 have not been fulfilled by the Pr. CIT which passed the order impugned. The learned counsel for the assessee has also produced paper book and drawn our attention to the assessment order and the documents produced thereon.

5. Per contra, learned D.R. submitted that as the Assessing Officer has not made proper enquiry regarding genuineness of the transactions made with Nemi Kochar and also regarding the genuineness of the sundry creditors/customers, the Pr. CIT has rightly exercised his jurisdiction u/s 263 of the Act.

6. We have heard both the parties and perused the materials on record. In the instant case the assessment has been completed u/s 143(3) of the Act on 14/08/2013 on total income of Rs.8,74,550/- and agriculture income of Rs.2,02,500/- as against the income returned at Rs.5,68,270/- and agriculture income of Rs.2,02,500/-. During the assessment proceedings

u/s 143(3) of the Act, the two issues involved in the order passed u/s 263 of the Act by Pr. CIT have been verified by the Assessing Officer. The learned Assessing Officer while enquiring regarding sundry creditors asked the assessee to furnish the details and evidences of sundry creditors and explain the same. The Assessing Officer has also called for examination of the sundry creditors who have given confirmation statement and Assessing Officer has also examined the books of account of the assessee which have been placed on record. On verifying the explanation provided by the assessee and the documents provided thereon, the Assessing Officer found the explanation of the assessee as satisfactory. The relevant observation of the Assessing Officer is as under:

*"On perusal of the balance sheet, it is gathered that sundry creditors appearing in the balance sheet Dixit Builders Pvt. Ltd., at Rs.1,48,06,974/- & Rs.3,78,16,878/- customer advance for booking. The assessee was asked to furnish the details & evidences of sundry creditors and explain the same. In this connection, assessee has submitted that "sundry creditors / customers booking advances are forming part of audit report. However, the list of sundry creditors are appearing in the books of account is enclosed for your kind perusal. Copy of ledger account of sundry creditors is also enclosed for your kind verification. It is respectfully submitted that some of the sundry creditors are old and balance is standing payable this year also. Their confirmation of balance has already been verified by your good-self during the course of assessment proceedings for the assessment year 2014-15 and considered. The assessee has approached to the respective sundry creditors and the parties from whom booking advances were received for their confirmation of balance as appearing in the books of account of the assessee as on 31-03-2015. The confirmation of account statement shall be submitted before your goodself as the same were received from respective trade creditors. It is respectfully submitted that the creditors as appearing in the books of account may please be considered.*

*During the course of assessment proceedings, confirmed statements of accounts of sundry creditors were called for and*

*examined with the books of accounts of the assessee, which is verified and are placed on record.*

*The assessee was asked to explain as to why low capital gain with respect to sale consideration (higher of AIR & ITR ). The assessee has explained that "the assessee is a builder and contractor engaged in construction / development of land and building. Except the assets sold as trading assets and recorded in the books of account as sales the assessee did not sold any other assets which attracts the provisions of capital gain. Similar is the position for purchase of assets. The immovable properties / assets those are if any purchased during the year are recorded in the books of account of assessee and reflected in audit report. Source of investment are also incorporated in the books of account. No any other assets / immovable properties were purchased by the assessee during the year. The same may please be considered.*

*The explanation of the assessee has been examined and found satisfactory."*

7. In so far as the second issue i.e. the genuineness of the transaction made with Nemi Kochar, during the original assessment proceedings the learned Assessing Officer based on the information that the assessee had purchased property valued at Rs.38,81,000/-, asked the assessee to explain the source for the purchase and the assessee had provided the necessary explanation and produced the documents in support of the contention. The explanation given by the assessee was found to be satisfactory and the learned Assessing Officer had discussed the explanation given by the assessee in following manner:

*".....The assessee is the builder and contractor engaged in construction / development of land and building and its trading. During the year the assessee has sold shops, flats and the same is recorded in the books of account as sales. The assessee has submitted copy of sale deeds of the properties, the same is verified and placed on record. It is seen that during the year the assessee has sold one of the property for valuing Rs.36,40,000/- to M/s AW & Sons, the value determined by the Stamp Valuation Authority at*

*Rs.38,81,000/-. Thus, there is a difference in value of Rs.2,41,000/-. The assessee was asked to explain the difference of the said value. During the course of hearing no explanation was furnished by the assessee, therefore, the said amount of Rs.2,41,000/- is added to the income of the assessee u/s 43 CA of the Income Tax Act 1961. Similarly a sum of Rs. 15,280/- were also added u/s 43CA on account of property sold to Shri Dr. Nemi Kochar during the year. Since no satisfactory explanation/evidences are submitted by the assessee, therefore penalty proceedings u/s 271(1)(c) of the Act can be initiated against the assessee."*

8. Considering the above facts, it is found that the Assessing Officer had made enquiries on both the issues and satisfied with the evidence produced before him and found that no addition is required to be made. The Pr.CIT cannot propose to substitute its opinion on the opinion of the Assessing Officer which is not permissible in the law. There are two pre-conditions essential to pass order u/s 263 of the Act i.e. the order should be erroneous and prejudicial to the interest of the Revenue. Both the conditions are required to be satisfied. The jurisdictional High Court in the case of H.H. Maharaja Pawar, Dewas vs. CIT 138 ITR 518 (MP) has held as under:

*"11. In the present case the non-compliance with s. 144B of the Act did not cause any prejudice to the Revenue because the ITO made the assessment at a figure which was much higher than the income returned, thus benefiting the Revenue and not causing prejudice to its interest. We, therefore, hold that the Tribunal was not right in holding that the order of assessment passed by the ITO without following the procedure under s. 144B was erroneous insofar as it was prejudicial to the interests of the Revenue giving rise to the jurisdiction of the CIT under s. 263 of the Act. Thus, question No. (1) is answered in the negative and against the Department."*

9. It is well settled law that any one of the twin conditions are not satisfied, the notice issued and the order made thereupon u/s 263 of the

Act is erroneous. The similar view has also been taken in following judicial pronouncements:

- (i) Hon'ble Gauhati High Court in the case of Smt. Leela Chaudhary vs. CIT 167 Taxman 1 (Gauhati)
- (ii) Hon'ble Madhya Pradesh High Court in the case of Nazir Singh vs. CIT 252 ITR 820 (MP)
- (iii) The High Court Supreme Court in the case of Malabar Industries vs. CIT 243 ITR 83 (SC)

10. In the present case the assessment has been framed under section 143(3) of the Act. The Assessing Officer collected various information and evidences and satisfied with the explanation given by the assessee regarding the issue of sundry creditor and the issue involved in respect of income/capital gain on sale of land and building. Now the learned Pr. CIT cannot find fault with the action of the Assessing Officer and direct the Assessing Officer to carry out de novo enquiries. Accordingly, we do not find any merit in the issues raised by learned Pr. CIT in its order passed u/s 263 of the Act. Accordingly, we quash the impugned order of Pr. CIT passed u/s 263 of the Act.

11. In the result, the appeal is allowed.

(Order was pronounced in the open court on 24/11/2023)

**Sd/.**  
**(DR. B.R.R. KUMAR)**  
**Accountant Member**

**Sd/.**  
**(YOGESH KUMAR U.S.)**  
**Judicial Member**

Dated:24/11/2023  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar