

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **409/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2017-18

Deepan Mangi, H.No. 3051, Mangi Niwas, Dera Baba Mangal Nath Street, Sirhind 140406	Vs. बनाम	Pr. Commissioner of Income Tax, Patiala
स्थायी लेखा सं./PAN No: AJYPM5231A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 23.04.2024

उद्घोषणा की तारीख/Date of Pronouncement : 02.05.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order of the Id. Principal Commissioner of Income Tax, Patiala (herein referred to as 'PCIT') dated 27.03.2022.

2. The Assessee in this appeal has taken following Grounds of appeal:

1. *That the Ld. PCIT (Central), Ludhiana has erred in assuming the jurisdiction to issue notice u/s 263 of the*

Income Tax Act, 1961 and, thereby, cancelling the assessment already framed by the AO vide order dated 04.04.2019 and holding the order passed by the Ld. Assessing Officer as erroneous and prejudicial to the interest of revenue and setting-aside the assessment already framed to the file of the Assessing Officer, with the direction to pass the assessment order, afresh in accordance with law, after granting sufficient opportunity to the assessee.

2. *That the Ld. PCIT has failed to appreciate the fact that the assessment as framed by the Assessing Officer vide order dated 04.04.2019, was after considering various replies as filed during the course of assessment proceedings and after complete application of mind on the issues, raised by the Ld. PCIT in the notice u/s 263.*
3. *That the Ld. PCIT has failed to appreciate that complete details as asked for in respect of unsecured loans and deposit of cash in the regular bank of the assessee had been explained and on which, the Assessing Officer has duly applied his mind and, thus, setting aside of order is not proper.*
4. *That the Ld. PCIT has failed to appreciate that the assessee have been maintaining day to day stock register in respect of jewellery business and the cash has been realized out of accounted for sale, which was verified from the cash book and ledger as produced before the Assessing Officer and on the basis of which, the Assessing Officer has taken a possible view and, thus, the setting aside of assessment is not proper.*
5. *The Ld. PCIT have erred in assuming the jurisdiction of the assessee on the basis of the audit objection, which is void-ab-initio, as per the binding judgment of Jurisdictional High Court in the case of Sohana Woollen Mills and followed in the case of Sh. Surinder Pal Singh in ITA No. 57/Chd/2021 and in the case of Ganga*

Acrowool in ITA No.196/CHD /2021 and also the action u/s. 263 having been taken on the bases of proposal sent by the AO to the PCIT and as such, there being no independent application of mind by the Ld. PCIT, the proceedings as taken up by the Ld. PCIT, is bad in law as per the various judgments of the coordinate benches.

6. *That the Ld. PCIT has relied upon some judgments while passing the order which all not applicable to the facts & circumstances of the case and the replies as filed during the course of proceedings before PCIT have not been considered properly.*
7. *That the appellant craves leave to add, amend, alter any of the above grounds during the appellate proceedings have been considered*

3. The appeal on Ground Nos. 1, 2, 6 and 7 are general in nature.

4. Brief facts of the case are that the Assessee is a partnership firm engaged in the business of trading of gold / silver / Diamond and its ornaments. The Assessee filed its return of income on 2.1.2018 at Rs. 16,18,820/-. The return was processed u/s 143(1) and subsequently the case was selected for scrutiny through CASS. Statutory notice u/s 143 (2) and a notice u/s 142(1) along with detailed questionnaire was issued through e-assessment portal and in response thereto the Assessee filed reply along with copies of papers and documents concerned. Later on, the Assessee was asked to produce books of account along with bills and vouchers for verification which were

produced and were checked on test check basis. After perusal of the reply and documents filed by the Assessee and necessary verification, the returned income of the Assessee was accepted by the Assessing Officer. However, later on the case was opened on the basis of audit objection and the ld. PCIT observed that the assessment order dated 4.4.2019 was erroneous as well as prejudicial to the interest of Revenue.

5. Before us, the first objection of the Assessee is regarding passing of an order u/s 263 of the Income Tax Act, 1961 (in short 'the Act') by the ld. PCIT on the basis of Audit objection. During the course hearing before us, the ld. Counsel of the Assessee also raised this issue and questioned the application of mind by the ld. PCIT on the basis of issues pointed out in the audit report. The ld. counsel argued that the short comings pointed out by the ld. PCIT in his 263 order are not outcome of his own independent observation rather, his findings are based on Audit objection raised by the Internal Audit party of the Department. Accordingly, the ld. Counsel argued that the order of the ld. PCIT passed u/s 263 should be quashed.

6. The ld. DR relied heavily on the order of the ld. PCIT and brought on record that although the mistakes by the Assessing Officer that made the assessment order erroneous and prejudicial to the

interest of Revenue are based on audit objections but there is no denial that the ld. PCIT has applied his mind in accepting and deliberating on the issues raised under audit objection.

7. We have heard both the parties on this issue and we find that the ld. PCIT has very clearly discussed this issue in his order, the relevant part of which is reproduced as under:-

“The machinery of audit only brings to the notice of the Commissioner the acts of omission, errors and matters of prejudice caused to the revenue. It has to be borne in mind that opinion or the information of the audit is not binding upon the Commissioner. It is also a mode for excluding such cases not requiring the attention of the Commissioner for the purpose of consideration of any action under section 263. Once the matter has been brought to the notice of the Commissioner, it is the Commissioner who has to exercise his powers under section 263 and for that purpose it is necessary for him to apply his mind to the facts of the case taking into account the objection raised by the internal audit. Such a consideration would not be contrary to the spirit of the scheme of the Act and the powers of the Commissioner under section 263.”

8. This matter has also been considered by the Delhi Bench of the ITAT in the case of ‘Mannesmann Demag A.G. Vs Deputy Commissioner of Income Tax’, 53 ITD 533 Delhi dated 20.3.1995 wherein it has been held as under:-

"13. We have given our careful consideration to the rival contentions and have perused the records. The contention raised on behalf of the assessee that the action of the Commissioner of Income-tax under Section 263 based on the audit objection is invalid and contrary to law is not well-founded. Whereas we agree with the learned counsel for the assessee that the powers under Section 263 are vested in the Commissioner of Income-tax and it is he who has to apply his mind before coming to the conclusion that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue, yet, that does not mean that the Commissioner of Income-tax has not to be assisted by anyone else in collecting information and in bringing to his notice any errors or omissions requiring action under Section 263 or under any other provision of the Act. It will be unreasonable to perceive that the Commissioner of Income-tax would himself examine the assessment records of all the assessees within his jurisdiction so as to arrive at a conclusion whether any action under Section 263 is required or not. It is humanly impossible. Therefore, setting up of a machinery known as internal audit which assists the Commissioner of Income-tax in this regard is not improper as the said machinery only brings to the notice of the Commissioner of Income-tax the acts of omission, errors and matters of prejudice caused to the revenue. It has to be borne in mind that opinion or the information of the internal audit is not binding upon the CIT. It is a mode for excluding such cases not requiring the attention of the Commissioner for the purposes of consideration of any action under Section 263. Once the matter has been brought to the notice of the CIT, it is the Commissioner who has to exercise his powers under Section 263 and for that purpose it is necessary for him to apply his mind to the facts of the case taking into account the objection

raised by the internal audit. Such a consideration would not be contrary to the spirit of the scheme of the Act and the powers of the CIT under Section 263.....”

9. Keeping in view the facts discussed above, we are of the view that the objection of the Assessee regarding passing of order by the Id. PCIT u/s 263 based on information provided by the audit objection party of the internal audit of the Income-tax Department and not his own application of mind, is not valid.

10. Accordingly, the Assessee's appeal on this Ground is dismissed.

11. Appeal on another Ground is regarding unsecured loans taken by the Assessee from different parties to the tune of Rs. 36,35,000/-. The Id. PCIT has given his findings that unsecured loans taken from different parties have not been verified by the Assessing Officer. Their identity, genuineness and creditworthiness have not been checked / verified by the Assessing Officer, therefore, acceptance of unverified unsecured loans makes the order erroneous and prejudicial to the interest of Revenue. During the proceedings before us, Id. Counsel of the Assessee submitted that the list of these unsecured loans is part and parcel of the tax audit report submitted before the Assessing Officer. He further contended that all the loans were given by cheques

and more importantly all such parties from whom unsecured loans have been taken are assessed by the same Assessing Officer and all such persons had filed their returns of income with the ITO, Sirhind. The Id. Counsel further argued that the case of the Assessee is that the Assessing Officer must have been satisfied with the fact that since all the persons from whom unsecured loans have been obtained are being assessed with him and, therefore, no inquiries were made by the Assessing Officer. The Id. DR argued vehemently on this issue and brought on record that it is clear from the assessment order that no question was asked by the Assessing Officer regarding unsecured loans during the assessment proceedings. No issue was raised by the Assessing Officer regarding identity, creditworthiness and genuineness of such unsecured loans. Even during the assessment proceedings, the Assessee did not file any paper whatsoever on this issue of unsecured loans to the Assessing Officer. The Id. Counsel of the Assessee further argued that since all the persons from whom unsecured loans were taken were assessed with ITO, Ward – Sirhind only where the Assessee is also assessed, therefore, no loan confirmation was filed. However, Id. Counsel further requested that alternatively this issue of unsecured loans may be set aside to the file of the Assessing Officer for necessary verification.

12. We have considered the arguments of the Id. Counsel of the Assessee as well as the Id. DR on this issue and we find that Id. DR is correct to the extent that Assessing Officer has never asked any question regarding unsecured loans during the assessment proceedings, which is evident from the assessment order. By filing of PAN, the identity of the persons may be established but the genuineness of the loans and creditworthiness of the creditors has neither been asked nor any submission has been filed by the Assessee. Accordingly, this issue of unsecured loans is set aside to the file of the Assessing Officer for necessary verification.

13. The appeal on third issue raised by the Assessee is against the action of the Id. PCIT by passing order u/s 263 for cash deposits to the tune of Rs. 1,69,99,000/- in four bank accounts but no source of cash deposit was sought to be verified by the Assessing Officer. During the course of hearing the Id. Counsel of the Assessee submitted that a specific query relating to cash deposited by the Assessee in its bank account was asked by the Assessing Officer vide questionnaire dated 9.1.2016 and a copy of the questionnaire was submitted in the paper book at pages 23 -24. The Id. Counsel further argued that in response to the said notice, the Assessee had filed its detailed reply wherein the details of cash deposits in various bank

accounts along with copies of bank statements were filed with the Assessing Officer. It was also explained before the Assessing Officer that cash has been deposited by the Assessee out of regular business operations of trading of gold / silver and diamond ornaments. The cash book, sale bills and vouchers were produced before the Assessing Officer and the Assessing Officer had accepted them after test check. According to Id. Counsel, there is no issue of non-application of mind by the Assessing Officer and, therefore, Id. PCIT's finding on this issue is not justified.

14. The Id. DR, on the other hand, raised the issue of different cash deposits made in four bank accounts of the Assessee on different dates as a matter of un-correlated cash sales.

15. We have considered the arguments of both the parties and we find that as the Assessee is in the business of purchase and sales of gold / silver and diamond ornaments and there is no denying that in this business most of the sales and purchases are through cash only. In fact, the Assessing Officer has verified the purchase register, sale bills, sale register and other relevant vouchers and no discrepancy has been found in it. The Assessing Officer also after accepting the papers and documents produced by the Assessee regarding sales and purchases accepted the books of account and as such it is not the

case of rejection of books of account. Therefore, when both the purchases and sales in question have been accepted by the Assessing Officer, there is no point in questioning the cash deposits arising out of such sales and its deposit in different bank accounts of the Assessee. Accordingly, the Assessee's appeal on this issue is allowed.

16. In the result, the appeal of the Assessee is partly allowed.

Order pronounced on 02.05.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar