

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.369/Del/2021  
Assessment Year: 2010-11

Ashok Kumar Gupta,  
200, Sec.-7A,  
Faridabad,  
Haryana. 121 001

Vs Pr. CIT,  
Faridabad.

PAN: AALPG5795M

(Appellant)

(Respondent)

Assessee by : Shri Rakesh Jain, Advocate  
Revenue by : Shri Zafarul Haque Tanweer, CIT, DR  
Date of Hearing : 07.12.2023  
Date of Pronouncement : 14.12.2023

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Assessee against the order dated 09.03.2020 of the Pr. Commissioner of Income Tax, Faridabad (hereinafter referred as Ld. PCIT) arising out of the order dated 28.11.2017 passed u/s. 147/148 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward 1(1), Faridabad (hereinafter referred to as the Ld. AO).

2. At the outset, it was pointed out by Id. AR that an application for condonation of delay of 324 days has been filed supported with an affidavit. On hearing upon the same, it comes up that the limitation for filing the appeal was upto 11.05.2020 and due to Covid-19 restrictions, in view of the directions of the Hon'ble Supreme Court in *Suo Moto Writ Petition (Civil) No.03/2020*, the period between 15.03.2020 and 28.02.2022 has to be excluded for the purpose of calculation of limitation and in the light of the aforesaid, the delay is condoned.

3. The Id. Authorised Representatives of both the parties were heard and the record has been perused. The facts of the case and relevant observations of the Id.PCIT can be conveniently picked up from the impugned order dated 09.03.2020. In response to notice u/s 148 issued by the AO on 21.03.2017 return declaring income of Rs.10,34,080/- was filed by assessee on 01.06.2017 for the Assessment Year 2010-11. The assessment proceedings u/s 143(3) of the Act was finalized by the AO vide order dated 28.11.2017 at the returned income of Rs.10,34,080/-. The proceeding u/s 147 were initiated on the basis of information of cash deposits of Rs.11,24,000/- in the bank account of the assessee. The assessee has claimed that the cash deposited at Rs.11,24,000/- with Union Bank of India relates to his wife and daughter. However the Ld. Pr. CIT was of view that the explanation of the assessee is not supported with material evidence.

4. Thereafter, show cause notice was u/s 263 and the matter was decided on merit on the basis of material on record. The Ld. Pr. CIT, observed that on perusal of assessment record, it is seen that the assessee has claimed that the cash deposited of Rs.11,24,000/- with Union Bank of India relates to his wife and daughter, who were doing their business of Boutique and Coaching Centre respectively. The assessee in his reply stated that his wife Smt. Kamlesh Gupta and daughter Miss Nikita Gupta have not filed their Income Tax Returns for the said financial year relevant to Assessment Year 2010-11. Moreover, they were not maintaining any bank account as the income from boutique as well as Coaching Centre was being deposited in the account of the assessee.

5. The story put forth by the assessee that both the persons were depositing their income in the account of the assessee was found 'evidently not reliable' since the assessee failed to bring on record any evidence in the shape of the bifurcation of the amounts deposited by his wife or his daughter or in the shape of gifts/savings as claimed by the assessee in his reply. Thus, the Ld. Pr. CIT concluded that the amount deposited at Rs.11,24,000/- in the Union Bank of India was of the assessee's himself from the sources not disclosed to the department. In view of the above, the Ld. Pr. CIT held that the assessee has concealed the particulars of its income to the extent of Rs.11,24,000/- by not disclosing the same to the department.

6. The Ld. Pr. CIT accordingly found that the assessment order under consideration passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue and it needs to be suitably revised. Therefore, the Ld. Pr. CIT has set-aside the assessment order u/s 263(1) of the Act and restored to the AO for making fresh assessment with direction to add to income relating to deposits of Rs.11,24,000/- made with Union Bank of India.

7. The ld. AR while referring to various queries raised during the assessment proceedings and the response of the assessee submitted that the AO having made all relevant inquiries has passed the assessment order and its review only from a different aspect and on different opinion is not permissible under law for which he relied on the following judgements/orders of ITAT:-

- (i) DIT Vs. Jyoti Foundation 357 ITR 0388 (Delhi);
- (ii) CIT Vs. Deepak Mittal 324 ITR 411 (P & H);
- (iii) Arun Kumar Garg HUF, ITA No. 3391/D/2018, Order dt. 08.01.2019;
- (iv) Delhivery Pvt. Ltd. ITA No. 1036/D/2021, order dt. 16.03.2023; and
- (v) M/s Amira Enterprises Ltd. ITA No. 3206/D/2017, order dt. 29.11.2017

8. On the other hand, the ld. DR submitted that there is no error in the findings of the ld. PCIT and the ld. AO had committed error by accepting the submissions without any corresponding evidences.

9. The assessee is in appeal raising the following grounds:-

*“1. The appellant prays that the addition of INR 1124000 made in respect of cash deposit be deleted.*

*2. That on the facts and circumstances of the case and in law, the impugned order dated 09.03.2020 passed by the Pr. Commissioner of Income Tax ("PCIT") under section 263 of the Income-tax Act, 1961 ("the Act") is beyond jurisdiction, illegal and bad in law and is liable to be quashed [Arihant Technology (P)Ltd. v. PCIT - Date of Judgement:03.03.2020 (ITAT Delhi)].*

*3. That on the facts and circumstances of the case and in law, the impugned order passed under section 263 of the Act, without appreciating that the twin conditions of that section viz., assessment order being erroneous as well as prejudicial to the interests of the Revenue, were not satisfied, is illegal and bad in law.*

*4. That on the facts and circumstances of the case and in law, the PCIT erred in holding that assessment order passed under section 147/148, was erroneous and prejudicial to the interests of the Revenue merely because the Ld. PCIT does not agree with the manner of enquiry conducted by the Assessing Officer. He cannot substitute his own reasons and hold the order to be erroneous and prejudicial to the interest of the revenue.*

*5. That The Assessing Officer had conducted enquiry and after various rounds of hearing and deliberation with the assessee and scrutinizing the documents filed before him as well as submissions of the assessee, the Assessing Officer had passed an order. Such assessment order is neither erroneous nor prejudicial to the interest of the Revenue.*

*6. That PCIT cannot initiate proceedings under section 263 merely on the ground that the enquiry conducted by the Assessing Officer was inadequate when the details have been enquired by the Assessing officer [(DIT v. Jyoti Foundation (2013) 357 ITR 388 (Del.)] The Appellant had submitted all the documents pertaining to income of his wife and daughter from which cash was deposited and the same was placed in file. Respondent had grossly erred in ignoring the documentation submitted.*

*7. That the facts demonstrate that necessary enquiry have been conducted by the Assessing Officer and relevant documents regarding the issue was received by the Assessing Officer still the Ld. Commissioner of the Income Tax may be of the opinion that it is erroneous but in no way it can be prejudicial to the interest of the Revenue since there is always a difference between any enquiry conducted or no enquiry conducted.*

8. *Powers under Section 263 cannot be used for directing a re-verification (Rakshit Transport v. CIT 2014 TaxPub(DT) 1280 (Kol 'B' - Trib)*

9. *PCIT has passed the order without application of mind and in haste without considering the facts of the matter placed on record.*

10. *That the impugned order is unclear as it pertains to Ay 2010-11 and yet directs the AO to conclude assessment for AY 2015-16 and hence has been issued without application of mind and is void ab-initio.*

11. *That on the facts and circumstances of the case, the impugned order passed by the PCIT even without going through the assessment records and findings of the Ld. Assessing Officer that relevant information /documents are discussed in detail, verified and placed on record and even not discussed the same in his order, is illegal and bad in law.*

12. *The revision order is against the principal of natural justice as the notice for hearing was never served to the Appellant*

13. *The order passed by Respondent is not a speaking order and hence should be quashed*

14. *The Respondent has erred in seek addition of whole amount of INR 1124000 cash deposited as income.*

15. *That on the facts and circumstances of the case and in law, the impugned order passed by the PCIT is illegal and bad in law, being barred by limitation prescribed under section 263(2) of the Act Since the second round of reassessment proceedings were on the same set of facts as the first round, the same were dropped by the Assessing Officer and thus the first reassessment order stood merged with the second, thus, the said order cannot be revised under Section 263 of the Act since only the valid reassessment order can be revised. [Sri Balaji Forgings (P) Ltd. v. PCIT (2019) 197 TTJ 915: 175 DTR 57 (ITAT Delhi)]*

16. *The Appellant craves leave to add, amend , alter vary and / or withdraw any or all the above grounds of Appeal.”*

10. After taking into consideration the facts of the matter and the submissions made, it comes up that consequent to the notice u/s 147/148 dated 28.11.2017 notice u/s 142(1) of the Act was first issued on 02.06.2017 which is available at

page 5 of the paper book and in which a specific query was raised to the assessee mentioned at sl. No.5: *“Please furnish source of cash deposits amounting to Rs.17,60,200/- made during the FY 2009-10.”* This was responded by the assessee by reply dated 14.06.2017 available at page 54 of the paper book wherein the assessee informed that during the FY 2009-10, cash deposits was of Rs.11,24,000/- instead of Rs.17,00,200/-. The details of date wise deposits were provided. Further, it was submitted that the assessee’s wife Smt. Kamlesh Gupta during the financial year was doing boutique work and out of her earning had deposited cash in her husband’s savings bank account. She has not filed any return. Further, the assessee’s daughter Nikita Gupta was doing tuition work and she had also deposited her earnings in her father’s account and balance cash deposits were out of past savings and gifts received from relatives.

10.1 Again, the ld. AO, by letter dated 08.08.2017, made available at page 6 of the paper book, sought further information from the assessee with regard to specific information about cash deposits and the assessee responded to the same by letter dated 22.08.2017 made available at page 8 of the paper book wherein again, it was re-asserted that the source of cash was salary, other source of income, past savings and family members’, i.e., wife’s and daughter’s savings.

10.2 The ld. AR has also pointed out that the ld. AO was also provided information with regard to the earnings of his wife and daughter which are made

available to this Bench at pages 19 to 28 of the paper book, being the bills of sales made at the boutique of wife and at pages 29-49 of the paper book being the receipts of the daughter's institute with the name Nikita Coaching Classes. Further, at page No.50 of the paper book, there is copy of another letter dated 21.07.2017 written to the AO mentioning that the assessee's wife has qualification and experience to run the boutique work from home and his daughter also is qualified holding Bachelor's degree and masters degree in Computers to give coaching. Confirmations from the wife dated 17<sup>th</sup> July, 2017 and from the daughter dated 18<sup>th</sup> July, 2017 are made available at pages 51 and 55 respectively of the paper book were also provided to the AO.

11. In spite of the aforesaid substantial evidences before the AO and on the assessment record, the ld.PCIT was of the belief that the ld. AO should not have been convinced with the story put forth by the assessee. The ld. PCIT observed that the assessee has failed to give bifurcation of the amounts deposited by his wife or daughter or in the form of gifts/savings. The ld. AO had made relevant queries directly touching the issue and sufficient evidences were filed by the assessee. The Bench is of the considered view that when, admittedly, the assessee is a salaried person, then the onus was on the assessee to explain how any other money in his account, apart from the salary, was credited. He had discharged his onus by direct evidence which were relied by AO. The observations of the ld. PCIT to find the assessment order erroneous and

prejudicial to the interest of the Revenue are based on his own understanding of the evidences furnished by the assessee. His conclusion may be more prudent but not sufficient to hold that the assessment order was erroneous or prejudicial to interest of Revenue without establishing it is not in accordance with law. The Revisional Power u/s 263 of the Act is not meant to substitute the opinion of a superior tax authority on mere difference of opinion.

12. In the result, the grounds raised are sustained and **the appeal of the assessee is allowed**. Impugned order u/s 263 of the Act is quashed.

Order pronounced in the open court on 14.12.2023.

Sd/-

(G.S. PANNU)  
VICE PRESIDENT

Dated: 14<sup>th</sup> December, 2023.

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Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi