

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**In ITA No.2802/Del/2019)
Assessment Year: 2014-15**

Rajinder Kumar Sachdeva, C/o. RRR TAXINDIA, D-28, South Extn. Part-I, Karnal (Haryana)	Vs.	ITO, Ward-05, Karnal
PAN :AWCPS0793A		
(Appellant)		(Respondent)

Department by	Ms. Sarita Kumari, CIT - DR
Assessee by	Dr. Rakesh Gupta & Deepesh Garg, Advs.

Date of hearing	15.11.2023
Date of pronouncement	29.11.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This is an appeal by the assessee arising out of order dated 01.03.2019 passed under Section 263 of the Income-Tax Act,1961 by learned Principal Commissioner of Income-Tax (PCIT), Karnal for the assessment year 2014-15.

2. The assessee has raised the following grounds:

1. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 of the Income-Tax Act, 1961 and has erred in holding the assessment order dated 30.09.2016 as erroneous and prejudicial to the interest of the revenue.
2. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in setting aside the assessment order dated 30.09.2016 passed by Ld. A.O u/s. 143(3) and directing the Assessing Officer to make fresh assessment and that too by recording incorrect facts and findings and without observing the principles of natural justice.
3. That having regard to facts & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in holding as under while setting aside the assessment order dated 30.09.2016.
 - Assessee had defaulted in deducting the tax at source in respect of the commission expenses;
 - Ld. AO has paid absolutely no attention to the heavy increase in the heads of expenses mentioned at para 4 of the impugned order;
 - No query was raised by Ld. AO to explain the source of cash deposits in bank account;
 - The assessment order passed in a casual and perfunctory manner without exercising due diligence and without conducting any enquiries; &
 - That the assessment order passed by Ld. AO dated 30.09.2016 is erroneous and prejudicial to the interest of the revenue.
4. That in any case and in any view of the matter, action Ld. Pr. CIT in passing the impugned order u/s 263 which is bad in law and against the facts and circumstances of the case and is in violation of natural justice.

5. That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.

3. Briefly, the facts are, assessee is a resident individual. For the assessment year under dispute, assessee filed his return of income on 26.09.2014 declaring income of Rs.5,12,400. In course of assessment proceedings, Assessing Officer issued notice under Sections 142(1) and 143(2) of the Income-Tax Act,1961 calling for various information and details from the assessee. in response to the such notices, assessee appeared from time to time through his representative and furnished the details called for.

4. After considering the submission of the assessee and details furnished, the Assessing Officer, while completing the assessment under Section 143(3) of the Act vide order dated 13.09.2016, made the following additions/disallowances:

- i) Sales Promotion Expenses; : Rs.1,00,000
- ii) Entertainment, Petrol, Telephone, : Rs. 60,000
stationary, general and advertisement
and publication expenses;
- iii) Low withdrawal for household Exp. : Rs. 50,000

Thus, he determined the total income at Rs.7,22,400. After completion of the assessment as aforesaid, learned PCIT called for and examined the assessment record. While doing so, he found certain shortcomings and discrepancies. Thus, being of the view that assessment order is erroneous and prejudicial to the interest of the revenue, he issued a notice under Section 263 of the Act to the assessee. Though, the assessee objected to the initiation of proceedings under Section 263 of the Act through a detailed submission made to show cause notice, however, learned PCIT was not convinced. Ultimately, holding the assessment order passed to be erroneous and prejudicial to the interest of revenue, he set it aside with a direction to the Assessing Officer to make a fresh assessment after considering the facts and issues discussed by him.

5. Before us, learned counsel appearing for the assessee submitted that along with the return of income, assessee had furnished tax audit report containing balance sheet and the profit and loss account with annexures. He submitted, at the time of assessment proceedings, the Assessing Officer from time to time has called for various information and details not only on the expenses incurred but on other issues also.

In this context, he drew our attention to the questionnaire issued by the Assessing Officer on 16.06.2016.

6. Drawing our attention to the show cause notice issued under Section 263 of the Act, learned counsel submitted that on the issues referred to by the learned PCIT in the show cause notice, the Assessing Officer has made thorough inquiry at the time of assessment proceedings. Thus, he submitted, in the given facts and circumstances the assessment order cannot be considered to be erroneous and prejudicial to the interest of the revenue. Further, he submitted, in the office note appended to the assessment order, the Assessing Officer has very clearly and categorically stated that he had examined the issues for which the case was selected for scrutiny. Thus, he submitted, the allegation of the revisionary authority that the Assessing Officer has not examined various issues is contrary to facts and material on record. Therefore, he submitted, the assessment order cannot be treated as erroneous and prejudicial to the interest of the revenue to empower the revisionary authority to exercise jurisdiction under Section 263 of the Act. In support of such contentions, he relied upon the following decisions:

1. CIT Vs. Sunbeam Auto Ltd. (2011) 332 Income Tax Return 0167 (Delhi);
2. Sri Kumar Pappu Singh Vs. DCIT, (2019) 175 DTR 0198 (Vishaka) (Trib);
3. CIT vs. Sohana Woolen Mills, (2008) 296 Income Tax Return 0238 (P&H);
4. Lotus Energy (India) Ltd. vs. CIT, (2017) 88 Taxmann.com 909;
5. Subodh Agarwal vs. State of UP (2023) 149 Taxmann.com 448 (Allahabad);
6. CIT vs. Max India Ltd., (2007) 295 Income Tax Return 0282 (SC);
7. Malabar Industrial Co. Ltd. vs. CIT, (2000) 243 Income Tax Return 0083 (SC);
8. Russel Properties Pvt. Ltd. vs. A. Chowdhury, Additional CIT (1977) 109 Income Tax Return 0229 (High Court of Calcutta);
9. Jai Prakash Garg Vs. PCIT, ITA No. 2118/Del/2016(ITAT Delhi).

7. Learned Departmental Representative relied upon the observations of learned PCIT.

8. We have considered rival submissions and perused the material on record.

9. The primary issue which requires to be examined is whether the assessment order can be considered to be erroneous and prejudicial to the interest of the revenue in terms with section 263 of the Act. On a perusal of show cause notice issued under Section 263, it is observed

that learned PCIT has considered the assessment order to be erroneous and prejudicial to the interest of the revenue due to following reasons:

- a) Assessing Officer has not examined the issue of disallowance to be made under Section 40(a)(ia) of the Act in respect of commission paid under Section 194A of the Act without deduction of tax at source.
- b) Assessing Officer has not examined huge increase in various expenses which might have resulted in drastic fall in the net profit rate to 0.83% from 6.85% of last year;
- c) Assessing Officer has not examined low withdrawal for household expenses;
- d) Assessing Officer has not examined cash deposits in the bank account maintained with HDFC Bank.

10. On perusal of materials placed before us, it is observed that the Assessing Officer in course of assessment proceedings has examined each of the issues discussed by learned PCIT in the show cause notice issued under Section 263 of the Act. In so far as alleged non deduction of tax at source on commission paid, it is observed that in course of assessment proceedings, the Assessing Officer has specifically enquired into this issue and in response, assessee had submitted that that such commission was paid to its own employees, hence, such commission being part of their salary is not covered under Section 194A of the Act. In so far as claim of huge expenses resulting in

drastic fall in net profit rate, it is observed that in course of the revisionary proceeding itself, assessee has brought to the notice of the learned PCIT the mistake committed by him in considering the net profit of 6.85% in the preceding years and being satisfied with the submissions of the assessee, learned PCIT in paragraph 6.1 has accepted the factual position that the net profit rate in the preceding assessment year was 0.83% and not 6.85%. Thus, the issue of drastic fall in net profit rate due to increase in expenses appears to be on account of factual misconception. As regards the issue of low withdrawal for household expenses, Assessing Officer in course of assessment proceedings has not only examined it, in fact, he has made an addition on that ground. In so far as alleged cash deposits in the bank account, learned PCIT has not brought on record the relevant facts regarding the amount and data of deposits.

11. Thus, the allegations of learned PCIT are not backed by any evidence. In any case of the matter, after considering the materials placed on record, we are convinced that the Assessing Officer in course of assessment proceedings has examined all the issues and after making proper inquiry, has completed the assessment and made

disallowances wherever it was required to be made. That being the factual position on record, the assessment order cannot be considered to be erroneous and prejudicial to the interest of the revenue so as to clothe learned PCIT with the power to exercise jurisdiction under Section 263 of the Act. In the garb of revisionary jurisdiction, the revisionary authority cannot step into the shoes of the Assessing Officer and scrutinize the assessment order with a magnifying glass to find out any small or nonexistent error. Thus, in view of the aforesaid facts, we hold that the impugned order passed under Section 263 of the Act lacks jurisdiction, hence, unsustainable. Accordingly, we quash the order passed under Section 263 of the Act and restore the assessment order.

12. In the result, the appeal is allowed.

Pronounced in the open court on 29.11.2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 29th November, 2023
Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi