

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITAs No.1533/Del/2023, 1534/Del/2023 & 1075/Del/2023
Assessment Years 2017-18, 2018-19 & 2019-20

Ashok Kumar Tayal 618 Pocket-E, Mayur Vihar-II New Delhi-110091	Vs.	PCIT (Central) New Delhi-110005
TAN/PAN: AACPT 8811 E		
(Appellant)		(Respondent)

Applicant by:	Ms. Rano Jain, Advocate Ms. Mansi Jain, Chartered Accountant
Respondent by:	Shri Sanjay Kumar, CIT-DR
Date of hearing:	10 04 2024
Date of pronouncement:	25 04 2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeals have been preferred by the assessee against the respective revisional orders passed by the Pr.CIT for captioned assessment years as tabulated below:

<i>Sr. Nos.</i>	<i>ITA/CO Nos.</i>	<i>A.Y.</i>	<i>Pr.CIT Order dated</i>	<i>Assessment Order dated</i>	<i>Remarks</i>
1.	ITA No.1075/Del/2023	2019-20	Pr.CIT (Central), Delhi-1, order dated 31.03.2023	Assessment order dated 18.11.2021	Assessment Order under section 143(3) of the Income Tax Act, 1961.
2	ITA No.1533/Del/2023	2017-18	Pr.CIT (Central), Delhi-1, order dated 31.03.2023	Assessment order dated 13.11.2020	Assessment Order under section 153A of the Income Tax Act, 1961.
3.	ITA No.1534/Del/2023	2018-19	Pr.CIT (Central), Delhi-1, order dated 31.03.2023	Assessment order dated 17.03.2022	Assessment Order under section 143(3) r.w. Section 153A of the Income Tax Act, 1961.

2. The assessee has assailed revisional order passed by the Pr.CIT under Section 263 of the Act on the ground that the assessment order under revision is neither erroneous nor prejudicial to the interest of the Revenue and therefore, the Pr.CIT lacks jurisdiction to invoke powers

conferred under Section 263 of the Act in respect of captioned appeals.

3. To begin with, we shall take up the appeal in *ITA No.1075/Del/2023* relevant to Assessment Year 2019-20 for adjudication.

4. Briefly stated, the assessee is an individual engaged in the practice of Chartered Accountancy since 1992. A search and seizure operation was conducted in the case of the assessee on 18.09.2018. In the course of the search, cash of Rs.10,12,780/- was found at the premises of the assessee. However, after considering the explanation of the assessee with respect to the cash found in the course of search, the cash was eventually not seized by the search team.

4.1 Pursuant to search proceedings under Section 132 of the Act, assessment proceedings under Section 153A of the Act were initiated. The assessee filed return in response to notice under Section 153A of the Act and the assessment proceedings thereon was set in motion. Inquiries were made by the AO *inter alia* in respect of source of cash and jewellery found from the premises of the assessee at the time of search and assessment was framed thereafter vide order dated 18.03.2021 for the AY 2019-20 in question. As per the assessment framed, the income returned by the assessee at Rs.11,14,140/- was assessed as such without any adjustments. Thereafter the Pr.CIT, in exercise of revisionary powers, issued show cause notice dated 25.03.2023 under Section 263 of the Act requiring the assessee to show cause as to why the assessment framed under Section 143(3) should not be suitably amended / modified on the ground that such order is erroneous insofar as prejudicial to the interest of the Revenue for the reason mentioned in the show cause notice.

5. The show cause notice issued under Section 263 by the PCIT to assume revisionary jurisdiction is extracted hereunder for ready reference:

PAN/TAN: AACPT8811E	A.Y. 2019-20	DIN & Notice No. : ITBA/REV/F.REV1/2022- 23/1051316164(1)	Dated: 25/03/2023
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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 2019-20.

In this regard, a hearing in the matter is fixed on 28/03/2023 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 for initiating action under section 263 of the Income Tax Act, 1961 in the case of Sh. Ashok Kumar Tayal for the A.Y. 2019-20 for revision of the assessment order u/s 143(3) of the Income-tax Act, 1961 dated 18.03.2021- reg.

The assessee was covered in search and seizure proceedings u/s 132 of the Income-tax Act, 1961 (herein after referred to as the Act') conducted as part of Sh. Ravinder Singh Tongar group on 18.09.2018. During thesearch, cash amounting to Rs.10,12,780/- was found at the premise of the assessee. The assessee filed original return of income at Rs.11,14,140/- on 28.11.2020. Assessment u/s. 143(3) of the Act was completed on 18.03.2021 accepting returned income of the assessee.

2. It is noted from the assessment records that in the return filed by the assessee for A.Y.s 2017-18 to 2019-20 following discrepancies are noted:

A.Y	Total Income		Cash in Hand	
	In original ITR	In ITR filed after search	In original ITR	In ITR filed after search
2017-18	6,65,950/-	6,65,950/-	0	27,79,067/-
2018-19	3,95,750/-	3,95,750/-	1,20,000/-	23,06,667/-
2019-20	NA	11,14,140/-	NA	19,95,667/-

3. During the assessment proceedings the explanation for the cash found amounting to Rs 10,12,780/- was provided by the assessee stating that he had cash balance of Rs. 19,95,667/- and Rs 23,06,667/- for A.Y. 2019-20 and A.Y. 2018-19 respectively. However, upon further examination, it is noted that opening cash balance for the year A.Y. 2019-20 was only Rs. 1,20,000/- as per the original ITR filed by the assessee for A.Y. 2018-19(closing balance of cash in hand for A.Y. 2018-19 was Rs.1,20,000/-).This explanation has been accepted by AO without any further query.

4. Further, it is observed that assessee has increased the closing balance of cash in hand for A.Y. 2018-19 from Rs. 1,20,000/- to Rs 23,06,667/- while filing the return in response to notice u/s 153A of the Act whereas the total income in both the returns for A.Y. 2018-19 remained same at Rs 3,95,750/-. Also, the same trend has been observed for A.Y. 2017-18. The assessee has increased the closing balance of cash in hand for A.Y. 2017-18 from Nil to Rs.27,79,067/- while filing the return in response to notice u/s. 153A of the Act whereas the total income in both the returns for A.Y. 2017-18 remained same at Rs.6,65,950/- Thus, the increase in cash balance without increase in income for both the years warranted further enquiry which the AO failed to do.

5. In view of above facts, I am of the opinion that Assessment order dated 18.03.2021 in your case for A.Y. 2019-20 is erroneous in so far as it is prejudicial to the interests of the revenue. Therefore, you are required to explain as to why proceedings under section 263 of the Act, should not be initiated for revision of Assessment Order for A.Y. 2019-20.

6. You reply in this regard should reach this office by 28.03.2023 at 11:00 A.M. You may also personally or through AR attend to the hearing of the case. In case nothing is heard from you by 28.03.2023 at 11:00 AM, then it will be presumed that you have nothing to say / submit in this matter and the matter will be decided on the basis of details available on record and merits of the issue, without any further opportunity to you.

6. As per the show cause notice, the Pr.CIT essentially observed that the explanation offered by the assessee towards source of cash found amounting to Rs.10,12,780/- has been wrongly accepted in the assessment proceedings without proper inquiry and without probing the explanation offered by the assessee. The response and explanation of the assessee in pursuance of show cause notice was considered as per paragraph 5 of the revisionary order. Unimpressed, the Pr.CIT passed the order under Section 263 of the Act wherein action of the AO was assailed on two counts;

(i) the AO has wrongly accepted the explanation offered by the assessee towards nature and source of cash found in search mainly with reference to opening balances of cash held from earlier years without requisite inquiry as alleged in the show cause notice. The PCIT accordingly directed the AO to include and assess Rs.10,12,780/- on account of unexplained cash under Section 69A r.w.s 115BBE of the Act in the assessment pursuant to the revisional action;

(ii) the AO failed to verify the source of investment in jewellery worth Rs.58,53,606/- found at the residence and in locker at the time of search. The issue was set aside to the AO for appropriate orders after enquiry.

7. The assessment order was accordingly set aside with a direction to the AO to make a fresh assessment *de novo* in terms of revisional order and in accordance with law.

8. Aggrieved, the assessee is in appeal before the Tribunal agitating supervisory jurisdiction usurped by the Pr.CIT under Section 263 of the Act.

9. The Id. counsel for the assessee broadly reiterated its submissions placed before the AO and also in the course of revisionary proceedings and submitted in furtherance that (i) the show cause notice issued under section 263 is inexplicably dated 25.03.2023 (Saturday) and the assessee was expected to respond to the show cause notice by 28.03.2023 morning i.e. by 11:00 a.m. Thus, the show cause notice even if remotely assumed to have been served on the same day i.e. on holiday, the assessee was left with only one working day to respond to the show cause notice carrying civil consequences to the grave prejudice of the assessee. Another notice dated 29.03.2023 was also issued but only as a mere reminder for compliance of earlier notice dated 25.03.2023 and the date of compliance was fixed yet again as an empty formality on 30.03.2023 at 11:00 a.m. The short opportunity given was just an eyewash. Apparently, no effective opportunity *per se* was given to the assessee to address the concern raised in the show cause notice despite explicit requirement of opportunity inbuilt in the provisions of Section 263 itself. The assessee thus contends that the proceedings under section 263 ostensibly based on empty formality is void and *non est* at the threshold (ii) the show cause notice issued at the fag end of limitation alleges purported short comings in the order of the AO towards source of cash deposits alone whereas the impugned revisional order culminated in

pursuance of such show cause notice also seeks to broaden the sphere of allegation and enquiry towards source of jewellery in addition to cash deposits. The revisionary order also seeks to fault the action of AO in admitting the explanation of the assessee on the source of jewellery found in the course of search. The allegation towards jewellery surfaced for the first time directly in the revisary order without a whisper in this regard in the show cause notice. Hence, even idle formality of opportunity was not obeyed as enjoined in law. In the absence of any opportunity, the directions on Jewellery in revisional order is a damp squib and has no legs to stand (iii) As regards source of cash balance explanation, the ld. counsel submitted that (a) the cash found in the course of search was not seized by the search team impliedly based on satisfactory reply offered instantly by the assessee towards source thereof (b) the case of the assessee was covered under presumptive taxation scheme which does not call for maintenance of books. However, the assessee has opted to declare the cash in hand in the return filed under Section 153A of the Act which demonstrates sufficient availability of cash (c) the closing balance of cash in hand in F.Y. 2015-16 relevant to A.Y. 2016-17 was declared by the assessee at Rs.24,19,867/- in the return filed under Section 153A of the Act. The cash balance so declared was not disturbed either by the AO or by the revisional Commissioner under Section 263 of the Act. Hence, when seen in perspective, the opening balance at the beginning of F.Y. 2016-17 spilled over to subsequent years including F.Y. 2018-19 relevant to A.Y. 2019-20 acquires a degree of acceptability for the purposes of explanation offered towards source of cash found. When seen conjointly with existing cash at the beginning of respective assessment years , the source of cash found in the course of search thus clearly stands explained. The cash balances as statedly reported in the ROI is as tabulated hereunder:

<i>Assessment Year</i>	<i>Original Return</i>		<i>Return filed u/s. 153A</i>	
	<i>Opening Balance</i>	<i>Closing Balance</i>	<i>Opening Balance</i>	<i>Closing Balance</i>
<i>2016-17</i>	-	-	-	<i>24,19,867.00</i>
<i>2017-18</i>	-	-	<i>24,19,867.00</i>	<i>27,79,067.00</i>

2018-19	-	1,20,000.00	27,79,067.00	23,06,667.00
2019-20	1,20,000.00	-	23,06,667.00	19,95,667.00

10. The Id. counsel next adverted to copy of notices issued by the AO under Section 142(1) of the Act and submitted that specific and pointed questions were raised in the course of assessment proceedings with reference to cash as well as jewellery found and detected in the course of search operations. Specific inquiries were carried out on both counts. In response to such queries, the assessee filed detailed replies as well as the copy of ITRs. The AO while performing *quasi judicial* function statutorily vested upon him, found justification in the explanations offered towards source of such cash and jewellery investment. Hence the AO did not consider it expedient to engage in protracted inquiries and accepted the explanation offered as reasonable. From the notices issued and replies filed thereto in the course of the assessment proceedings, it is apparent that the AO has applied its mind to the factual matrix and has arrived at a conclusion plausible in law. The Id. counsel thus submitted that the recourse to revision under Section 263 is not available merely because the Pr.CIT does not agree with the extent and manner of inquiry carried out by the AO as held in plethora of judicial precedents. The powers conferred under section 263 howsoever wide, are not plannery. The Id. counsel thus submitted that the revisional order passed by the Pr.CIT is not sustainable in law since the twin prerequisites for invocation of powers under s. 263 i.e. the assessment order being erroneous and prejudicial to the interest of the Revenue are sorely missing in the present case.

11. The Id. CIT-DR for the Revenue, on the other hand, relied upon the revisional order and submitted that the Pr.CIT has ample jurisdiction under Section 263 r.w. Explanation-2 appended thereto to enable it to invoke the revisionary powers. The Ld. CIT-DR thus contends that no interference with revisinary directions are called for. In continuation, the Id. CIT- DR for the Revenue submitted that large cash in hand stated to

be available at the beginning of the different financial years is merely a pretense and an eyewash. Such large cash in hand as opening balances in the different financial years are grossly disproportionate to the meager income reported by the assessee and does not withstand the test of preponderance of probabilities. The Id. CIT-DR thus submitted that a casual and summary inquiry made by the AO does not discharge the quasi judicial responsibilities entrusted upon the AO and such cryptic and nondescript order has been rightly been set aside under s. 263 of the Act. In the absence of any satisfactory explanation offered, the Pr.CIT has rightly given a conclusive directions to the AO to make additions on account of cash found in the course of search with the aid of Section 69A r.w. Section 115BBE of the Act. As regards nonchalant inquiry allegedly carried out by the AO towards source of investment in jewellery. the Id. CIT-DR submitted that the issue has been merely set aside to the file of the AO and it will be open to the assessee to offer explanations towards source of jewellery.

12. We have carefully considered the rival submissions on the maintainability of revisional action in the factual matrix and in the light of jurisprudence available in this regard. The assessee has questioned the rationale for invoking powers under section 263 of the Act and alleged absence of prerequisites for doing so.

13. Section 263 of the Act confers power upon the Pr.CIT / CIT to call for and examine the records of a proceeding under the Act and revise any order, if he considers the same to be erroneous and prejudicial to the interest of the Revenue. The Pr.CIT can however take recourse to revision under Section 263 of the Act only where the assessment order is erroneous as well as prejudicial to the interest of the revenue. The twin conditions are required to be satisfied simultaneously. The Pr.CIT in the present case has purported to act in exercise of power under Section 263 of the Act and thereby has sought to modify the re-assessment order passed by the Assessing Officer under Section 143(3) of the Act.

13.1 In the context of the present case, controversy has emerged on two counts. The Pr.CIT firstly observed that source of cash found in the course of search remains unexplained and additions under Section 69A r.w. Section 115BBE is therefore, warranted in the factual matrix. The veracity of opening balances of cash in hand which as explained to be source of cash found, was frowned upon. The assessment order was thus set aside and the AO was directed to enhance the assessed income to the extent of cash found in search. Secondly, while framing revisionary order, the Pr. CIT proceeded on the premise that AO has also failed to make cogent inquiries with reference to investments in jewellery found in the course of search in terms of Sections 69 / 69A r.w. Section 115BBE of the Act. Based on such premise, this issue was set aside to the file of the AO for making inquiries in terms of directions issued in the revisional order. The Pr.CIT thus alleged that the order passed by the AO is erroneous insofar as prejudicial to the interest of the Revenue.

14. To begin with, we shall address ourselves on the second issue raised towards source of jewellery found and consequent set aside to AO for making enquiries in this regard. On perusal of records, it is evident that the show cause notice was issued on a solitary point towards source of cash found in the course of search. There is not even a whisper of challenge to the action of the AO towards source of jewellery in the show cause notice dated 25.03.2023 which was followed by another show cause notice dated 29.03.2023 issued as reminder for mere compliance of first show cause notice. Clearly, the issue was not confronted to the Assessee and no opportunity whatsoever was given by the Pr. CIT to the assessee to raise its defense on the second issue of investment in jewellery. Undisputedly, the revisional order has been passed without confronting the assessee on purported allegations towards lack of inquiry / inadequacy in inquiry regarding source of investment in jewellery by the AO.

15. At this juncture, it may be pertinent to observe that the breach of principles of natural justice can typically happen in two ways; (i) the

competent authority passes an order without giving reasonable opportunity to deal with the points raised and facts in issue or; (ii) passes order without revealing the facts itself in the course of the proceedings and comes out with an order adverse to the assessee without any prior notice. The case of the assessee insofar as source of jewellery is concerned, falls in the second category of breach which is far more incomprehensible. The Pr. CIT has outrightly deprived the assessee of his statutory right to make any effective representation to defend his case as contemplated in the provisions of Section 263 of the Act. Noticeably, the requirement of opportunity is not merely implied but expressly enacted in section 263 of the Act. The power to give appropriate directions on the counters of section 263 is squarely contingent upon proper opportunity to the assessee. The Pr. CIT can exercise powers only after giving the assessee an opportunity of being heard to the assessee. The expression '*after giving the assessee an opportunity of being heard*' thus looms large as a compulsive mandate while exercising powers under s. 263. Total lack of opportunity in serious transgression to principles of natural justice explicitly inbuilt in section 263 has singularly vitiated in proceedings qua jewellery issue and rendered such directions outside the bounds of law. Consequently, the revisional order passed on the issue without opportunity is liable to struck down and set aside. The revisional order passed by Pr. CIT this score is thus not sustainable in law at the threshold.

15.1 As regards first issue towards source of cash available, we take note of the contentions raised on behalf of the assessee that an opportunity of barely three working days in aggregate has been given to assessee to defend the allegations. Despite such extremely short time made available, the assessee has attempted to comply with the show cause notice in the best possible manner and has pointed out that search team itself was *prima facie* satisfied with the source of cash available in the course of search and did not choose to seize the cash. The source of cash was shown to be arising from the earlier balances as well as some

accumulation thereafter to the satisfaction of the AO. A specific inquiry was directed by the AO and the source was found to be satisfactory. While seeking to dislodge the action of AO, no inquiries were made by the Pr. CIT in the course of revisional proceedings. Thus, the Pr.CIT without giving any effective opportunity, has decided the issue against the assessee with a degree of finality disregarding the vital facts such as opening balances available in the F.Y. 2016-17 to the tune of Rs.24.19 lakh which was admitted and accepted as closing balance of cash in the preceding A.Y. 2016-17 and also has attained finality. Notwithstanding, the Pr.CIT has adjudicated the issue against the assessee without giving any allowance for any cash in hand which, a common person would ordinarily possess having regard to the construct of the Indian society. An amount of Rs.10 lakh cannot be stated to be highly implausible having regard to the postulations which define Indian socio-economic structure. The business model of the assessee and need of cash for running business was also disregarded by the Pr. CIT.

16. In the backdrop, we find substantial merits in the ardent defense raised on behalf of the assessee on both counts. The assessee has demonstrated the existence of cash in hand. The relevant facts were placed before the AO which suggests the view taken by the Assessing Officer in its *quasi judicial* capacity to be plausible while framing the assessment. As stated, the assessee has not declared any cash in hand in its return of income filed prior to search since it was not compulsory for the assessee to do so owing to presumptive taxation scheme availed by the assessee. The cash in hand was however declared for different assessment years in the return filed under Section 153A. Pursuant to search, the opening cash in hand for F.Y. 2016-17 declared at Rs.24.19 lakh has been accepted by the Revenue and has attained finality in the absence of any pending proceedings. This itself gives rise to a somewhat plausible explanation towards cash found. This apart, the assumption of Pr.CIT towards NIL cash in hand and treating the entire cash found in the course of search as unexplained defies logic and common sense approach.

Besides, the revisional action has been taken at a ferocious speed and in unprecedented hurry apparently to meet the limitation period denying any opportunity to the assessee to objectively explain the factual position to the Pr.CIT. The Pr. CIT has merely rejected the plea of the assessee with preconceived notions and without countering the assessee in any manner.

17. When the facts are collated, the view taken by the Assessing Officer cannot be branded as without any enquiry. The direction of the Pr.CIT to make additions on account of cash found in the course of search with aid on the contour of Section 69A r.w. Section 115BBE without effective opportunity, thus cannot be countenanced in law. Such directions are thus required to be set aside and the action of the AO is required to be restored. We do so accordingly.

18. As noted earlier, the directions of the Pr.CIT setting aside the assessment order to make inquiry on source of jewellery is clearly marred by total lack of opportunity and is in contravention of the statutory enactment codified under Section 263 of the Act. A revisional directions given without any opportunity to assessee is a complete non starter.

19. The impugned revisional order passed under Section 263 of the Act is thus set aside and quashed.

20. In the result, the appeal of the assessee in ITA No.1075/Del/2023 relevant to Assessment Year 2019-20 is allowed.

21. We now advert to ITA No.1533/Del/2023 relevant to AY 2017-18. The Pr.CIT has sought to revise the completed assessment order with a direction to treat the opening cash in hand of Rs.24,19,867/- in A.Y. 2017-18 as 'Nil' and consequently revise the closing cash in hand for A.Y. 2017-18 in question. Similar directions have been given in ITA No.1534/Del/2023 in A.Y.2018-19 to exclude the effect of closing balance of earlier years.

22. The assessee contends that such direction is not justified for the

reasons mentioned in A.Y. 2019-20 (supra) as discussed in length and also in the absence of any error which is one of the essential ingredients of section 263 for exercise of revisionary powers.

23. In the light of the delineations made in the A.Y. 2019-20, the revisional directions under Section 263 in ITAs No.1533/Del/2023 & 1534/Del/2023 relevant to A.Ys. 2017-18 and 2018-19 are also set aside and quashed.

24. In the result, all the captioned appeals of the assessee are allowed.

Order pronounced in the open Court on 25th April, 2024.

Sd/-
[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: 25th April, 2024
Prabhat

Copy forwarded to:

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

Assistant Registrar