

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 446/DEL/2022 [A.Y. 2012-13]

Shri Paramjit Singh
Dra Guru Nanak Pura
Pingly Road, Karnal

Vs.

The P.C.I.T.
Rohtak

PAN: BGPS 9938 N

(Applicant)

(Respondent)

Assessee By : Shri Somil Agarwal, Adv

Department By : Shri P.N. Barnwal, CIT-DR

Date of Hearing : 28.11.2023

Date of Pronouncement : 01.12.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. PCIT, Rohtak dated 17.02.2022 framed u/s 263 of the Income-tax
Act, 1961 [the Act, for short] pertaining to A.Y. 2012-13.

2. The grievances of the assessee read as under:

"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 Income Tax Act, 1961 and has erred in holding the reassessment order dated 06-08-2019 as erroneous as well as prejudicial to the interest of revenue and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in setting aside the impugned reassessment order dated 06-08- 2019 and directing the assessing officer to pass an order, in accordance with law and that too by recording incorrect facts and findings and without observing the principles of natural justice and more particularly when all the necessary details/information/evidences were examined at the time of reassessment proceedings with regard to cash deposit.

3. That in any case and in any view of the matter, action of Ld. Pr.CIT in passing the impugned order U/S 263 is bad in law and against the facts and circumstances of the case and is in violation of principles of natural justice.

4. That having regard to the facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 which is bad in law inter alia for this reason that the reassessment order passed u/s 147(3) dated 06.08.2019 which is sought to be revised u/s 263 itself was invalid inter alia on various grounds as mentioned below and thus proceedings initiated u/s 263 against the invalid reassessment order is clearly bad in law.

(a) That assumption of jurisdiction u/s 147 is itself is bad in law as the reason recorded would not have led to the formation of belief of escapement of Income.

(b) That no valid satisfaction/approval U/S 151 was obtained.

(c) That impugned reassessment order was passed without complying with the mandatory conditions of section 147 to 151.

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 stated, the facts of the case are that assessment order dated 06.08.2019 framed u/s 147 r.w.s 143(3) of the Act was considered not only erroneous but also prejudicial to the interest of the Revenue by the PCIT Rohtak.

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

5. The sum and substance of the submissions of the ld. counsel for the assessee is that the Assessing Officer could not have done what the PCIT expected him to do as the Assessing Officer had limited jurisdiction for completing reassessment proceedings based upon the reasons recorded for reopening the assessment.

6. It is the say of the ld. counsel for the assessee that the Assessing Officer could not have gone beyond the reasons recorded for reopening the assessment.

7. Supporting the order of the PCIT, the ld. DR vehemently state that though the Assessing Officer has accepted the source of cash deposit but did not investigate the nature of land alleged to be sold as agricultural land. It is the say of the ld. counsel for the assessee that the impugned land was within the municipal corporation limit and, therefore, the Assessing Officer completely ignored the taxability of capital gain arising out of the sale of the said land.

8. Reasons recorded for reopening the assessment u/s 147 of the Act read as under:

"1. This is a case of individual. As per report generated from the AST, the assessee, Sh. Paramjit Singh Sio Sh. Amar Singh, Dera gurunanak Pura, Pingli Road, PO- Chirao, Distt. Karnal did not file his return of income for the AY.2012-13.

2. As per information received from NMS Cycle of Itax net, site of the department, the assessee had made cash deposits to the tune of RS.20,50,0001- in his saving bank account maintained with Oriental Bank of Commerce, Karnal & Rs. 51,50,0001- in saving bank account maintained with State Bank of Patiala, Karnal and had received interest income at Rs. 7,7501- during the F.Y. 2011-12 relevant to AY. 2012-13 but he did not file the return of income for the period 2011-12 relevant to A.Y. 2012-13.

3. From the perusal of the ITS details, during the F.Y. 2011-12 relevant to A.Y.2012-13 it reveals that the assessee had made cash deposits to the tune of Rs. 72,00,0001- in his saving bank accounts and received interest at Rs. 7,7501- as per 26AS during the F.Y. 2011-12 relevant to AY. 2012-13.

4. After receiving the information that cash of Rs. 72,00,0001- was deposited in savings bank accounts and interest received at Rs 7,7501-during the F.Y. 2011-12

relevant to A.Y. 2012-13 but return of income had not been filed by the assessee for the relevant period, case being worth investigation, approval was obtained u/s 133(6) of IT Act, 1961 from the competent authority i.e. Pr. Commissioner of Income Tax, Karnal for further processing of the information. After getting the approval from the Worthy Pr. Commissioner of Income Tax, Karnal u/s 133(6) of IT Act, query letter was issued on 28.02.2019 for verification of transaction asking the assessee for furnishing the reply. In the letter, the assessee was asked to intimate whether the assessee had filed return of income for the A.Y. 2012-13 alongwith source of above said cash deposits of Rs. 72,00,000/- in the saving bank account and interest received at Rs. 7,750/- as discussed above. In compliance thereto, the assessee had furnished reply dated 14.03.2019. The reply filed by the assessee has been considered but not found tenable.

5. In view of the fact and circumstances that the assessee failed to furnish satisfactory reply of the letter issued by this office in respect of source of cash deposits of Rs. 72,00,000/- deposited in the saving bank accounts maintained with Oriental Bank of commerce and State bank Of India and interest income of Rs. 7,750/- during the F.Y. 2011-12 relevant to A.Y. 2012-13. Therefore cash deposit of Rs. 72,00,000/- in saving bank accounts and interest income of Rs. 7,750/- remained unexplained which exceeds the maximum amount no chargeable to tax for the relevant assessment year under consideration Hence, the said unexplained cash deposit of Rs. 72,00,000/- and

interest income of R~ 7,7501 - is required to be taxed in the hands of the assessee as per provisions of section 151 of the Income tax Act, 1961.

Keeping in view the facts narrated above, I am satisfied and have reason to believe that the income chargeable to tax on account of cash deposited in bank account and interest income totaling Rs. 72,07,750/- as well as any other income which comes to notice during assessment proceedings has escaped assessment by reasons of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year 2012-13 and accordingly, the provisions of Section 147 of the I.T. Act, 1901 are clearly attracted in the case of the assessee

7. In this case no return of income was filed for the year under consideration. Accordingly, in this case no assessment was made and the only requirement to initiate proceeding u/s 147 is reason to believe, which has been recorded in the above paragraphs.

It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed in paragraph above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to

be a case where income chargeable to tax has escaped assessment

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of income Tax as per provisions of section 151 of the Income Tax Act, 1961."

9. Reasons for reopening the assessment are limited to the verification of the source of cash deposited in the Savings Bank account and interest earned on savings account. We find that while scrutinizing the return of income, during the course of scrutiny assessment proceedings, the Assessing Officer considered the reply of the assessee in respect of source of cash deposited in the Savings Bank account and after thorough scrutiny the Assessing Officer completed the assessment proceedings by observing as under:

"Proceedings u/s 147 of the Act were initiated in this case vide notice u/s 148 of the Act dated 27.03.2019 issued

to the assessee with prior approval of the Worthy Pr. Commissioner of Income Tax, Karnal, vide her office letter No. Pr.CIT/KNL/148/2018-19/4717 dated 19.03.2019. Further, on change of incumbent, notice u/s 142(1) was issued on 15.07.2019 fixing the case for 23.07.2019 and asked for furnishing the information regarding source of income, copy of ITR along with all its annexure for the assessment year 2012-13 and source of cash deposit. The assessee was also asked to furnish details of all the moveable/immovable assets purchased /sold during the financial year 2011-12, relevant to A.Y.2012-13 and intimate the Capital gain liability in sale of the same along with documentary evidence.

3. In response to the notices issued, Sh. Mohinder Singh, Advocate authorized representative of the assessee has attended the proceedings and filed his Power of Attorney. In response to the notice u/s 148 of the I.T. Act, 1961 the counsel of the assessee furnished the copy of ITR declaring an Income of Rs.86,343/-+Rs.4,12,500/-Agriculture Income under I.T. Act, 1961 along with computation of income. The assessee is deriving income from agricultural activities. Accordingly notice u/s 143(2) & 142(1) of the I.T. Act, 1961 was issued for compliance. Regarding source of cash deposit, necessary documents have been examined, perused and placed on record. Keeping in view the reply and documents submitted by the assessee, the returned income shown at Rs.86,343/-+Rs.4,12,500/-Agriculture Income is accepted.

10. It can be seen from the findings of the Assessing Officer [supra] that he has considered the source of cash deposit, necessary documents have been examined/perused and placed on record which means that not only the Assessing Officer has considered the source of cash deposit, but has also examined the document of sale transaction of the land.

11. Assuming jurisdiction u/s 263 of the Act, the PCIT issued the following show cause notice:

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Rohtak

To, PARAMJIT SINGH DEERA GURU NANAK PURA, PINGLI ROAD KARNAL 132001, Haryana India	3076 29.10.2021
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PAN/TAN: EBGPS9938N	AY: 2012-13	DIN & Notice No : ITBA/REV/F/REV1/2021- 22/1036639016(1)	Dated: 29/10/2021
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NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2012-13**.

In this regard, a hearing in the matter is fixed on **10/11/2021** at **11:00 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

Sub : Show Cause Notice U/s 263(1) of the Income Tax Act, 1961 for the A.Y. 2012-13 Regarding-

In response to the notice u/s 148 of the Income Tax Act, 1961 you have filed Return of Income for the A.Y. 2012-13 declaring income of Rs. 86,343/- + agriculture income of Rs.4,12,500/- was filed by you on 29.06.2019. The assessment for the year under consideration was completed by erstwhile ITO Ward-3, Karnal vide order dated 06.08.2019 passed u/s 143(3)r.w.s 147 of the Income Tax Act, 1961 by accepting returned income.

2. The assessment record for the period under consideration was called upon and examined. On such examination, it has been noticed that during assessment proceedings, while explaining source of cash deposit, you have submitted the copy of Sale deed No. 13087 dated 23.12.2011 consideration amount of Rs. 1,50,00,000/- of sale of agricultural land in which your share is amounting to Rs. 59,37,500/- The land

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAYAKAR BHAWAN, OPP. MANSAROVER PARK, ROHTAK, Haryana, 124001
Email: ROHTAK.CIT@INCOMETAX.GOV.IN,

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN- Document Identification No.

mentioned in the above sale deed falls in within the Municipal Area, therefore, is a capital asset within meaning of Section-2(14) of the Income Tax Act, 1961 and the capital gain is chargeable to tax u/s 45 of the Act in the above sale transaction. You have not submitted computation of LTCG nor the AO has called for the same in the absence of which cost of acquisition & LTCG cannot be determined. Therefore, the whole sale proceeds amounting to Rs. 59,37,500/- is to be taken for the purpose of LTCG and re-computation of income is required to be made accordingly. Failure on the part of the AO to do so renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue.

3. In view of the above, the assessment completed by the AO is, *prima facie* erroneous in so far as it is prejudicial to the interest of revenue. The same is, therefore, required to be suitably amended / modified u/s 263 of the Income Tax Act, 1961. You are, therefore, required to show cause as to why an appropriate order u/s 263(1) of the Act should not be passed. In this connection, you may send your written reply supporting documentary evidence on the email-id(rohtak.cit@incometax.gov.in) or through e-proceedings by 10.11.2021. In case of no reply per above, it shall be assumed that you do not wish to say anything in the matter and the matter would be decided as per material on record without any further notice / intimation to you.

12. On a perusal of the aforementioned notice at Para 2 the PCIT himself has referred to the sale deed No. 13087 dated 23.12.2011 relating to sale of agricultural land. This very document was examined by the Assessing Officer as mentioned in his assessment order when he was examining the source of cash deposited in the Savings Bank account.

13. These facts go on to show that specific queries were raised to which specific reply was filed. Therefore, it cannot be said that the Assessing Officer did not make any enquiry. Moreover, assessment was reopened with specific reasons for reopening and those specific

reasons have been duly examined by the Assessing Officer before completing assessment.

14. In our considered opinion, for exercise of power u/s 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. A perusal of the assessment order shows that the returned income was accepted by the Assessing Officer and no addition was made for reasons recorded at the time of issue of notice u/s 148 of the Act.

15. This is an undisputed fact that the issues which prompted the Assessing Officer to reopen the assessment were duly considered and reply of the assessee was accepted and no addition was made. This fact has also not been disturbed by the PCIT in his order u/s 263 of the Act.

16. In our considered opinion, the Assessing Officer could not have made the addition on the issues raised by the PCIT in his order as no addition was made on account of reasons recorded for reopening the assessment.

17. The Hon'ble High Court of Delhi in the case of CIT Vs. Software Consultants I.T. Appeal No. 914 of 2010 order dated 17.01.2012 21 Taxmann.com 155 was seized with the following question of law:

“Whether the Tribunal was right in law in holding that the CIT had wrongly invoked the jurisdiction u/s 263 of the Act.”

18. The Hon'ble High Court, on facts similar to the facts of the appeal under consideration, held as under:

“9. One of the contentions, which has been accepted by the tribunal is that the order of the Assessing Officer cannot be regarded as erroneous even if the Assessing Officer had failed to carry out necessary verification and required enquiries in respect of the share application money, as no addition has been made on account of the reasons for reopening, which were recorded before issue of notice under [Section 148](#) of the Act. It has been held that the Assessing Officer could not have made an addition on account of share application money as no addition has been made on account of FDRs of Rs.20 lacs. The tribunal has noticed and recorded that in the reasons for reopening it was mentioned that the assessee had made investment in form of FDRs of Rs.20 lacs but in the assessment order passed under [Section 147/143\(3\)](#) of the Act it has been held that the

respondent assessee had been able to show and establish the genuineness of and capacity to make the said investment.

10. Similar issue had arisen before this Court in Ranbaxy Laboratories Limited versus CIT, (2011) 336 ITR 136 (Delhi). In the said case, the Division Bench had also examined Explanation 3 to [Section 147](#), which was inserted by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1989. Reference was made to the decision of the Bombay High Court in CIT versus Jet Airways India Limited, (2011) 331 ITR 236 (Bom.) in which it has been held as under:

"The effect of [section 147](#) as it now stands after the amendment of 2009 can, therefore, be summarised as follows : (i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year ; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of [section 148](#) ; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section ; and (iv) though the notice under [section 148\(2\)](#) does not include a particular, issue

with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section."

11. Thereafter, the High Court referred to the decision of the Rajasthan High Court in the case of CIT versus Shri Ram Singh, (2008) 306 ITR 343 (Raj.) in which it has been observed as under:

"It is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had 'reason to believe' to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under [section 147](#).

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under [section 147](#), the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his 'reason to believe', had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason

to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under [section 147](#)."

12. The Division Bench in Ranbaxy Laboratories Limited (supra) considered the judgment of the Supreme Court in the case of V. Jagmohan Rao versus CIT and EPT, (1970) 75 ITR 373(SC) and CIT versus Sun Engineering Works Private Limited, (1992) 198 ITR 297 (SC) and has then elucidated:

"18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v. Jet Airways (I) Limited [2011] 331 ITR 236 (Bom). We may also note that the heading of [section 147](#) is "income escaping assessment" and that of [section 148](#) "issue of notice where income escaped assessment". [Sections 148](#) is supplementary and complimentary to [section 147](#). Sub-section (2) of [section 148](#) mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute the escaped income. [Section 147](#) mandates recording of reasons

to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under [section 147](#) regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under [section 148](#).

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items, viz., club fees, gifts and presents and provision for leave encashment, but, however, during the

assessment proceedings, he found the deduction under [sections 80HH](#) and [80-I](#) as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under [sections 80HH](#) and [80-I](#) and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under [sections 80HH](#) and [80-I](#) which as per our discussion was not permissible. Had the Assessing Officer proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per Explanation 3 to reduce the claim of deduction under [sections 80HH](#) and [80-I](#) as well."

13. On the second aspect raised by the Commissioner of Income Tax with regard to the Assessing Officer accepting the loss return of Rs.1,02,756/-, we are of the view that the same did not require exercise of revisionary power under [Section 263](#) of the Act. The observations of the Assessing Officer were only to the extent of stating that he had accepted the return. Benefit of carry forward of loss can be claimed in case a return is filed

under [Section 139\(1\)](#). It is not the case of the Revenue that the assessee had tried to claim benefit of carry forward of loss on the basis of the order passed under [Section 147/143\(3\)](#) of the Act.

14. For exercise of power under [Section 263](#) of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under [Section 148](#) of the Act. This position is not disputed and disturbed by the Commissioner of Income Tax in his order under [Section 263](#) of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under [Section 147/148](#). Accordingly, the assessment order is not erroneous. Thus, the Commissioner of Income Tax could not have exercised jurisdiction under [Section 263](#) of the Act.

15. The question of law is accordingly answered in affirmative against the Revenue and in favour of the assessee. There will be no order as to costs."

19. As mentioned elsewhere, the facts of the case in hand are pari materia same as the facts considered by the Hon'ble High Court [supra]. Therefore, we have no hesitation in setting aside the order of

the PCIT dated 17.02.2022 and restore that of the Assessing Officer dated 06.08.2019.

20. In the result the appeal of the assessee in ITA No. 446/DEL/2022 is allowed.

The order is pronounced in the open court on 01.12.2023.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 01st NOVEMBER, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	