

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Anubhav Sharma, Judicial Member

ITA No. 813/Del/2021 : Asstt. Year: 2015-16

Jayant Kumar, House No. 415, Patu Pana Kanjawala, Near Rattan Singh Market, Delhi-110081	Vs	Pr. CIT, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. CSGPK2825K		

Assessee by : Sh. Mayank Patawari, CA

Revenue by : Ms. Monika Dhami, CIT-DR

Date of Hearing: 18.06.2024

Date of Pronouncement: 21.06.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. PCIT-12, Delhi dated 16.03.2020.

2. Following grounds have been raised by the assessee:

"1. That the Ld. PCIT has erred in law as well as on facts by cancelling assessment order dated 16.03.2020 passed by the Ld. AO u/s 143(3) of the Act considering the same as erroneous and prejudicial to the interest of revenue.

2. That the Ld. PCIT vide has erred in law and on facts in treating the source and nature of receipts in the hands of assessee as not explained.

3. That the Ld. PCIT has erred in law and on facts by stating that section 56(1)(vii) be invoked in case of gifts received from relatives.

4. That the Ld. PCIT has erred in law as well as on facts by considering the order of Ld. AO as erroneous and prejudicial on the basis of merely alleging that no enquiries and

verification about sourcing of cash deposit were conducted by the Ld. AO and placing reliance on decisions of Apex Court which either pertains to other law or do not deal with matter identical to the facts and circumstances of the present case.

5. That the Ld. PCIT has erred in law and on facts by stating that the source of source of the receipts in the hands of assessee ought to have been examined in the case of the assessee. Despite the fact that the onus to prove the source does not lie in the hands of the assessee under law.

6. That the Ld. PCIT has erred in law and on facts by directing a de-novo assessment ignoring the explanation and evidence filed during the assessment proceedings where all aspects were considered by the assessing officer."

3. Pertinent points for adjudication of the appeal are that, the case has been selected for limited scrutiny to verify cash deposits and the Assessing Officer made addition of Rs.66,851/- on account of interest received on the amounts in the bank account. The assessee had cash deposits of Rs.90,49,000/- which has been examined by the Assessing Officer and accepted as explained.

4. The Id. PCIT passed order u/s 263 of the Income Tax Act, 1961 holding that the Assessing Officer has not made enquiry and verification of source of cash and the AO has not verified the genuineness of the agreement with regard to agreement of sale against which cash of Rs.25,00,000/- has been received. Owing to the lack of enquiries, the Id. PCIT held that the Assessment Order are erroneous and prejudicial to the revenue and annulled the assessment and directed to make assessment *de-novo*.

5. Aggrieved, the assessee filed appeal before the Tribunal.

6. Before us, the Id. AR relied on the submissions made before the AO and the Id. DR relied on the order of the Id. PCIT.

7. Heard the arguments of both the parties and perused the material available on record.

8. We find that the assessee had cash deposits and the same have been explained as under:

- Rs.6,00,000/- out of cash withdrawals from the bank and earnings
- Rs.40,00,000/- from the father Sh. Sukhbir Singh
- Rs.10,00,000/- from mother Smt. Bimla Devi
- Rs.10,00,000/- from wife Smt. Pinki Rani
- Rs.10,00,000/- from uncle Sh. Jagbir Singh
- Rs.10,00,000/- from father-in-law Sh. Harpal Singh
- Rs.12,00,000/- cash withdrawals from SB account

9. Before the AO, the assessee has submitted gift deed, affidavit, bank statement, buyer agreement from Sh. Sukhbir Singh, gift deed, affidavit and bank statement in the case of Sh. Harpal Singh, Smt. Bimla Devi and Smt. Pinki Rani and also assessee's bank own statement. We find from the order sheet, the assessee himself attended before the AO on various occasions and submitted all the documents. The buyer agreement and the bank statement have been duly examined by the Assessing Officer during the assessment proceedings. Hence, the issue before us narrows down to whether the AO could have enquired further more or the enquiry made by the AO is insufficient.

10. On this issue, we are guided by the judgment of Hon'ble High Court of Delhi in the case of CIT Vs. Anil Kumar Sharma 335 ITR 83 wherein it was held as under:

"7...it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this Court. That being the position, the present case would not be one of 'lack of inquiry and, even if the inquiry was termed as inadequate, following the decision in Sunbeam Auto Ltd.'s case (supra), "that would not by itself give occasion to the Commissioner to pass orders under section 263 of the said Act, merely because he has a different opinion in the matter". No substantial question of law arises for our consideration. Consequently, the appeal is dismissed."

11. The Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. [1993] 203 ITR 108, the Hon'ble High Court held that *"from the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the*

opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed."

12. We find that the Id. PCIT (para 7.2) relied upon the jurisdictional High Court in the case of CIT Vs. Brahamdev Gupta in ITA No. 907/2017 wherein the Hon'ble High Court held that the PCIT can invoke provisions of Section 263 of the Act where the AO has not made adequate enquiry and verification whereas in this case the Id. PCIT conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the Assessment Order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'.

13. Hence, after going through the entire facts and the legal proposition involved, the appeal of the assessee is liable to be allowed.

14. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 21/06/2024.

Sd/-

**(Anubhav Sharma)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated:21/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR