

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 111/Rjt/2022
Assessment Year: 2017-18**

AAN Automobiles Kuvadava Road, Rajkot Rajkot 360005, Gujarat PAN No: AANFA5032H (Appellant)	Vs	The Pr. CIT-1, Rajkot, Rajkot (Respondent)
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**Assessee Represented: Shri D.M. Rindani, A.R.
Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 21-11-2023
Date of pronouncement : 20-12-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 16.02.2022 passed by the Principal Commissioner of Income Tax, Rajkot-1, (hereinafter referred as PCIT) arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is that the assessee is a Partnership Firm engaged in the business of dealership of two wheeler of Hero MotoCorp Ltd. and also in sales of parts and authorized service station. For the Assessment Year 2017-18, the assessee filed its Return of Income declaring total income of Rs.13,97,820/- on 13.10.2017. The return was processed u/s. 143(1) and then taken up for scrutiny assessment as large value of cash deposit made by the assessee during demonetization period. The Assessing Officer issued various notices u/s. 143(2) calling for explanations, details and having satisfied with the explanations offered by the assessee, accepted the returned income as assessed income and completed the assessment.

3. On perusal of assessment records by Ld. PCIT, total aggregated Specified Bank Note (SBN) deposited of Rs.2,61,95,000/- in ICICI Bank, RNSB Bank. However cash deposit of Rs.7,16,001/- in HDFC Bank was not been submitted during the assessment proceedings. The Assessing Officer also not verified the SBN cash deposit in different installments and there is huge discrepancy of introduction of cash deposit amounting to Rs.46,19,001/- which neither verified by the A.O. at the time of finalization of assessment nor sought any explanation from the assessee. Thus the assessment order passed by the A.O. without verification of cash deposits during demonetization period, which is an erroneous order and prejudicial to the interest of Revenue. Therefore the Ld. PCIT invoking provision u/s. 263 of the Act by giving show cause to the assessee why not to revise the assessment.

4. The assessee vide its letter dated 20.01.2022 replied as follows:

With reference to, above captioned subject, we would like to under...

1. *During FY 2016-17, on 08/11/2016 we have opening balance of cash Rs. 2,63,38,644.00*

2. *Out of the above cash balance, we have deposited cash on different dates and our bank accounts as below...*

<i>Date of Deposit</i>	<i>Cash Deposited</i>	<i>SBN Note Cash Deposited</i>	<i>Bank</i>
<i>10/11/2016</i>	<i>81,00,00.00</i>	<i>81,00,00.00</i>	<i>ICICI BANK</i>
<i>11/11/2016</i>	<i>75,00,000.00</i>	<i>75,00,000.00</i>	<i>ICICI BANK</i>
<i>11/11/2016</i>	<i>16,92,130.00</i>	<i>16,92,130.00</i>	<i>ICICI BANK</i>
<i>12/11/2016</i>	<i>39,03,000.00</i>	<i>39,03,000.00</i>	<i>ICICI BANK</i>
<i>TOTAL (A)</i>	<i>2,11,95,130.00</i>	<i>2,11,95,130.00</i>	
<i>11/11/2016</i>	<i>50,00,000.00</i>	<i>50,00,000.00</i>	<i>RNSB BANK</i>
<i>TOTAL (B)</i>	<i>50,00,000.00</i>	<i>50,00,000.00</i>	
<i>GRAND TOTAL (A+B)</i>	<i>2,61,95,130.00</i>	<i>2,61,95,130.00</i>	

3. *During demonetization period, there were long queues and public rush for deposit and withdrawal in banks, even bankers were not accepting such huge amount due to which we were compelled to deposit in piecemeal for safely deposit of cash of our business, we have deposited in banks in different dates. We have reasonable intention of safely deposit of our business cash. There is no other intention of cash deposit in 5 installments.*

4. *During demonetization period, we have not deposited cash in HDFC Bank A/c No. 16972320000155 we herewith submit bank statement for your ready reference.*

5. *We herewith submit cash deposition denomination certificate during demonetization period for your ready reference.*

We have submitted all required Information and documents in connection with proceeding U/S 263 of the act. We hope you will be satisfied with our submission, if you required any further information or explanation, we are pleased to provide you the same.

Your honor, if you take any adverse decision, we request you to give us an opportunity of being heard through personal hearing to make oral submission through video conferencing.

Honorable sir, if any details required by you we need more time for details to submit, due to Covid-19 situation and Curfew going in the city.

5. The Ld. PCIT considered the above reply filed by the assessee however held that the Assessing Officer had not conducted any

inquiries or verification in respect of cash deposit amounting to Rs. 46,19,001/- after 11.11.2016 in HDFC bank account at the time of finalization of assessment, which is against the Explanation 2 of Section 263(1) of the Act. Therefore the assessment was set aside with a direction to make fresh assessment by giving opportunity of hearing to the assessee.

6. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On the facts and in the circumstances of the case as well as law on the subject, the learned Principal Commissioner of the Income Tax has grievously erred in initiating the proceedings u/s 263 of the Act, 1961.

2. On the facts and in the circumstances of the case as well as law on the subject. The learned Principal Commissioner of Income Tax has grievously erred in holding that the assessing Officer had not verified the properly transaction of cash deposition of SBN made during demonetization period during the course of proceeding and not made proper inquiry or verification finalized the order of assessment u/s. 143(3) of the I.T. Act is contrary to the fact of the case.

3. On the facts and in the circumstances of the case as well as law on the subject, the entire proceedings u/s 263 are bad-in-law and invalid as assessment order u/s. 143(3) of the Act for the same year were framed, wherein Learned A O has made detailed inquiry by issuing various notices on different dates as per verification checklist for assistance of AOs for framing assessment in demonetization related cases as per internal guidance note issued by CBDT. The learned Principal Commissioner of Income Tax has grievously erred by exercising jurisdiction u/s 263 merely based on suspicion.

4. The learned Principal Commissioner of Income Tax has grievously erred ignoring the fact that appellant has not deposited any cash of Rs. 7,16,001/- in HDFC Bank during demonetization period.

5. On the facts and in the circumstances of the case as well as law on the subject, the learned Principal Commissioner of Income Tax has grievously erred in considering the detailed submission made by appellant to the learned A O during assessment proceedings.

5. On the facts and in the circumstances of the case as well as law on the subject, the learned Principal Commissioner of Income Tax has grievously

erred in setting aside the assessment order framed u/s. 143(3) of the I.T. Act without considering the detailed submission made by appellant To the learned PCIT during proceeding u/s 263 of the IT Act.

6. It is therefore prayed that the above proposed proceedings may please be revoked as learned members of the tribunal may deem it proper.

7. Ld. Counsel Shri D.M. Rindani appearing for the assessee submitted a detailed enquiry was conducted by the Assessing Officer by issuing notice u/s. 142(1) on 17.08.2019, 10.10.2019 and 14.12.2019. In response, the assessee filed detailed replies on 22.10.2019, 12.12.2019 and 24.12.2019 furnishing various bank accounts, details of cash in hand and other details as follows:

3. Details of Cash in Hand (Notice Point No. 11(3)):

We herewith submit details of Cash in Hand in following format as per your requirement for your ready reference.

Opening Cash in hand as on 01/04/2014	Closing cash in hand as on 31/03/2015	Closing cash in hand as on 31/03/2015	Closing cash in hand at the midnight of 08/11/2016
36,16,578.00	44,27,139.00	88,70,753.00	2,63,38,644.00

4-Details of Cash in Hand (Notice Point No. 11(4)):

We herewith submit details of Cash in Hand in following format as per your requirements for your Ready reference.

SL NO	Name And Address of the Bank with branch	Account No	Total cash deposit from 9 th November 2016 to 31 st December 2016 in old 500 and 1000 Rupees notes	Total cash deposit from 9 th November 2016 in other currency/ notes	Total cash deposit from 9 th November 2016 to 31 st December (4+5)
1	RNSBBANK, BEDIPARA BRANCH, RAJKOT	14006700001009	50,00,000.00	-	50,00,000.00
2	ICICI BANK, JAI HIND BARANCH, RAJKOT	015305010291	2,11,95,000.00	17,00,130.00	2,28,95,130.00

5. Details of Cash in Hand (Notice Point No. 11(6)):

We herewith submit details of Cash ledger as per your requirement for your ready reference.

6. Details of Online Response of Cash Deposited (Notice Point No. 11(7)):

We herewith submit details of Online Response of Cash Deposited during Demonetization as per your requirement for your ready reference.

7. Details of Other Supporting Documents (Notice Point No. 11(8)):

We herewith submit Certificate from Bank for Cash Deposited during Demonetization in OHD Notes as per your requirement for your ready reference.

7.1. Further the assessee is required u/s. 285BA of the Act furnishing Statement of Financial Transaction (SFT) which is a reporting mechanism wherein specified entries are required to provide about material financial transaction to the Income Tax Department in Form 61A r.w. Rule 114E of the Income Tax Rules. The assessee furnished the SFT Forms relating to the ICICI Bank and Rajkot Nagrik Sahakari Bank Ltd. which is running to 67 and 23 pages which contains the name of the purchaser of two wheeler with full Postal Address, Pincode, Nature of Transaction and amount received by the assessee. This SFT returns which are very much available with the Assessing Officer. That apart, the assessee also furnished certificate from ICICI Bank and Rajkot Nagrik Sahakar Bank Ltd. about the demonetization notes deposited with the banks with date-wise transaction and denomination-wise transaction. Further the assessee provided sales register and stock summary for the Financial Year 2016-17. The assessee also produced HDFC Current Account No. 16972320000155, during the demonetization period, wherein no cash deposit made by the assessee. All the transactions were done either by cheque or NEFT transactions. Thus the Ld. PCIT misconstrued and wrongly invoked the revisions proceedings. Therefore he is not correct in holding Explanation 2 of Section 263 and the entire revision proceedings is liable to be quashed.

8. Per contra Ld. CIT-DR, Shri Sharmdeep Sinha appearing for the Revenue supported the Revision order passed by Ld. PCIT and requested to uphold the same.

9. We have given our thoughtful consideration and perused the materials available on record including the voluminous Paper Book running to 644 pages filed by the assessee. It is clearly seen from the SFT returns filed by the assessee u/s. 285BA of the Act, every cash transaction is reflected with the name of the person, with full postal address, nature of transaction and the amount of transaction, the same are placed before us in Page Nos. 279 to 368 of both ICICI Bank and Rajkot Nagrik Sahakari Bank Ltd. It is further seen from notices issued u/s. 142(1) of the Act, the various details called for by the A.O. in above notices were duly complied with by the assessee by furnishing the details and also clarified with further details as requested by the Assessing Officer. Thus in our considered opinion, the Assessing Officer has made necessary enquiries before passing the assessment order. The other contention of the Ld. PCIT that the A.O. failed to verify the cash deposits in HDFC Account No. 16972320000155 of Rs. 7,16,001/-. The assessee also produced the bank statement of the above account, during the demonetization period. Perusal of the same clearly shows that there were no cash transaction in the above current account as alleged by the Ld. PCIT, whereas the entire transactions were done through either cheque or NEFT mode. So the very basis of invoking 263 on the ground that the cash deposits in HDFC Bank itself, is baseless. Further the Assessing Officer has

made detailed enquiry before passing the assessment order on the cash transaction during the demonetization period.

9.1. Further in our considered view, the Ld. PCIT partially looking into the assessment records and initiated the Revision proceedings on the ground that the assessee failed to submit evidences in support of the cash deposits, which is factually incorrect. The Ld. PCIT failed to consider the other reply letters dated 22.10.2019, 12.12.2019 and 24.12.2019 filed by the assessee. Unless both the ingredients i.e order must be erroneous in nature; and the error must be such that it is prejudicial to the interest of Revenue are present in a given case, it is not legally permissible for a Commissioner to initiate suo motu proceeding under section 263 of the Act, the same has been upheld by Hon'ble Supreme Court in case of Malabar Industrial Co. Ltd.-Vs-CIT 243 ITR 83. However, an assessment cannot be revised if there is no jurisdictional error in the order or if it has been passed after due application of mind or in case, where PCIT has a view different from that taken by A.O. Therefore we have no hesitation in quashing the Revision order passed by the Ld. PCIT. Thus the Grounds raised by the assessee are hereby allowed.

10. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 20-12-2023
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 20/12/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट