

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1168/Del/2022  
Assessment Year: 2017-18

Anshit Builders & Home Fin.  
Co. Ltd.,  
E-993, 3<sup>rd</sup> Floor, CR Park,  
New Delhi – 110 019.

Vs

Pr. CIT,  
Delhi-1,  
New Delhi.

PAN: AABCA0684J

(Appellant)

(Respondent)

Assessee by : Shri Ravi Pratap Mall, Advocate  
Revenue by : Ms Sapna Bhatia, CIT-DR

Date of Hearing : 26.04.2024  
Date of Pronouncement : 05.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 27.03.2022 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') of the Pr. Commissioner of Income Tax, Delhi-1 (hereinafter referred as Ld. PCIT) in Revision No.PCIT, Delhi-1/Revision-263/100000325656/2022 arising out of the order dated 31.12.2019 passed u/s 143(3) of the Act, by the ITO, Ward 2(4), Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the records.

3. The assessee company was incorporated on 24.12.1996 and is engaged in the business of hotels, restaurants, guest house, beach resorts, holiday camps, canteen, cafes, and other type of creation facilities. Apart there from it is also engaged in the business of construction related to the repair, maintenance and renovation of building.

3.1 A show cause notice u/s 263 of the Act was issued to the appellant on the ground that during the course of assessment proceedings, the assessing officer had asked the appellant to explain the source of cash deposited for the year under consideration, however the assessee had not provided relevant and reliable documentary evidence w.r.t. source of cash deposited in bank account, and despite that the assessing officer has made addition of Rs. 19,68,750/- only being 15% of Rs. 1,31,25,000/- instead of the whole of the amount. The PCIT has held that the AO should have also examined all the evidences and should have also applied correct law including the SOP issued by CBDT on this account.

3.2 The case of assessee is that in response to the show cause notice, the assessee filed its reply dated 17.03.2022, and submitted that it is incorrect that the assessee has not filed the requisite details. It was submitted that assessee has filed the complete details, and despite that assessing officer has made arbitrary addition of 15% of the cash deposit, against which it has filed an appeal before

the Id CIT(A) which appeal is pending for consideration, but meantime these proceedings u/s 263 of the Act were initiated.

3.3 The PCIT, however rejected this objection on the ground that in the case of the assessee, appeal has not yet been decided by the CIT(A) and matter pending before him is only limited to the addition of 15% of the total cash deposited in bank accounts, hence Clause (c) of Explanation 1 below Section 263(1) is inapplicable.

3.4 Ld. AR however submitted that the position of law is different than as held by Pr.CIT and for this he relied following judicial pronouncements.

- i. Smt. Renuka Philip Vs ITO [2019] reported in 409 ITR 567 (Madras)  
(Page 1-9 of the JPB);
- ii. CIT Vs Vam Resorts and Hotels (P) Ltd reported in 418 (Allahabad)  
(Page 10-22 of the JPB).
- iii. M/s Vision Habitate & Services Pvt. Ltd. vs. Pr.CIT (ITA No.214/CTK/2019) (Page 42-54 of the JPB);
- iv. CWT vs. Sampathmal Chordia, Executor to the Estate of Late Neni Kavur Bai [2002] 256 ITR 440 (Madras);
- v. Pr. CIT vs. H. Nagaraja [2018] 406 ITR 242 (Karnataka);
- vi. S.K. Jain v. Commissioner of Income-tax [2010] 127 ITD 217 (Agra)  
(TM)

3.5 Ld. DR on the contrary has relied the judgment of the Hon'ble Supreme Court in the case of *EIMCO K.C.P. Ltd. v. Commissioner of Income-tax*

**[2000] 242 ITR 659 (SC)** but same is resisted by Ld. AR as not applicable by submitting that since the assessment year involved in the said appeal beofer the Hon'ble Supreme Court was AY 1969-70 and during the said assessment year 1969-70, Explanation-1 to section 263(1) of the Act was not available in section 263 of the Act, and clause (c) of Explanation-1 was inserted by the Finance Act, 1988 w.e.f. 01.06.1988, as such, aforesaid judgment is distinguishable

4. It is also submitted by the Ld. AR that show-cause notice issued is on one ground and revisional order is passed on an entirely different ground, order cannot be sustained in law. In this context it was submitted that in the show cause notice it has been alleged that assessing officer has asked the assessee to explain the source of cash deposited in the bank account, which has not been provided by the assessee, however in the order it has been held that assessee has filed the details, however the assessing officer has not examined all the evidences. He relied following judgments to support this contention;

i. Commissioner of Income-tax, Delhi v. Contimeters Electricals (P.) Ltd.

[2009] 317 ITR 249 (Delhi);

ii. Genesis Colors (P) Ltd. vs. CIT [2014] 147 ITD 191 (Delhi-Trib.)

4.1 It is submitted that section 263 of the Act cannot be invoked to make deeper enquiry. Relying the judgment of Hon'ble High Court of Delhi in the case of ***Commissioner of Income- tax v. Leisure Wear Exports Ltd. reported in 202 Taxman 130*** it was submitted that where the assessment order has been passed by the Assessing Officer after taking into account the assessee's

submissions and documents furnished by him and no material whatsoever has been brought on record by the Commissioner which showed that there was any discrepancy or falsity in evidences furnished by the assessee, the order of the Assessing Officer cannot be set aside for making deep inquiry only on the presumption and assumption that something new may come out.

4.2 It is submitted by Id. AR that revision order cannot be passed u/s 263, unless there is total non application of mind based on cogent material Reliance was placed on following judicial pronouncements:

- i) 100 ITD 173 (Mum) Mrs. Khatiza S. Oomerbhoy vs. ITO
- ii) 100 ITD 441 (Kol) Al-Haz Amir Hasan Properties Pvt. Ltd. vs. Asst. CIT
- iii) 203 ITR 108 (Bom) CIT vs. Gabriel India Ltd.
- iv) 171 ITR 141 (MP) CIT vs. Ratlam Coal Ash Co.

4.3 It is also submitted that where all particulars are furnished before the learned assessing officer and he has applied his mind then revision is not valid u/s 263 of the Act. Reliance was placed on following judicial pronouncements:

- i) 130 TTJ 669 (Del) Regency Park Property Management Services Pvt. Ltd. vs. CIT
- ii) 125 TTJ 428 (Del) Rajiv Agnihotri vs. CIT
- iii) 131 ITD 58 (Jai) Rajiv Arora vs. CIT
- iv) 137 TTJ 67 (Pat) Ramakant Singh vs. CIT

5. The Ld. DR has however, relied the order of PCIT and submitted that AO has not taken queries to reasonable end.

6. After taking into consideration the material on record and the submissions made it comes up that on 30.10.2017 the return of income was filed. Thereafter on 21.08.2018, the AO issued notice u/s 143(2) of the Act which was followed by Notice u/s 142(1) of the Act was issued on 23.09.2019. The assessee had filed reply on 07.10.2019. AO issued a notice u/s 142(1) of the Act on 12.12.2019 to which on 16.12.2019 filed its reply. On 16.12.2019 a Notice was issued by AO as per the SOP issued by the CBDT and on 19.12.2019 Assessee filed reply along with requisite details and this was followed by another reply on 22.12.2019.

7. On going through these notices issued by AO and replies filed it becomes very obvious that assessee had was specifically asked to explain the cash deposits and assessee had provided the details of cash flow statement, cash balances on various dates, details of cash deposits in bank accounts, a tabular chart of source of cash deposits in which sources from cash sales from construction, realization from sale of food business, and realization from sale of fixed assets and scrap was disclosed. Details of parties from whom cash was received was provide and documentary evidences of sale of food was provide to the AO.

8. The AO has accepted the purchases and stocks and the accounts of assessee were not disputed. Though AO made ad hoc addition, which is not subject matter of the appeal before us. But the aforesaid establish that there is no substance in findings of Pr. CIT, to hold absence or lack of enquiry by the AO.

Rather Ld. AR has rightly pointed out that in para 5 of the impugned order the Pr. CIT has made a wrong observation of fact that assessee had not provided details of cash deposits. It seems the foundation of holding the assessment order to be erroneous so far as prejudicial of interest of Revenue, is based on erroneous conclusion from the assessment record. Thus we are inclined to sustain grounds.

9. The appeal of assessee is allowed. Impugned order is quashed.

Order pronounced in the open court on 05.07.2024.

Sd/-

(G.S. PANNU)  
VICE PRESIDENT

Dated: 05<sup>th</sup> July, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi