

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

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.4051/Del/2018
(ASSESSMENT YEAR 2013-14)**

Sanjay Sawhney C-83, Ashok Vihar, Phase-1, Delhi - 110052 PAN-ABNPS4554P (Appellant)	Vs.	Income Tax Officer Ward 34(3) New Delhi (Respondent)
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Appellant by	Sh. Sachin Jain
Respondent by	Ms. Rishpal Bedi

Date of Hearing	25/04/2024
Date of Pronouncement	16/07/2024

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Principal Commissioner of Income Tax, Delhi, [hereinafter referred to as 'Ld. PCIT'] dated 28/03/2018 against the order passed by Income Tax Officer, Ward 34(3), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act

(hereinafter referred to as 'the Act') on 19/06/2015 for the Assessment Year 2013-14.

3. The only effective issue to be decided in this appeal is as to whether the Ld. PCIT was justified in invoking the revision jurisdiction u/s 263 of the Act in the facts and circumstances of the case both on law as well as on merits.

4. We have heard the rival submissions and perused the material available on record. The assessee is an individual earning income from salary under 'income from salary' and commission & interest under the head 'income from other sources'. The assessee is employed with Yamuna Calcium Private Limited. The return of income for the assessment year 2013-14 was filed by the assessee on 22.03.2014 declaring taxable income of Rs.9,84,500/-. The assessment was completed u/s 143(3) of the Act on 19.06.2015 accepting the returned income. This assessment was sought to be revised by the ld. PCIT by invoking revision jurisdiction u/s 263 of the Act based on proposal received from the ld. Joint Commissioner of Income Tax (JCIT), Range 34, New Delhi through letter dated 07.07.2015. This letter was received by the ld. PCIT on 20.08.2015.

Accordingly, the show cause notice u/s 263 of the Act dated 09.09.2015 issued to the assessee for invoking revision jurisdiction u/s 263 of the Act on the ground that order passed by the ld. Assessing Officer was erroneous inasmuch as it is prejudicial to the interest of the revenue on the following grounds: -

- “1. *The A.O. has not called for details of salary/salary certificate from the assessee.*
2. *The assessee has shown commission receipts of Rs.2,69,444/- and shown to have paid commission of Rs. 50,000/- therefrom but the A.O failed to examine the services rendered by commission agent for payment of commission of Rs.50,000/ The A. O. has also not called for details of commission/commission certificate. In absence of the services rendered, commission cannot merely be allowed on the basis payment made.*
3. *The assessee shown interest receipts of Rs. 26,38,494/- and shown to have paid interest Rs. 18,46,945/ out of above receipts, showing net income of Rs. 7,91,549/ The A.O. only collected evidence of payment of interest but made no enquiry whether the loan raised from various persons have invested to earn above interest or invested otherwise. The A.O. also not called for the copies of account of the lenders. The A. O. also not collected copies of account of the person from whom the assessee received interest.*
4. *The A.O. has not called for copy of statement of affairs/Balance sheet as on 31.03.2012 and 31.03.2013, to tally the figures of current year with preceding year.*
5. *The photos copies of bank pass books are not legible and the entries in the pass books cannot be read.*
6. *The reply of the assessee on house hold expenses in not clear.”*

5. The assessee filed a detailed reply in response to the aforesaid show cause notice first by stating the veracity of the contention of the assessee that order of the ld. Assessing Officer was not erroneous on merits of the case on the impugned issues sought to be revised by the ld. PCIT. Further the assessee also drew attention of the ld. PCIT by stating that on the very same issues, adequate inquiries were indeed carried by the ld. Assessing Officer during the course of scrutiny assessment proceedings. The assessee drew the attention of the ld. PCIT by referring the relevant pages of the paper book where proper examination was indeed carried out by the ld. Assessing Officer on the very same issue. The ld. PCIT, however, disregarded those contentions and proceeded to hold that though details were filed by the assessee on queries raised by the Assessing Officer but the ld. Assessing Officer had not carried out requisite inquiries thereon by investigating further on the details furnished by the assessee. Accordingly, the ld. PCIT concluded that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue on the ground of 'lack of inquiry' by the ld. Assessing Officer and set aside the assessment order by giving

directions to the ld. Assessing Officer to make assessment afresh. Aggrieved, the assessee filed the appeal before us.

6. At the outset, we find that the entire initiation of proceedings by the ld. PCIT u/s 263 of the Act was not based on independent examination of the records by him or independent application of mind by him as mandated in Sec.263(1) of the Act. In the present case, the proceedings u/s 263 of the Act stood triggered based on the proposal received from ld. JCIT, Range-34, Delhi which fact is duly confirmed by ld. PCIT himself in his revision order vide para 2 & 4 of his order. Hence, this is a clear cut case of borrowed satisfaction by the ld. PCIT resulting in direct violation of provisions of Sec. 263(1) of the Act. The law is now very well settled that based on borrowed satisfaction by the ld. PCIT, the revision proceedings u/s 263 of the Act deserve to be quashed as void-ab-initio. The provisions of section 263(1) of the Act clearly says -"The Commissioner may call for and examine the records of any proceedings under this Act, and if he considers ... ", which means that proposal for initiation of revision proceedings must be initiated by the ld. PCIT, because, it is the ld. PCIT who has to call for and examine the records. In the case at present, the ld. PCIT did not initiate the proceedings himself but initiated the proceedings on the proposal received from the ld. JCIT. Only on receipt of proposal from the JCIT, the ld.PCIT initiated revision proceedings. It is not the case where ld. PCIT called for the record and after examining the same, initiated the proceedings u/s 263 of the Act. This clearly

proves that there is no independent application of mind on the part of Id. PCIT while invoking jurisdiction u/s 263 of the Act. Therefore, the initiation of proceedings u/s 263 at the instance of the Id. JCIT are invalid. This view of ours is further fortified by the following decisions:-

(i) Decision of Mumbai Tribunal in the case of Ashok kumar Shivpuri v. CIT in ITA No.631 (M) of 2014 dated 07-11-2014, wherein it was held -

It has been observed by us that the assessment was framed subject to valuation by the DVO. This, by itself is a deficiency in the order under section 143(3). We further find that the proposal was received by the CIT from the AO, which clearly means that there has been no independent application of mind by the CIT, because section 263(1) clearly says, "The Commissioner may call for and examine the records of any proceedings under this Act, and if he considers ... ", which means that proposal for initiation of revision proceedings must be initiated by the CIT, because, it is the CIT who has to call for and examine the records. But in the instant case the proposal came from the AO and on receipt of the proposal, the CIT initiated revision proceedings. Therefore, in our opinion, the proceeding gets flagged at the threshold. - We, therefore, hold that the proceedings were bad in law and thus subsequent proceedings are annulled.

(ii) Decision of Kolkata Tribunal in the case of Rupayan Udyog Vs. CIT in ITA No. 1073/Kol/2012 dated 28.11.2018, wherein it was held -

The power vested in the CIT is that of revisional jurisdiction to interfere with the order of AO, if it is erroneous in so far as prejudicial to the revenue and therefore, the power to exercise the revisional jurisdiction is vested only with Pr. CIT/Commissioner if he considers the order of the AO to be erroneous in so far as prejudicial to the interest of the revenue. The power cannot be usurped by the AO to trigger the revisional jurisdiction vested with the CIT as per the scheme of the Act which gives various powers to various authorities to exercise and they have to exercise powers in their respective given sphere which is clearly ear-marked and spelled out by the statute. Here, we note that the AO who is empowered by the Act to assess a subject within a prescribed time period has first assessed the assessee and later after passing of time has taken up a proposal with the CIT to exercise his revisional jurisdiction cannot be countenanced for the simple reason that when in the first place the AO noticing that he failed to properly enquire before assessing the assessee within the time limit prescribed by the statute cannot be allowed to get fresh innings to reassess because it was his duty to enquire properly within the time limit prescribed by the statute.

(iii) Decision of Ahmedabad Tribunal in the case of Shanti Exim Ltd Vs CIT reported in 88 taxmann.com 361 (Ahd. Tribunal), wherein it was held -

The Commissioner set aside assessment order in exercise of his power under section 263 on the ground that the Assessing Officer did not make any independent verification to establish the genuineness of the purchase transaction of the assessee-company with eight parties.

Held that the action under section 263 initiated on the basis of recommendation by the concerned Assessing Officer/Joint Commissioner. The said Assessing Officer has categorically held that the order of his predecessor is erroneous and prejudicial to the interest of the revenue. Thereafter the case record was called for by the Commissioner. **If the recommendation would not have received from the successor the Assessing Officer, then the Commissioner would even not have initiated the proceedings under section 263. Therefore, it could not be termed that the Commissioner himself has called for the records. In this case, the record has been called for only after the recommendation received from the successor Assessing Officer.** In similar situation, the ITAT, Mumbai "A" Bench in the case of Ashok kumar Shivpuri v. CIT dated 07-11-2014, in ITA No.631 (M) of 2014, held that the revision proceedings simply on the basis of proposal from the Assessing Officer is not valid, because section 263(1) says that proposal for

initiation of revision proceedings must be initiated by the Commissioner. **It is the Commissioner who has to call for and examine the records; but in the instant case the proposal came from the Assessing Officer and on receipt of the proposal, the Commissioner initiated revision proceedings, which is not justified.**

(iv) Decision of Mumbai Tribunal in the case of Adishwar K. Jain Vs. CIT in ITA No. 3389/Mum/2014 dated 12.03.2018, wherein it was held -

We may refer to a plea set-up by the assessee based on the decision of our co-ordinate Bench in the case of Ashok Kumar Shivpuri, ITA No. 631/Mum/2014 dated 07.11.2014. In this case, the Tribunal found that the Commissioner invoked Sec. 263 of the Act based on a proposal received from the Assessing Officer. **The Tribunal found it inconsistent with the requirement of Sec. 263(1) of the Act and held that the initiation of proceedings u/s 263 of the Act was bad-in-law. The aforesaid proposition also supports the infirmity in the action of the Commissioner in as much as para 2 of the impugned order brings out that the initiation of proceedings u/s 263(1) of the Act is based on the proposal of the Assessing Officer dated 03.01.2013.**

(v) Decision of Mumbai Tribunal in the case of VinayPratap Thacker in ITA No. 2939/Mum/2011 dated 27.02.2013, wherein it was held

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As per Section 263(1), the CIT must himself come to a conclusion, after applying his own mind, because, the words used in the section are"..... and if he considers",here, application of his own mind becomes important. It is important to examine the similarity of the expression used under section 147(1) and 263(1). Under section 147(1), the expression used is "has reason to believe" and under section 263(1), the expression used is "if he considers". Though the expressions used are not verbatim parimateria, but the meaning which is to be drawn in both the expressions are parimateria, i.e., an independent, unpolluted and un-adopted application of mind by the officer, invoking the provision.

We have seen from the impugned order of the CIT, dated 11.02.2011, the CIT admits, "A proposal was received on 10.06.2010 from the AO under section 263 of the Income Tax Act, 1961, pointing out some discrepancies/short comings in the assessment order". This clearly shows that in so far as the CIT was concerned, he did not apply his own mind..... We are of the considered opinion that the CIT could not have invoked the jurisdiction under section 263 without his own independent application of mind.

(vi) Decision of Pune Tribunal in the case of Span Overseas Ltd. Vs. CIT, Pune in ITA No. 1223/PN/2013 dated 21.12.2015 , wherein it was held -

The Commissioner of Income Tax has invoked the provisions of section 263 without applying his own independent judgment and merely at the behest of proposal forwarded by the Dy. Commissioner of Income Tax is against the spirit of Act. Thus, the impugned order is liable to be set aside.

(vii) Decision of Hon'ble Bombay High Court in the case of CIT Mumbai vs Maharashtra Hybrid Seeds Co. Ltd in Income Tax Appeal No. 47 of 2002 dated 4.9.2018 , wherein it was held -

9. As rightly held by the Tribunal, this note firstly shows that all the explanations and arguments of the Assessee have been considered by the Assessing Officer and secondly that the action taken under [Section 263](#) is only on the basis of the audit party's note or report, who it would appear, ultimately did not approve of the Assessing Officer's view regarding the allowability of the deduction. Admittedly, the CIT has not referred to any audit objection but in the light of the note, the Tribunal held that it would be a fair inference that his action under [Section 263](#) was consequent upon the audit objection. Be that as it may, this office note clearly shows that the Assessing Officer had taken all explanations and arguments of the Assessee into consideration before allowing deduction. This being the case, the CIT could not have merely substituted his own views for that of the Assessing Officer by invoking Section 263 of the I. T. Act.

7. Further, we find that adequate inquiries were indeed conducted by the ld. Assessing Officer in the instant case which is evident from notice u/s 142(1) of the Act dated 18.05.2015 enclosed at page 12 of the paper book, wherein the ld. Assessing Officer had indeed asked for the parties to whom interest was paid along with ledger account with their PAN and address. The ld. Assessing Officer had also sought for tax deduction at source made on the

said interest payments. Further the ld. Assessing Officer had also sought for entire ledger for all expenses debited to profit and loss account. This questionnaire was duly replied by the assessee from time to time vide letters dated 22.04.2015, 28.05.2015, 02.06.2015 and 14.06.2015 before the ld. Assessing Officer which are enclosed in pages 13 to 16 of the paper book. The assessee had indeed given complete explanation for the interest expenditure , explanation for interest income earned, confirmation of interest from the parties, confirmation of commission paid to the parties together with the details thereon. Hence we hold that the ld. PCIT is factually incorrect in stating that no enquiries were made by the ld. Assessing Officer in the scrutiny assessment proceedings qua the issue of commission payment and interest payment. Hence order passed u/s 263 of the Act deserve to be quashed on this count itself.

7. Further we find on perusal of the revision order u/s 263 of the Act, the ld. PCIT does not even remotely suggest that the issue contemplated to be revised would result in any tax payable consequentially resulting in any prejudice to the interest of the revenue. As per the decision of Hon'ble Supreme Court in the case

of Malabar Industrial Company Ltd. reported in 243 ITR 83 (SC), twin conditions should be satisfied cumulatively in invoking revision jurisdiction u/s 263 of the Act i.e. (i) order of Assessing Officer must be erroneous; and (ii) it must be prejudicial to the interest of revenue. Even if one of the pre-condition is absent, revision jurisdiction u/s 263 of the Act fails. In the entire order of ld. PCIT, we find that ld. PCIT is only trying to substitute his view in place of the view already taken by the ld. Assessing Officer. This is clearly not permissible u/s 263 of the Act. Reliance in this regard is placed in the decision of Hon'ble Bombay High Court in the case of Gabriel India Ltd. reported in 203 ITR 108 (Bom). In fact we find that the ld. PCIT does not say that no enquiries were made by the ld. Assessing Officer on the impugned issue of interest expenditure and commission expenditure. The ld. PCIT only says that the enquiries were not made in the manner wanted/desired by ld. PCIT. This aspect of the issue even if held in favour of the revenue would result in making the order of the ld. Assessing Officer erroneous but still it would not automatically result in prejudice being caused to the interest of the revenue. This is in view of the fact that the ld. PCIT does not even say in his order that had the enquires been

made to his satisfaction/desire, then it would have resulted in tax payable by the assessee which in turn would result in prejudice being caused to the interest of the revenue. This is conspicuously absent in his order. Hence, the reliance placed by the ld. D.R on the decision of Hon'ble Supreme Court in the case of CIT Vs. M/s Paville Projects Pvt. Ltd. in Civil Appeal No. 6126 of 2021 (@ SLP (C) No. 13380 of 2018) dated 06.04.2023 becomes factually distinguishable and does not come to the rescue of the revenue.

8. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation to quash the revision order passed u/s 263 of the Act in the facts and circumstances of the instant case as it deserves to be quashed for more than one reason as stated supra. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 16th July, 2024.

-Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 16/07/2024

Rohit/p.s.

-Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Copy forwarded to:

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