

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. **410/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2012-13

J M G Green Promoters & Developers, Opp. Jain Mandir, Chandigarh Road, Sirhind 140406	Vs. बनाम	Pr. Commissioner of Income Tax, Patiala
स्थायी लेखा सं./PAN No: AAIFJ0737F		
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 : 24.04.2024

उद्घोषणा की तारीख/Date of Pronouncement : 03.05.2024

**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 29.03.2022, for the Assessment Year 2012-13.

2. In fact, an Application dated 23.4.2024, was filed by the Id. Counsel of the Assessee taking an additional Ground of appeal, which

was later on merged with the Revised Grounds of appeal filed on 24.4.2024.

3. The revised Grounds of appeal taken by the Assessee are reproduced as under: -.

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 19.12.2019 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 19.12.2019, 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 the Assessing Officer was conscious of reasons for reopening of the case u/s 147 with regard to the purchase of land and which was accepted on the basis of details submitted by the assessee and, thus, the setting aside of the assessment after due application of mind by the Assessing Officer is not proper.*

4. *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.*
5. *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.*

4. Brief facts of the case are that the Assessee is a partnership firm engaged in the business of development of colonies. The case was reopened u/s 148 and order u/s 147 read with section 143(3) of the Income Tax Act, 1961 (in short 'the Act') was passed by the Assessing Officer. Later on, the ld. PCIT Patiala issued a notice u/s 263 on the ground that the order passed by the Assessing Officer u/s 143(3) / 147 was erroneous and prejudicial to the interest of Revenue on the following Grounds:-

- a) *The assessee had purchased 22 Kanal of Land for Rs. 1,60,60,000/- and one more land of 8 Kanal of land from Smt. Manpreet Kaur. The AO has not enquired about the purchase of land as per registration deeds. The AO neither verified the source of investment in this property no profit earned from the sale of land in the form of small plots/showrooms.*

- b) *All the partners have contributed their share of capital, out of their own sources and Rs. 45,30,000/- have been introduced as cash capital and Rs. 52,00,000/ through cheque. No documentary evidence in the shape of their bank statements, copy of ITR to establish the genuineness and capacity of these partners were furnished.*
- c) *The assessee had also raised unsecured loan of Rs. 10,00,000/- from Smt. Harjinder Kaur but no source of the loan advanced was sought by the AO.*

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

6. While perusing the file of the Assessee, the ld. PCIT found that the Assessee had purchased 22 kanal of land for Rs. 1,60,60,000/- on 25.7.2011 and also purchased 8 kanal of land on 31.1.2012. the ld. PCIT has given his findings that the Assessing Officer has not enquired about the purchase of land as per the registration deed. It was further found by the ld. PCIT that the Assessing Officer neither verified the source of investment in the purchase of these properties nor enquired about profit earned from the sale of land in the form of small plots / show rooms. The second issue for passing order u/s 263 was that the Assessing Officer had not made enquiries about partner's capital account while partners have made additions of Rs. 97,30,000/- in the capital account. The ld. PCIT also found that an unsecured

loan of Rs. 10,00,000/- was obtained from Smt. Harjinder Kaur but no source or creditworthiness of the creditor were looked into by the Assessing Officer. Aggrieved with the action of the ld. PCIT for passing order u/s 263 of the Act, the Assessee has filed this appeal.

7. During the course of hearing the ld. Counsel for the Assessee brought it on record that the Assessee is a partnership concern which came into existence on 31<sup>st</sup> May, 2011. The Assessee is in the real estate business and it deals in purchase of land and sales of small plots and show rooms. The ld. Counsel also submitted that copy of tax audit report was filed before the Assessing Officer, where alongwith details of purchase of land and its sale in the form of small plots, show rooms and profit earned therefrom were reflected in the trading and profit and loss account. The ld. Counsel brought on record that the ld. PCIT had found the assessment order erroneous and prejudicial to the interest of Revenue on the basis that the credits in the capital accounts of the partners to the tune of Rs. 97,30,000/-, both by cash and cheques to the tune of Rs. 35,30,000/- and Rs. 50,00,000/- respectively, were not verified by the Assessing Officer. The ld. Counsel further argued that the partnership firm was constituted on 31.5.2011 and it was the first year of its operation wherein partners had introduced Rs. 97,30,000/- as capital in newly constructed firm.

It was also stated by the ld. Counsel that the detail of investments by partners in their capital from their own source was out of their past savings income. All the partners were assessed to tax and details of their PAN cards etc. were furnished during the assessment proceedings. The main argument of the ld. Counsel was that it is a case of the Assessee firm where the Assessee firm and partners are different entity. Partners are assessed separately and even otherwise on account of capital contribution by the partners who are separately being assessed, the assessment of the partnership firm cannot be held to be erroneous and prejudicial to the interest of Revenue. Another issue on which the ld. PCIT has taken 263 was the source of investment in the land purchased during the year and the profit earned from the sale of land in the form of a small plots and show rooms. In this regard, the Counsel invited our attention to page No. 27 of the paper book filed on 28.11.2022 wherein, the source of investment in plot to the tune of Rs. 58,80,000./- was given on 13.1.2012 and it is also brought on record by the ld. Counsel that the plots and show rooms were sold by the firm for cash consideration and the sale proceeds were deposited in the bank accounts maintained with Canara Bank and the copy of the bank statements was also filed. Copies of the Registration Deed and payment through cash and cheques have also been shown at page 42 of the paper book.

Regarding purchase of entire piece of land for Rs. 1,60,60,000/-, details and copies of purchase deed have been filed at page 50 of the paper book and it has also been stated that these transactions were duly recorded in the books of account and purchase ledger of the firm. The ld. Counsel also stated that regarding cash component, the Assessee firm had sold residential plots to the tune of Rs. 1,75,85,000/-and such sales were reflected in the sales book of the firm. Cash book, ledger, purchase deed, sale deed along with bills and vouchers were also furnished as part of the paper book. With regard to the purchase of land, payment of Rs. 1,60,00,000/- was made by two cheques which was reflected in the bank account. Regarding purchase of land of Rs. 58,50,000/-, details of payments by cheques and cash were reflected in the bank account. Regarding unsecured loans of Rs. 10,00,000/- from Smt. Harjinder Kaur, no appeal has been filed and, therefore, we are not giving any finding on this issue.

8. The ld. DR, on the other hand, argued vehemently and explained various entries in the bank accounts. He pointed out that invariably before issuance of cheques by the Assessee firm, cash deposits were made in the bank accounts on various dates. It was also pointed out by the ld. DR that even the cash deposits in the personal accounts of

the partners have not been explained by the Assessee. The ld. DR also brought on record that since the cash deposits by partners have not been verified by the Assessing Officer, therefore, creditworthiness and genuineness of such deposits by partners cannot be proved.

9. We have considered the arguments put by ld. counsel and counter arguments put by ld. DR on all the issues raised by the ld. PCIT, Patiala in his order passed u/s 263 of the I.T. Act.

10. At the very outset, it is clarified that there is no appeal by the Assessee on unsecured loans of Rs. 10,00,000/- from Smt. Harjinder Kaur, therefore, we are not passing any order on this issue and accordingly this issue remains to be decided by the Assessing Officer.

11. Regarding the capital contribution of partners in the form of cash and cheques, we are of the view that it is the first year of business operation of the firm, therefore, for the source of capital contribution, it is not the firm but the partners in their individual capacity are liable to explain the source of their contribution. We are inclined to agree with the contention of the ld. Counsel that the firm and its partners are different entities and they are assessed separately. Even if, the source of said partners contribution has not

been verified by the Assessing Officer, the assessment order of the partnership firm cannot be held to be erroneous and prejudicial to the interest of Revenue. It is because we find that if at all any addition is to be made, it is to be made in the hands of the partners in their individual capacity. The ld. Counsel of the Assessee has also brought on record an order of the Hon'ble jurisdictional High Court in the cases of 'Burma Electro Corp.' reported in [2003] 126 Taxman 533 and 'Metal & Metals of India' reported in 208 CTR 457 in which it has been held that partners having admitted to have made the investments in the firm and there is no material to indicate that these investments are the profit of the Assessee firm, there is no cogent reason for taking action u/s 263. Based on the order of the Hon'ble jurisdictional High Court in the case of Burma Electro Coprn.' and 'Metal & Metals of India' (supra), we find no force in the arguments of the ld. DR regarding non verification of identity, creditworthiness and genuineness of the transactions by partners and partners investment in the partnership firm.

12. Regarding purchase and sales of land, we have also considered the arguments of the ld. counsel and the ld. DR. There is no denying that for the purchase of land, cheques were issued by the firm and before every issuance of cheque, there has been various cash deposits

in the bank account of the Assessee firm. On this issue, we find that the Assessee has already accepted that it sold small pieces of land in parts and show rooms in cash and such cash were deposited in the bank account of the Assessee on different dates. It is also seen that the cash book, sale book, and other books of account of the Assessee have been verified by the Assessing Officer and the Assessing Officer in the assessment order has clearly written that books of account along with bills and vouchers were produced and they were test checked by the Assessing Officer. Accordingly, there is no rejection of books of account by the Assessing Officer. Once the cash book, cash deposits in bank, cash sales etc. have been accepted by the Assessing Officer, there is no reason to question some of the cash deposits in the bank accounts of the Assessee firm. Therefore, on this issue, the Assessee's appeal is allowed.

13. The appeal in revised Ground No.4 is regarding action of the ld. CIT(A) on passing order u/s 263 on the basis of audit objection.

14. Before us, the 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.

15. 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.

16. 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.”*

17. 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 assesseees 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.....”*

18. Keeping in view the facts discussed above, we are of the view that the objection of the Assessee regarding passing of order by the ld. PCIT u/s 263 is based on information provided by the internal audit of the Income-tax Department and not his own application of mind is not valid. Accordingly, the Assessee's appeal on this Ground is dismissed.

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

Order pronounced on 03.05.2024.

**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