

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “A” , HYDERABAD**

**BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA No.67/Hyd/2024		
Assessment Year: 2020-21		
Rakesh Kumar Jain, 1-10-1/ 1, Flat No.301, Ratna Rekha Apartment, Hyderabad – 500020, Telangana. PAN : ALZPJ1233A (Appellant)	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(4), Hyderabad. (Respondent)
Assessee by:	Shri Mohd. Afzal, Advocate.	
Revenue by:	Shri B. Bala Krishna, CIT-DR	
Date of hearing:	02.05.2024	
Date of pronouncement:	29.05.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2020-21 arises from order of learned Principal Commissioner of Income Tax (Central), Hyderabad (“ ld. PCIT”) dt.06.11.2023 passed u/s 263 of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under:

“1. The learned PCIT erred in assuming that the provisions of Section 115BBE of the IT Act are attracted in the case of aa, whereas the assessee admitted additional income from commission which is in the nature of business.

2. The learned Pr. Commissioners assumption of applicability of section 11 5BBE is not germinated from any enquiries/facts/records of the Assessing Officer and the investigation wing. The assumption is only an opinion therefore, the learned Commissioner erred in directing the Assessing Officer to assess the income as unexplained cash under the provisions of section 69A r.w.s 115BBE of the IT Act.

3. The learned Pr. Commissioner ought to have appreciated the facts and circumstances of the proceedings before the investigation wing and statements recorded therein and also the affidavit filed before the Assessing Officer, therefore, erred in directing the Assessing Officer to assess the Income as unexplained cash under the provisions of section 69A r.w.s 115BBE of the IT Act,

4. The action of the learned Pr. Commissioner to apply the provision of section 69A r.w.s 115BBE is only an opinion without any enquiries made therefore, erred in directing the Assessing Officer to assess the income as unexplained cash under the provisions of section 69A r.w.s. 115BBE of the I.T. Act.”

3. The appeal filed by the assessee is barred by limitation by 16 days. He has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

4. The brief facts of the case are that cash of Rs. 1,00,70,000/- was seized by police from the assessee and then handed over the cash to the income tax department. The Income tax department in the absence of proper documentary evidence regarding the sources of cash, seized amount of Rs. 1,00,70,000/- from the assessee by issue

of warrant u/s 132A of the Act. Latter on the assessee filed his return of income on 13/02/2021, showing total income of Rs.1,08,98,800/-. The learned assessing officer (“ ld. AO”) completed the assessment proceedings u/s 143(3) of the Act on 24.08.2021 accepting the returned income of the assessee at Rs.1,08,98,800/- . Subsequently the Ld. PCIT issued show cause notice u/s 263 of the Act dt.13.09.2023 contending that assessment u/s 143(3) of the Act was completed by the ld. AO without making necessary enquiries about the sources for the availability of cash amounting to Rs.1,00,70,00/- and without considering the facts that assessee had not complied with the provisions of Section 44AB of the Act. Hence, The Ld. PCIT treated the order of the ld. AO and order u/s 153D of the Act passed by the ACIT, Central Range – 1, Hyderabad as erroneous and prejudicial to the interest of Revenue. Assessee filed his submission before the Ld. PCIT and objected the invocation of action u/s 263 of the Act. However the Ld. PCIT rejected the submission of the assessee and thereby set aside the order to the file of ld. AO for the limited purpose of assessing the unexplained cash of Rs.1,00,70,000/- under the provisions of section 69A of the Act r.w.s. 115BBE of the Act and for invoking the relevant penal provisions of the Act.

5. Feeling aggrieved with the order of ld.PCIT passed u/s 263 of the Act, assessee is now in appeal before the ITAT . Before us, the assessee has challenged the order passed by the ld.PCIT u/s 263 of the Act, quashing the assessment order of the ld. AO u/s 143(3) of the Act vide order dt.24.08.2021.

6. The ld.AR has drawn our attention to the order of ld. AO wherein the ld. AO in Para 5 has recorded that the assessee has furnished the information along with the affidavit explaining the cash seized by the authorities. The assessee has explained that the cash seized was on account of the income from commission received by the assessee from farmers on account of procurement of seeds during the financial year 2019-20. It was further submitted that during the assessment proceedings, the assessee also filed the confirmation letters from 16 farmers. The ld.AR further drawn our attention to the confirmation letters of the farmers being filed by the assessee . Lastly, the ld.AR has submitted that the order was passed by the Assessing Officer after taking the prior approval of the ADIT u/s 153D of the Act.

6.1. The ld.AR also made the following submissions :

- a) Passing of the order by the ld.PCIT whereby the ld. PCIT has substituted his own opinion against the opinion of the ld. AO is not permissible.
- b) It was submitted that once the ld. AO has concluded after examining the facts that the income declared by the assessee was business income and not an unexplained income, then it is not permissible for the ld.PCIT to invoke his powers u/s 263 of the Act.
- c) It was submitted that the view taken by the ld. AO is one of the possible view and therefore, the ld.PCIT was not right in invoking action u/s 263 as the view taken

by the Assessing Officer was not to the liking of ld.PCIT.

- d) The ld.AR has further submitted that the approval u/s 153D of the Act was granted by the competent authority and therefore, it is not permissible for the ld.PCIT to sit over the approval granted by the competent authority while exercise powers u/s 263 of the Act.

6.2 In support of its case, the ld.AR relied upon the following decisions :

- i) CIT Vs. Dr. Ashok Kumar in ITA No.192/2000, 163 of 2008, 413-414 of 2012.
- ii) Surendra l. Hiranandani, Mumbai Vs. PCIT, Central 1, Mumbai in ITA No.3226/Mum/2017.
- iii) M/s. Trinity Infra Ventures Ltd. Vs. DCIT, Central Circle – 2(1), Hyderabad in ITA Nos.584-589/Hyd/2015.

7. Per contra, the ld. DR has drawn our attention to the show cause notice issued by the ld.PCIT on 13/09/2023, wherein at page no. 20 & 21 of the paper book in Para no. 2 and 3, it was mentioned as under :

assessee also had not complied with the provisions of section 44AB of the Act and the assessing officer also did not examine the fact of maintenance of books of account and their audit in compliance with the provisions of section 44AB of the Act. The assessing officer neither called for the relevant particulars nor conducted necessary enquiries in this regard.

3. In view of the above mentioned facts noticed from the record, the assessment order passed by the assessing officer u/s.143(3) of the Act passed on 24.08.2021 for A.Y.2020-21 is erroneous in so far it is prejudicial to the interest of revenue as the AO had failed to apply the correct rate of tax u/s.115BBE i.e.60% in respect of the above unexplained cash of Rs.1,00,70,000/-. The assessing officer's failure in not examining the source of the cash seized and consequently in not applying the correct rate of tax u/s 115BBE of the Act and also absence of invoking of penal consequences has rendered the assessment order erroneous in so far as it is prejudicial to the interest of the revenue. For the same reasons, the Order u/s.153D of the Act passed by the Additional Commissioner of Income Tax, Central Range-1, Hyderabad according approval to the above mentioned Assessment Order can be said to be erroneous and prejudicial to the interest of Revenue.

7.1 The Id.DR further submitted that the precise reason given by the Id.PCIT for exercising the power u/s 263 of the Act was that the assessee has not given any explanation and the incomplete information given by the assessee was accepted by the Id.AO by agreeing that the cash seized represents the income out of the commission received by the assessee on procurement of seeds.

7.2 The Id.DR also submitted that the Ld. AO failed to apply his mind to the documents available on record namely, the affidavit and the statement of the assessee recorded by the police when the assessee was intercepted with the cash. In his statement, the assessee has stated that the cash was collected by him on account of outstanding dues from the NCC in respect to iron sold earlier by the assessee. The assessee has changed the above said version before the DDIT, Investigation and the sworn statement recorded on 21.08.2019 and 22.08.2019, it was submitted by the assessee that the cash pertains to the amount collected from the farmers for

supplying the seeds. Again, before the Assessing Officer, the assessee has submitted that the cash seized was out of the commission received on procurement of seeds during the financial year 2019-20. Thus ld.DR submitted that there was three stands of the assessee which are contrary to each other and were not examined by the Assessing Officer while passing the assessment order.

7.3 It was submitted that there was no change of opinion by the ld.PCIT or substitution of opinion. In the present case, the Assessing Officer has failed to apply his mind and examined the facts including the above contradiction and affidavit and therefore, the exercising of powers under section 263 of the Act was within the four corners of law.

8. We have heard the rival submissions and perused the material on record. There is no doubt about the facts that while explaining the source of cash of Rs.1,00,70,000/-, three stands have been taken by the assessee which are contrary to each other . However, before the Ld. AO the assessee in his final stands submitted that the cash seized was out of the commission received on procurement of seeds during the financial year 2019-20. In support of his claim, the assessee has furnished before the Ld. AO the information along with the affidavit explaining the cash seized by the authorities. The assessee during the assessment proceedings, also filed the confirmation letters from 16 farmers before the Ld. AO. and after considering all the facts and the documents available before the Ld. AO, the Ld. AO treated the same as business income .

The conclusion drawn by the Ld. AO as per his wisdom is one of the possible view. Hence in our opinion it cannot be said that the Ld. AO has failed to make any enquiry. In the case of Malabar Industrial Co. Ltd. vs. CIT[2000] 243 ITR 83(SC), the honorable Supreme Court held that every loss of tax cannot be said to be prejudicial to the interests of the Revenue. If two views are possible, and the AO has adopted one of those views, the order of assessment cannot be prejudicial to the interests of the Revenue. By following the same view of the honorable Supreme Court, we are of the opinion that the Ld. AO has taken one of the possible in the present case before us and hence it cannot be said to be prejudicial to the interests of the Revenue. Therefore, we upheld the action of the Ld. AO and hence allow the appeal of the assessee on this ground.

9. As we have allowed the appeal of the assessee on aforesaid ground, therefore, we deem it appropriate to abstain from adjudication of the remaining grounds.

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

Order pronounced in the Open Court on 29th May, 2024.

Sd/

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th May, 2024.

PVV/SPS

Copy to:

S.No	Addresses
1	Rama Mohan Soma, H.No.12-274-3, Bypass Road, Kadiri, Anantapur, Andhra Pradesh – 515591.
2	The Income Tax Officer, Ward – 1, Hindupur.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order