

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 492/DEL/2021
Assessment Year: 2010-11**

Mukesh Kumar Goel, C/o Narsh Kumar Aggarwal, 21, Gher Khatti, Gaushala Road, New Mandi, Muzaffarnagar. PAN- ACWPG1738R	<u>Vs</u>	JCIT, Range-1, Muzaffarnagar.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Sh. Subhra Jyoti Chakraborty, CIT(DR)	
Date of hearing	19.03.2024	
Date of pronouncement	21.03.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Principal Commissioner of Income-tax (PCIT), Dehradun, dated 09.03.2021 U/s

263 of the Income-tax Act, 1961, hereinafter referred to as the 'Act', pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

"1. That the notice issued under Section 263 of the Income Tax Act, 1961, and the order passed under said Section are illegal, bad in law and without jurisdiction.

2. That the notice by the Pr. CIT under Section 263 does not show that the Assessing Officer committed any error in passing the assessment order under Section 143 (3). Therefore, the jurisdiction assumed by the Pr. CIT under Section 263 is illegal and without jurisdiction and is liable to be quashed.

3. That the order passed under Section 143 (3) by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue and as such the order passed by the Pr. CIT order under Section 263 in cancelling the assessment is illegal and bad in law.

4. That the Pr. CIT has failed to appreciate that the proceedings initiated U/s 148 on the basis of the illegal and bad in law verification letters, which makes the whole proceedings initiated U/s 148 void-ab-intio, therefore, the proceedings U/s 263 becomes illegal, bad in law and without jurisdiction.

5. That, the Pr. CIT has erred in not appreciating, that, all the issues referred in his order under Section 263 have been duly considered and the view taken by the Assessing Officer is a possible view. All necessary enquires/investigations relating to all the issues referred in the order of the Pr. CIT under Section 263 were made and partly accepted by the Assessing Officer while framing the assessment Under Section 147/143(3). Thus, the notice issued and the impugned order are beyond the preview of Section 263 and hence, the order passed under Section 263 is liable to be quashed.

6. That the Pr. CIT has agreed with the submissions of the Appellant that the Assessing Officer has taken the view after considering all the aspects. Moreover the view taken by the Assessing Officer is a possible view. Hence, the Pr. CIT has erred in law and on facts in setting aside the assessment to be redone afresh.

7. *That, the Pr. CIT has failed to appreciate, that, the assessee has duly complied with all the queries filed during the assessment proceedings and also verified. Therefore, the view taken by the assessing officer cannot be held as erroneous and prejudicial to the interest of the revenue, hence, the assumption of jurisdiction U/s 263 is illegal, bad in law and without jurisdiction.*

8. *That the observations of the Pr. CIT are based on surmises and conjectures and on the basis of the different view taken by the Assessing officer after framing the Assessment Order Section 147/143(3) and do not afford any legal justification to the findings given.*

9. *That the proceeding under Section 263 are initiated at the instance of Assessing officer and the order passed by the Pr. CIT is clearly without application of mind as it refer to many irrelevant issues and findings hence the order under section 263 is liable to be quashed.*

10. *That the Pr. CIT have erred in not providing proper and adequate opportunity to Appellant to place the material on record and the impugned order passed is against the principle of natural of justice.*

11. *That all the facts and circumstances of the case and the material available on record have not been properly considered by the Pr. CIT while passing the order under Section 263. The impugned order is illegal, arbitrary and bad in law.*

12. *The Appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.”*

2. Facts, in brief, are that in this case assessment u/s 147 read with section 143(3) of the Act was framed vide order dated 7.11.2017 at a total income of Rs. 2,34,141/- as against Rs. 1,19,141/- declared by the assessee. The AO while framing the assessment made disallowance of expenses amounting to Rs. 25,000/- and addition on household expenses amounting to Rs. 90,000/-. This order was revised u/s 263 of the Act by the learned PCIT on the basis that from the opening

balance, income and expenditure mentioned in the entries of the capital account the closing balance should have been Rs. 9,96,726/- as against Rs. 19,44,254/- shown by the assessee. Therefore, the learned PCIT was of the view that the AO failed to verify the correctness of the claim of the assessee and set aside the assessment order passed u/s 143(3) of the Act, directing the AO to pass the assessment afresh after verification and affording opportunity of being heard to the assessee. Aggrieved against this the assessee is in appeal before this Tribunal.

3. At the time of hearing no one attended the proceedings. It is seen from the record that on earlier occasion also no one had attended the proceedings. Further, it is transpired from the records that vide submissions dated 21.11.2022, learned AR of the assessee has filed a death certificate dated 29.05.2021 whereby the death of assessee is recorded and date of death is mentioned as 26.04.2021. It is further noticed that as per the Registry noting, the present appeal was presented before Registry on 5.5.2021. The appeal was filed on behalf of the assessee on 5.5.2021. As per Form no. 36, date of verification of form no. 36 is dated 30.03.2021 i.e. prior to the death of assessee. However, the appeal is filed in the name of assessee Shri Mukesh Kumar Goel and the appeal was presented on 5.5.2021. Thus, ex facie the appeal is not maintainable in the name of Shri Mukesh Goel, since deceased. The appeal is, therefore, dismissed with liberty to legal heirs for restoration of appeal after removing the defect.

4. Appeal of the assessee is dismissed accordingly.

Order pronounced in open court on 21st March, 2024.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI