

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.4937/DEL/2019
(Assessment Year: 2009-10)**

Shri Ashok Kumar,
C/o M/s. RRR TAXINDIA,
D-28, South Extension Part – 1,
New Delhi – 110 049.

vs.

Pr.CIT,
Ghaziabad.

(PAN : ABPPY8405P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Somil Agarwal, Advocate
REVENUE BY : Shri Sujit Kumar, CIT DR

Date of Hearing : 13.06.2024
Date of Order : 26.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld.

Pr.CIT, Ghaziabad dated 30.03.2019 for the assessment year 2009-10.

2. Grounds of appeal taken by the assessee read as under :-

“1. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the assessment order dated 29-12-2016 as erroneous as well as prejudicial to the interest of revenue.

2. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in holding as under while passing the impugned order.

- That exemption/s 54B to the assessee was not to be allowed on investment in agricultural lands purchased after the due date of filing the return for the year.
- That exemption U/S 54F for investment in residential property was not to be allowed because the plot purchased was industrial plot and the valuation report is fabricated document.

3. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in directing the assessing officer to enhance the income assessed by him vide order dated 29-12-2016 by denying the claims made by the assessee and further erred in directing to explore other action (penalty, prosecution etc.) against the assessee and that too by recording incorrect facts and findings and without observing the principles of natural justice and without considering the correct facts by assessee during the course of 263 proceedings and more particularly when all the details/information/evidences were available on the record at the time of assessment proceedings and assessee has rightly claimed the exemption u/s 54F and 54B of Income Tax Act.

4. That in any case and in any view of the matter, action Ld. Pr.CIT in passing the impugned order u/s 263 is bad in law and against the facts and circumstances of the case and is in violation of principles of natural justice.

5. That having regard to the facts and circumstances of the case, order u/s 263 is bad in law for the reason also that the proceedings u/s 147 initiated itself was bad in law as well as the order u/s 143(3)/147 dated 29.12.2016 was bad and an invalid re-assessment cannot be set aside u/s 263 of the Act.”

3. In this case, originally assessment was reopened by giving the following reasons for issue of notice under section 148 of the Income-tax Act, 1961 (for short ‘the Act’) :-

“ In this case NON-PAN AIR information has been received that the assessee has deposited cash of Rs.44,00,000/-

in his Saving Bank account during the F.Y. 2008-09 relevant to A.Y. 2009-10. To verify the transaction, query letters were issued to the assessee to furnish particulars of his PAN, Income Tax Assessment, filing of ITR for A.Y. 2009-10 etc. and to explain as to how the said transaction has been disclosed/shown by the assessee in ITR. Despite service of query letter, reply to the said query letter had not been furnished and the assessee has failed to furnish any plausible explanation to the said transaction. Further, information regarding details of transactions as well as assessee was collected from the AIR filer. Since, the assessee has not complied with the query letter and ITR of the assessee for A.Y 2009-10 is not available on record, the high value AIR transaction entered into by the assessee in F.Y. 2008-09 remained unexplained. As such, source of the cash deposited in the Saving Bank account of the assessee remains unexplained.

Therefore, on the basis of credible information in my possession, I have reasons to believe that the income chargeable to tax for the assessment year 2009-10 has escaped assessment within the meaning of section 147 of the LT. Act, 1961.”

4. In the assessment order, Assessing Officer did not make any addition on the issue of cash deposit as discussed in the reasons recorded. Assessing Officer enquired about the cash deposit and he was satisfied with the explanation given by the assessee. Relevant portion of the assessment order read as under :-

“During the year, the assessee has deposited cash of Rs.44,00,000/- in his Saving Bank A/c maintained with Bank of India, Harsaon branch, Govindpuram, Ghaziabad. During the assessment proceedings, assessee has submitted that he has maintained another Bank account with Axis Bank branch, Ambedkar Road, Ghaziabad from which he has withdrawn Rs.54,00,000/- between 20.01.2009 and 31.03.2009. Out of this amount, Rs.44,00,000/- was deposited in his Bank of India bank account.”

5. Thereafter, Assessing Officer dealt with the issue of sale of agricultural land sold by the assessee and proceeded to compute capital gain on sale of agricultural land at nil by giving the relevant computations. The assessment order was subject to order under section 263 of the Act. Ld. PCIT after discussing the issue concluded as under :-

“ In view of the above discussion, it is found that the order passed by the AO is erroneous as well as prejudicial to the interest of the Revenue on the following counts :-

a) Exemption to the assessee was not to be allowed on investment in agricultural lands for Rs.6,35,000/-, Rs.11,48,500/- & Rs.5,83,000/- purchased after the due date of filing the return for the year, whereas the AO allowed the exemption u/s 54B.

b) Exemption u/s 54F for investment in residential property was not be allowed because actually the plot purchased was industrial plot and the valuation report is a fabricated document.”

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. counsel for the assessee submitted that the reasons recorded for reopening u/s 147 of the Act would show that the same were on the issue of cash deposit in the bank of Rs44,00,000/-. The source of such cash deposited in the bank was duly explained by the assessee and accepted by the AO in the assessment year under consideration. Ld. counsel for the assessee further submitted that thus it is an undisputed fact that the issue which prompted the AO to reopen the assessment was duly considered and

the reply of the assessee was accepted and no addition was made on the issue for which reasons were recorded. These facts were not disturbed by the ld. PCIT in his impugned order u/s 263 of the Act. Ld. counsel for the assessee further submitted that in view of the above, Assessing Officer could not have made addition on the issues raised by the PCIT as no addition was made on account of reasons recorded for reopening of assessment and, therefore, assessment order is not erroneous and prejudicial to the interest of Revenue as alleged and thus assumption of jurisdiction u/s 263 is bad in law and deserves to be quashed. For this proposition, ld. counsel for the assessee has placed reliance on the following case laws :-

- (i) CIT vs. Software Consultants – ITA No.914/2010 dated 17.01.2012 (Del);
- (ii) Sh. Paramjit Singh vs. PCIT – ITA No.446/2022 dated 01.12.2023 (Del.);
- (iii) Smt. Daya Rani vs. PCIT – ITA No.402/2021 dated 20.02.2024 (Del.);
- (iv) Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 0136 (Del.);
- (v) CIT vs. Jet Airways (I) Ltd. – (2011) 331 ITR 0236 (Bom.).

8. Per contra, ld. DR for the Revenue relied upon the order of PCIT.

9. Upon careful consideration, we note that the assessee's case was reopened to examine the cash deposited in the bank account of Rs.,44,00,000/-. In the assessment order, Assessing Officer enquired this aspect and was satisfied with the explanation given by the assessee. In these

circumstances, when the Assessing Officer has not made addition on the issue of reasons recorded, he is ousted of his jurisdiction to any other amount/addition in the assessment order. This view is duly supported by the case laws as mentioned above. Furthermore, in the case of CIT vs. Software Consultants (supra), Hon'ble Delhi High Court has dealt with the similar issue and has concluded as under :-

“ For exercise of power under Section 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under Section 148 of the Act. This position is not disputed and disturbed by the Commissioner of Income Tax in his order under Section 263 of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under Section 147/148. Accordingly, the assessment order is not erroneous, Thus, the Commissioner of Income Tax could not have exercised jurisdiction under Section 263 of the Act.

10. Examining the present case on the touchstone of the above case law, it is amply clear that in this case also, Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice u/s 148 of the Act. This position is not disputed and disturbed by the PCIT in his order u/s 263 of the Act. Resultantly, Assessing Officer could not have made any addition on account of capital gain in the assessment proceedings u/s 147/148 of the Act. As such, the assessment order is not erroneous as held

by the ld. PCIT. Hence, the ld. PCIT could not have exercised his jurisdiction u/s 263 of the Act. In the background of the aforesaid discussion and precedent, we set aside the order of PCIT and quash the order passed u/s 263 of the Act.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 26th day of June, 2024.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 26th day of June, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**