

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 416/Del/2022

(Assessment Year: 2017-18)

Panna Lal Om Prakash Jewellers, Vs. Pr. CIT,
C/o. Anil Jain DD &Co. 611, New Delhi
Surya Kiran Building, 19, KG
Marg, Delhi
(Appellant) (Respondent)
PAN:AAAFP4412F

Assessee by :	Shri Anil Jain, CA Shri Sarweshwar Singh, Adv
Revenue by:	Shri P. N. Barnwal, CIT DR
Date of Hearing	21/11/2023
Date of pronouncement	14/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.416/Del/2022 for AY 2017-18, arises out of the order of the Pr. Commissioner of Income Tax-10, Delhi [hereinafter referred to as 'ld. Pr. CIT', in short] in Appeal No. ITBA/REV/F/REV5/2021-22/1039581004(1) dated 09.02.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.12.2019 by the Assessing Officer, ACIT, Circle-51(1), Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That on the facts and circumstances of the case and the provisions of law, the order passed u/s 263 by Ld. PCIT 10 NEW DELHI is illegal, bad in law, without jurisdiction and contrary to the facts.

2. That on the facts and circumstances of the case and the provisions of law, the Ld. PCIT Delhi-10 has erred in passing the order u/s 263

without giving proper opportunity of being heard and hence the order passed u/s 263 is against the principle of natural justice and requires to be quashed.

3. That on the facts and circumstances of the case and the provisions of law, the Ld. PCIT Delhi-10 has erred in setting aside the order passed by Ld AO u/s 143(3) without appreciating the fact that the assessee firm has already declared additional income of Rs 12500000/ on the cash sales relating to cash deposited during demonetisation period- under IDS -II and the tax of Rs 6250000/-was duly deposited on the above said income and an FDR of Rs 3250000 was also made.

4. That on the facts and circumstances of the case and the provisions of law, the Ld. PCIT Delhi 10 has erred in not considering the submissions filed by the assessee and in forming an incorrect opinion without confronting the same and in using the same adversely without providing the reasonable opportunity of defending, which inaction of the Ld PCIT makes the order passed u/s 263 as null and void

5. That on the facts and circumstances of the case and the provisions of law, the Ld. PCIT Delhi 10 has erred in setting aside the assessment order without distinguishing the judgments of the Hon'ble jurisdictional Delhi High Court and the Hon'ble Supreme Court.

6. That the appellant craves leave to reserve to itself the right to add, alter, amend, vary, modify and/or withdraw any ground(s) of appeal at or before the time of hearing."

3. Though the assessee has raised various grounds, the only effective issue to be decided is as to whether the Id PCIT was justified in invoking revision jurisdiction u/s 263 of the Act on law and on merits of the case.

4. We have heard the rival submissions and perused the material available on record. The return of income for AY 2017-18 was filed by the assessee on 14.10.2017 declaring total taxable income of Rs. 92,85,930/-. The assessee derived income from business and income from other sources. The case of the assessee was selected for complete scrutiny and notice u/s 143(2) of the Act was issued on 13.08.2018 followed by notice u/s 142(1) of the Act along with questionnaire dated 02.07.2019. The assessee in response to various notices issued on ITBA portal furnished its submissions together with relevant documentary evidences. The assessment was completed accepting the return of income vide order u/s 143(3) of the Act dated 14.12.2019.

5. This assessment was sought to be revised by the Id PCIT by invoking his revisionary jurisdiction on the ground that cash deposit made in the sum of Rs. 4,58,88,000/- made by the assessee during the demonetization period was not enquired by the Id AO while completing the assessment thereby making the order of the Id AO erroneous and prejudicial to the interest of revenue. A show cause notice was issued to this effect u/s 263 of the Act by the Id PCIT to the assessee stating that assessee has made cash sales of Rs. 4,25,63,269/- in the month of October 2016 and from 01.11.2016 to 08.11.2016, cash sales made by the assessee was Rs. 1,28,41,452/- which seems to be abnormal keeping in view the nature of business carried out by the assessee. The assessee submitted month-wise cash sales and cash deposits for a period of 3 years from 01.04.2015 to 31.03.2018. Further, in the month of November 2016, the assessee further gave a breakup of the cash deposit upto 08.11.2016 and cash deposit during 09.11.2016 to 31.12.2016 with corresponding data for the preceding years. The assessee also submitted that there was a questionnaire issued by the Id AO on 26.11.2019 to furnish the details of cash deposits together with the source thereon in the prescribed format to the assessee during the course of assessment proceedings. The assessee had duly responded to the said questionnaire by furnishing requisite details in the prescribed format. The assessee also submitted a sum of Rs. 1.25 crores was surrendered by it during the course of survey under Income Disclosure Scheme (IDS) and tax of Rs. 62,50,000/- was deposited on the said income and FD of Rs. 31,25,000/- was also made by the assessee in accordance with Pradan Mantri Garib Kalyan Deposit Scheme (PDGKDS), 2016.

6. From the perusal of the paper book, we find that the Id AO during the course of original assessment proceedings vide notice u/s 142(1) of the Act dated 02.07.2019 vide Question No. 12 had specifically raised a query for furnishing details of cash deposit in various bank accounts during the financial year 2016-17 asking for segregation of deposit for the period 01.04.2016 to 08.11.2016; for the period 08.11.2016 to 31.12.2016 and for the period of 01.01.2017 to 31.03.2017. The Id AO vide Question. No. 13 asked for source of

the cash deposit with supporting evidence. The Id AO vide Question. No. 14 asked for detailed cash flow statement for the year under consideration. The Id AO vide Question. No. 15 asked for copy of bank statement where the cash deposits were made. The assessee vide its reply before the Id AO explaining the source of cash deposit to be made out of cash sales of jewellery and cash balance available in its books. The assessee also furnished the entire break up of cash deposits as sought by the Id AO. The assessee also furnished cash flow statement for the whole year under consideration. The assessee also furnished bank statement where cash deposits were made by the assessee. For the sake of convenience, the details of cash deposit made by the assessee in various bank accounts are tabulated hereunder at page 29 of the paper book:-

Detail of Cash Flow Statement for AY 2017-2018 (FY 2016-2017)

Particulars	Amounts (Rs.)	
Opening balance of cash as on 01.04.2016		899303.00
Add: Cash Sales	101073349.00	
Add : Cash withdrawal from Bank	50000.00	101123349.00
		102022652.00
Less : Cash deposit into Bank	95018200.00	
Less : Cash withdrawal by partners	1800000.00	
Less : Business Expenses	3914938.00	100733138.00
Closing balance of cash as on 31.03.2017		1289514.00

7. Further, the assessee also furnished the statement showing gross profit and net profit ratio for the year under consideration together with preceding two assessment years as under:-

Panna Lai Om Prakash Jewellers

Statement showing GP and NP ratio

Particulars	A.Y 2017-18	A.Y 2016-17	A.Y 2015-16
Sales	584398256	369089945	366257938
Gross Profit	44212259	27809052	27492830
Net Profit	9285926	7244211	6853590
GP ratio	7.57	7.53	7.51
NP ratio	1.59	1.96	1.86

8. Further, the Id AO issued yet another notice u/s 142(1) of the Act on 20.11.2019 asking for copy of cash account in respect of entries and specifically making enquiries with regard to month-wise details of sales (cash and credit); month-wise details of purchases (cash and credit) for the year under consideration as well as in the immediately preceding year; month-wise details of cash sales and cash withdrawals, cash deposit and closing cash balance in hand specifically seeking for segregation between pre demonization period, demonetization period and post demonetization period; details of month-wise cash sales and cash deposits together with cash withdrawals; details of top 20 parties to whom cash sales were made; details of top 20 parties from whom purchases were made; month-wise details of stock of jewellery giving opening stock, purchase, sales and closing stock of each month together with stock statement/ stock register; copies of VAT return/ service tax returns for the period 01.04.2015 to 31.03.2017 quarter-wise among other details. The assessee vide letter dated 26.11.2019 submitted the entire details that were called for by the Id AO during the course of assessment proceedings. The cash book for the whole year is enclosed from pages 45 to 133 of the PB from where we find that there is no negative cash balance on any single day. Details of month wise sales and purchases for the year under consideration immediately preceding year are tabulated here under:-

Month	Current Year (AY2017-18)				Preceding Year (AY 2016-17)			
	Purchases		Sales		Purchases		Sales	
	Credit	Cash	Credit	Cash	Credit	Cash	Credit	Cash
April	55678176.00	-	8012670.00	1893280.00	18192160.00	-	20137861.00	10895930.00
May	23792730.00	-	13758212.00	2813896.00	22866202.00	-	29953202.00	9414089.00
June	16283828.00	-	3303510.00	4854828.00	39894028.00	-	13029879.00	7915639.00
July	9154608.00	-	17874314.80	6408428.00	17205479.00	-	18506484.00	7782730.00
August	26563960.00	-	33185050.00	6539402.00	12190016.00	-	9468582.00	8856503.00
September	78330590.00	-	41507141.20	11014984.00	16541057.00	-	7311969.00	9303828.00
October	69294845.00	41296.00	44922249.00	42563269.00	35376770.00	-	40769865.00	7424117.00
Upto 8th November	13424072.00	-	18209727.00	12841452.00	8738055.00	-	19249622.00	2420463.00
9th November to 30.11.2016	66248269.00	-	27347782.00	906174.00	24710900.00	-	9090491.00	6456307.00
December	35150253.00	-	79914279.00	2383002.00	57775469.00	-	32467888.00	10380147.00
January	36191710.00	-	67699767.00	3510074.00	19341849.00	-	26057547.00	9142278.00
February	81250860.00	59150.00	49947617.00	2011895.00	28815276.00	-	30411125.00	8219313.00
March	86660290.00	-	78579895.00	23953458.00	4968653.00	-	13972570.00	451516.00
Total for the year	598024191.00	100446.00	484262214.00	100136042.00	306615914.00	-	270427085.00	98662860.00

9. From the above table, it could be seen that though there is a huge increase of sale in the month of October 2016 and for the period 01.11.2016 to 08.11.2016, which is usual custom in Hindu religion to purchase jewellery during the Dhanteras and during Dussehra. Dussehra fell on 11.10.2016 and Dhanteras fell on 28.10.2016, followed by Choti Diwali on 29.10.2016, Diwali on 30.10.2016, Govardhan Puja on 31.10.2016, Bhai Duj on 01.11.2016 and Chhat Puja from 04.11.2016 to 07.11.2016. These facts are not disputed by the revenue before us. When there are series of festivals lined up in the month of October 2016 and upto 07.11.2016, there is absolutely nothing wrong in sales getting increased substantially for every jewellery house during this period as it caters to meet the sentiments of Hindu belief system to purchase jewellery on various auspicious occasions. Hence, in our considered opinion, there is absolutely no abnormal trend in the sales made during October 2016 and 1st week of November 2016 as pointed out by the Id PCIT. The month wise cash sales, cash deposits made for the period 01.04.2015 to 31.03.2016, 01.04.2016 to 31.03.2017 is tabulated as under:-

"Details of month-wise Cash Sales and Cash deposits from 01.04.2015 to 31.03.2016"

Details of month-wise Cash Sales and Cash deposits from 01.04.2015 to 31.03.2016					
Month	Op.Cash in hand Credit	Cash Sales	Cash deposited in Bank	Cash withdrawal from Bank	Closing Cash in hand
April,2015	406977.86	10895930.00	8410000.00	-	2555498.86
May,2015	2555498.86	9414089.00	8765000.00	-	3249716.86
June,2015	3249716.86	7915639.00	8998500.00	-	1853759.86
July,2015	1853759.86	7782730.00	8074500.00	-	1261998.86
August,2015	1261998.86	8856503.00	7245850.00	-	2492754.00
September,2015	2492754.00	9303828.00	9910000.00	-	1423775.00
October,2015	1423775.00	7424117.00	5502000.00	-	2841433.00
November till 08.11.2015	2841433.00	2420463.00	2880000.00		2151338.00
09.11.2015 to 30.11.2015	2151338.00	6456307.00	5004000.00	-	3302235.00
December,2015	3302235.00	10380147.00	10268500.00	-	2865482.00
January,2016	2865482.00	9142278.00	6900000.00	-	4339141.00
February,2016	4339141.00	8219313.00	9710000.00	-	2267466.00
March,2016	2267466.00	451516.00	1560000.00	-	899303.00

"Details of month-wise Cash Sales and Cash deposits from 01.04.2016 to 31.03.2017."

Month	Op.Cash in hand Credit	Cash Sales	Cash deposited in Bank	Cash withdrawal from Bank	Closing Cash in hand
April,2016	899303.00	1893280.00	515000.00	-	2041938.00
May,2016	2041938.00	2813896.00	1700000.00	-	2897266.00
June,2016	2897266.00	4854828.00	2520000.00	-	4916273.00
July,2016	4916273.00	6408428.00	5970000.00	-	4747345.00
August,2016	4747345.00	6539402.00	7389200.00	-	3468072.00

September,2016	3468072.00	11014984.00	10920000.00	-	2776343.00
October,2016	2776343.00	42563269.00	11090000.00	-	34229486.00
November till 08.11.2016	34229486.00	12841452.00	2068000.00	-	44822620.00
09.11.2016 to 30.11.2016	44822620.00	906174.00	43390000.00	50000.00	2104710.00
December,2016	2104710.00	2383002.00	2100000.00	-	2106313.00
January,2017	2106313.00	3510074.00	3316000.00	-	2104658.00
February,2017	2104658.00	2011895.00	1900000.00	-----	^2132929.00
March, 2017	2132929.00	2395358.00	2140000.00		1289514.00

10. From the above table, it could be seen as on 08.11.2016, the assessee had closing cash balance of Rs. 4,48,22,620/- which was very much available as a cash source to make cash deposits during the demonetization period. There is no negative cash balance on any single day at all. The sales and purchase (cash and credit) reported by the assessee have been duly accepted by the revenue. Further, the assessee had provided item wise stock statement month wise before the Id AO which are enclosed at page 137 to 165 of the Paper book duly mentioning the corresponding quantity and value thereon. Absolutely no discrepancy whatsoever was even found by the Id PCIT on this stock statement and the details furnished by the assessee. When the assessee has furnished the aforesaid details before the Id AO during the assessment proceedings, we are unable to comprehend ourselves to accept the observation of the Id PCIT that the Id AO had not made any enquiry on the issue of cash deposit made during the demonization period.

11. The Id DR before us submitted that cash sales made during October 2016 was Rs. 4.25 crores and it was highly improbable for the assessee to retain that cash balance without depositing the same in the bank account. The Id DR placed reliance on the decision of the Chennai Tribunal in the case of Ms. K. Rajeswari Vs. ACIT in ITA No. 487/Chny/2022 dated 17.02.2023 specifically reference was made to para 8 of the said order by the Id CITDR. We have gone through the said decision and we find that the facts in that case was that cash in specified bank notes was received by the assessee during the demonization period and which was deposited during the demonization period in the bank account. Further, no enquiries at all were carried out by the Id AO in that case in the original assessment proceedings. In those special factual matrix of that assessee, the issue decided against that assessee by the Chennai Tribunal. As narrated in

the facts of the case before us herein above, it could be safely concluded that the decision of the Chennai Tribunal relied upon by the Id DR is factually distinguishable and does not advance the case of the revenue either. It is pertinent to note that to the extent of sales made by the assessee (both cash and credit), the corresponding stocks were also reduced by the assessee which is also evident from the month-wise / items-wise statement submitted by the assessee before the Id AO which are enclosed in pages 137 to 165 of the PB. At the cost of repetition, we would like to state that the purchase shown by the assessee have been accepted and stock statement submitted by the assessee have been accepted and no discrepancies were found thereon and to the extent of sales made corresponding reduction in stock has also been made by the assessee herein. Admittedly, the books of account of the assessee had not been rejected at all by the Id PCIT by pointing out any discrepancy thereon. The case of the assessee is squarely covered in favour of the assessee by the coordinate bench decision of Vishakapatnam Tribunal in the case of Hira Panna Jewellers in ITA No. 253/Viz/2020 and CO No. 2/Viz/2021 for AY 2017-18 dated 12.05.2021 which is also of jeweller like the assessee herein. Further, the issue is also covered by the decision of Hon'ble Jurisdictional High Court in the case of PCIT Vs. Agson Global Pvt. Ltd in ITA Nos. 68 to 73/2021 dated 19.01.2022.

12. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we have no hesitation to quash the revision order passed by the Id PCIT u/s 263 of the Act both on law as well as on merits. Accordingly, the grounds raised by the assessee are allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14/02/2024.

-Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:14/02/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi