

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**(ITA No. 183/RPR/2024)**  
(Assessment Year: 2013-14)

Chandani Jain, Flat No. N/102, Rishabh South City, Potiyakala, Durg-491001, Chhattisgarh	V s	Principal Commissioner of Income Tax, Raipur-1, C.R. Building, Civil Lines, Raipur, Chhattisgarh, 492001
<b>PAN: AMOPJ09636H</b>		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	02.07.2024
<b>घोषणा की तारीख/Date of Pronouncement</b>	:	22.08.2024

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal is filed by the assessee against the order of Principal Commissioner of Income Tax, Raipur -1 (in short "Ld. PCIT"), dated 11.03.2024, for the Assessment Year 2013-14, which in turn arises from the order under section 147 read with section 144B of the Income Tax Act, 1961 (in short "The Act"), passed by the Assessing Officer, National Faceless Assessment Centre, Delhi, dated 14.09.2021.

2. The grounds of appeal raised by the assessee are as under:

1. On the facts and circumstances of the case & in law, assessment made u/s147 rws. 144B dt. **14.09.21** for AY 13-14 is **neither** erroneous nor prejudicial to the interest of revenue; issue of **cash deposits into bank** of Rs.13,84,000 has considered & accepted by the AO after examining the same through **query** dt.31-1-21 & **reply** dt.13-3-21 submitted before the AO; it is a complete enquiry & verification made by the AO; the AO has taken a possible view which is tenable as per law; **in absence of both/ twin** pre-requisite condition i.e., erroneous & prejudicial to the interest of revenue, order made u/s 263 by the Id. PCIT would be invalid and is liable to be quashed.
  2. On the facts and circumstances of the case & in law, after making written **submission/ explanation** dt.21-2-24 along with documentary evidence (i.e., balance sheet, cash book, bank statement, Form 26AS etc.) before the PCIT against the SCN u/s 263 dt. 1-2-24; the PCIT has **not given any finding on merits** on the issue of 'cash deposits' that **how it is incorrectly/ erroneously accepted** by the AO; **in absence of this factual finding on merits** by the PCIT & simply passed order **for making fresh assessment de novo** to the file of the AO, is not permissible in the eyes of law; order u/s 263 by the PCIT would be invalid and is liable to be quashed.
  3. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.
3. Succinctly stated, the assessee is an individual, have not filed her regular return of income u/s 139 for the AY 2013-14, however, as per the information available with the department, that assessee has made cash deposits amounting to Rs. 13,97,105/- in her two-saving bank accounts maintained with State Bank of India having A/c No. 30195645884 & 20044905078 and has received interest income during the FY 2012-13 relevant to AY 2013-14. Since the assessee had not filed her return of income, therefore, the Ld. AO had initiated proceedings u/s 147 to assess the income escaped and to bring the same within the tax net. Notice u/s 148 was issued

by Ld. AO after obtaining the approval of Ld. PCIT-2, Raipur. In response, to the said notice, assessee has e-filed her return of income on 29.12.2020, declaring total income at Rs. 1,42,620/-. As requested by the assessee, the copy of reasons recorded for reopening was provided and notice u/s 143(2) of the I. T. Act, 1961 has been issued on 22.02.2021, which was duly served on the assessee. Also notice u/s 142(1) were issued and served. In response, the assessee has submitted her reply which is placed on record. The assessee is a Dentist, and her main source of income is from her profession. The assessee has submitted, P & L A/c, balance sheet, detailed computation of total income, Form 26AS, copies of bank statements and copy of detailed day-wise cash book along with narrations for explanation towards source of deposits and details of interest. The assessee has stated that she did not have exceeded income chargeable to tax, therefore, she was not required to file the return as per provisions of the Act. Ld. AO after going through the day-wise cash books and narrations therein for explanations towards source of deposit, details of interest and nature of business, assessee's contention, which were considered good and acceptable, accordingly the returned of income of the assessee has been treated as assessed income and the assessment was completed on 14.09.2021.

4. Later on, case records of the assessee have been perused by the Ld. PCIT and on perusal of the cash books, it is observed that the assessee has shown huge opening cash balance of Rs. 16,02,340/- as on 01.04.2012. Ld. PCIT further observed that the assessee had maintained two bank accounts with State Bank of India and have deposited cash to the tune of Rs. 26,02,000/- on almost 92 occasions in a piecemeal manner in parts of Rs. 25,000/- on each occasion. Ld. PCIT observed that the assessee having huge surplus cash more than Rs. 16 lacs, who has no perpetual expenses, such state of affairs was treated as very odd and against the human behaviour. Ld. PCIT commented that the explanation offered, and document submitted by the assessee does not explain the source of aforesaid cash deposit. With such observations, Ld. PCIT find it appropriate to consider the remaining cash of Rs. 24,59,380/- (2602000 – 142620) falls under the meaning of unexplained money u/s 69A r.w.s. 115BBE, in the hands of the assessee. A show cause notice incorporating the above facts, for initiation of revisionary proceedings u/s 263 of the Act was issued to the assessee on 01.02.2024. In response, the assessee has submitted his reply on 20.02.2024, however, the same does not find favour with the Ld. PCIT, who observed that the assessee fail to justify the cash deposited on 92 occasions which is not commensurate with the meagre income shown by the assessee in her return, in response to notice u/s 148. Ld. PCIT concluded that the assessment passed by the Ld. AO is erroneous in so

far as it is prejudicial to the interest of the revenue as per provisions of section 263 of the Act, thus, the assessment order has been set aside to the file of Ld. AO and the matter is reverted back for making a fresh assessment to examine the transactions of huge cash deposits vis-à-vis her source of income as claimed by the assessee, and to pass a fresh assessment order in a speaking manner after making all necessary inquiries required, after providing due and adequate opportunity of being heard to the assessee in a fair and judicious manner.

5. Aggrieved with the aforesaid order of Ld. PCIT, in order to avail the benefit of available remedy assessee preferred an appeal before the tribunal and the same is under consideration in the present case before us.

6. At the outset, Ld. Authorized Representative on behalf of the assessee Shri Sunil Kumar Agrawal, CA (in short, "Ld. AR"), reiterated the facts of the case has have submitted that the invocation of provisions of section 263 in his present case are against the mandate of law as the Ld. PCIT has not extended any factual finding on the merits of the issue so as to brand the assessment order passed u/s 147 in the present case as erroneous and prejudicial to the interest of revenue. Ld. AR further contended that the issue has been duly examined by the Ld. AO while completing the assessment,

wherein the returned income of the assessee was duly accepted after proper inquiry *qua* the issue of cash deposits by the assessee during the relevant assessment year. To substantiate that proper inquiries were conducted, and the issue was examined by the Ld. AO, Ld. AR drew our attention to the paper book wherein copy of notice u/s 142(1) dated 31.01.2021 (PB page 11-13) was issued to the assessee, and in response, a reply along with P&L A/c, Balance sheet, computation of total income, Form 26AS etc. was submitted by the assessee on 13.03.2021 (PB page 14-63). Another notice show causing the assessee was issued u/s 132(1) on 03.08.2021 (PB page No. 64-65), wherein the assessee was required to furnish details regarding cash deposits and interest received, towards which a reply making reference to the earlier reply was furnished by the assessee on 18.08.2021. Ld. AR further submitted that the show caused issued by the Ld. PCIT was for explaining the opening cash balance of Rs.16,02,340/- as on 01.04.2012, which pertains to AY 2012-13, therefore, in case there is any doubt the same could have been assessed by reopening of the earlier year, but no addition on this account can be made in the AY 2013-14. It was the submission that the assessee had furnished a day-to-day cash book showing all the entries regarding receipts, payments and cash deposits and all such material was before the Ld. AO, which was queried from the assessee time and again and after satisfaction the returned income of the assessee was accepted. It was the argument that when the issue has

been discussed, deliberated and a plausible view has been taken by the Ld. AO in that case revisionary proceedings to impose a different view cannot be initiated. Ld. AR further submitted that the proposal of Ld. PCIT to treat the amount remained after income shown in the ROI i.e., Rs.24,59,380/- (26,02,000-1,42,620) as unexplained money u/s 69A also does not found to be as per the prescribed mandate of law. It is the submission that the essential conditions required to invoke provisions of section 69A, as clarified by Hon'ble Supreme Court in the case of **CIT and ANR vs DN Singh dated 16.05.2013** are that

*27. Turning more to s. 69A, it may be broken down into the following essential parts:*

- (a) The assessee must be found to be the owner,*
- (b) He must be the owner of any money, bullion, jewellery or other valuable articles;*
- (c) The said articles must not be recorded in the books of account, if any maintained;*
- (d) The assessee is unable to offer an Explanation regarding the nature and the source of acquiring the articles in question; or the explanation, which is offered, is found to be, in the opinion of the officer, not satisfactory;*
- (e) If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other valuable article may be deemed as the income of the financial year in which the assessee is found to be the owner,*
- (f) In the case of money, the money can be deemed to be the income of the financial year,"*

7. Ld. AR further drew our attention to the submission of the assessee before the Ld. PCIT, explaining that as per CBDT's Circular No. 20 of 1964, it is clarified that the provisions in section 69 which enable the assessment of the value of investment which have not been recorded in books of accounts of the assessee and source which have not been explained by him satisfactorily, whereas in present case the assessee had furnished necessary details which were examined by the Ld. AO and only after his satisfaction the assessment was completed. Provisions of section 69A also have a pre-requisite that the money, bullion, jewellery or other valuable articles in question are not recorded in the books of accounts if any, maintained by the assessee concerns for any source of income and the assessee either offers no explanation as to the nature and source of acquisition thereof or the explanation offered by him is, in the opinion of Ld. AO, not satisfactory. Ld. AR further placed is reliance on the following case laws:

*c. Reliance is placed in judgement by Jaipur ITAT in the case of on the judgment of ITAT in the case of Smt. Pinki Devi Agarwal Vs ITO, relevant extract of which has been reproduced below:*

*"The returns of income though were not subjected to scrutiny, however, once the cash was reflected in the books of account and pad of the balance sheet of the assessee, then in the absence of said cash introduced in the books of account by the assessee during the year under consideration, the issue of making addition by disallowing the availability of cash in the hands of the assessee can be considered*

*only in the preceding year in which the cash was introduced by the assessee in the books of account. The AO during the assessment proceedings was very well aware of the fact that Rs. 11,32,626/- was stated to have been introduced in the books during the earlier assessment year and, therefore, if the said claim of the assessee was not acceptable then the proper course of action was to make the addition of this cash introduced in the books of account under section 68 in the relevant assessment year in which the said cash was introduced in the books and not in the year under consideration when it is shown as opening cash balance. The AO instead of taking up the assessment of the preceding year has made the addition of the said amount by rejecting the source of the amount as shown as opening cash balance. Further, the AO has not rejected the books of accounts of the assessee and, therefore, once the assessee has established the availability of the cash in the books of account, then the proper course of action for rejecting the said claim and making the addition is to reopen the assessment of the earlier year. "*

*d. Reliance is placed upon DCIT Vs. Smt. Veena Awasthi (ITAT) (Lucknow)  
Dt. 30.11.2018*

*That nowhere Revenue has doubted availability of cash with the assessee and Assessing Officer has also not brought out any material on record to show that cash which was withdrawn was spent on some other purpose and that cash deposited again was from undisclosed sources. The Assessing Officer has only doubted behavioural pattern of the assessee but has accepted availability of own funds in the hands of the assessee. When source of cash deposits explained and it is evident that it is the own cash of the assessee, which has been deposited in bank account, then there is no question of making addition under the head as income from undisclosed sources.*

e. Further reliance is placed on Judgement by Punjab & Haryana High Court in the matter of MM Kumar and Alok Singh dated 16.04.2012. Relevant extract has been produced below:

*“That Tribunal was correct in holding at the balance-sheet is a statement of affairs showing the assets and liabilities of the assessee as on a particular date, it also incorporates opening balance of various assets and liabilities brought forward from earlier years along with net increase/decrease in each of the assets and liabilities during the year. If the closing balance of cash in hand is disclosed income, the opening balance cannot be regarded to be undisclosed Income. There was no dispute that the assessee has submitted the balance-sheet before the A O and in the balance-sheet the closing balance or cash in hand was disclosed, therefore, the opening balance cannot be regarded to be undisclosed income. The entries in the balance-sheet have not been disputed by the A.O. In the result, appeal was answered in favour of assessee.”*

8. Ld. AR also placed the contention that under the settled principle of law the department is not at liberty to pick and choose the information according to their convenience as in the present case the books and records furnished by the assessee were not doubted by them. Ld. AR further placed his reliance on the decision by Hon'ble High Court of Gujarat in the case of **PCIT vs Mukesh Chand Mal Pitti [2023] 156 taxmann.com 145 (Gujarat)[29.08.2023]**, wherein Hon'ble Gujarat High Court has held that:

*3.2 On the respondent carrying the matter further in appeal to the Income-tax Appellate tribunal, the Tribunal, after examining the question of law and referring to various decisions on the scope of inquiry under sec. 263(A) of the Act, held as under:*

“6.9 Now coming to the facts before us, from the records we observe that the issue regarding the cash deposited by the assessee during the demonetization period has been discussed in detail during the course of assessment proceedings. The assessment proceedings were initiated specifically for the reason "verifying the cash deposited during demonetization period". Accordingly, the AO issued notice for verifying the cash deposits made by the assessee, in response to which the assessee furnished the details which have been mentioned in the preceding paragraphs. Therefore, this is not a case where no enquiry was made by the AO during the course of assessment proceedings. Further, we also observe that the assessee also duly filed his reply in response to the notice issued by the AO and various details like Certificates from Lakshmi Vilas bank and Certificate from Allahabad Bank, bank statements of Lakshmi Vilas Bank and Allahabad Bank, cash book for financial year 2016-17, VAT returns for financial year 2016-17 etc were submitted before the AO in response to this query regarding the cash deposits made by the assessee during the demonetization period. We further observe that it is also not the case of the Principal CIT that the AO has taken a view which is legally impermissible. Therefore, from the above facts, we are of the considered view that the AO had made enquiries into the aspect of cash deposit in the bank accounts of the assessee during demonetization period, and after due consideration of the assessee and did not make any addition to the returned income. Accordingly, in our view, this is not a case where no enquiry has been made by the Assessing Officer during the course of assessment proceedings. In our view, Pr. CIT has incorrectly observed in the instant facts that the Ld. AO failed to apply his mind to the issues on hand or he had omitted to make enquiries altogether or had taken a view which was not legally plausible in the instant facts. As held by various Courts, Principal CIT cannot in 263 proceedings set aside an assessment order merely because he has different opinion in the matter. In our view, s. 263 of the Act does not visualize a case of substitution of the judgment

*of the Principal CIT for that of the Assessing Officer who passed the order unless the decision is held to be wholly erroneous. As noted in various judicial precedents highlighted above, the Principal CIT, 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-visit the entire assessment and determine the income himself at a higher figure.”*

*3.3 Perusal of the order would indicate that the Income-tax Appellate Tribunal and in our opinion rightly came to the conclusion that since the assessment proceedings were specifically undertaken for the reason of verifying the cash deposits during the demonetization period, it was not the case where no enquiry was made by the A. O. during the course of assessment proceedings.*

*3.4 Perusal of the order and reasons would indicate that these are finding of facts arrived at by the Tribunal. Having found that in response to the notice issued by the A. O, details were supplied such as Certificates from the Lakshmi Vilas Bank, certificate from the Allahabad Bank, Bank Statements of the banks concerned, cash books for the financial year 2016-17 etc., based on which the A. O. had taken a decision, the Income-tax Tribunal allowed the appeal of the assessee.*

9. Backed by aforesaid submissions, it was the prayer by Ld. AR that the order of Ld. PCIT u/s 263 in absence of any findings on the issue, was unable to establish that the order of Ld. AO was erroneous and prejudicial to the interest of revenue, thus, the same shall be held as invalid and is liable to be quashed.

10. Ld. CIT DR, Shri S. L. Anuragi, representing the department have placed his strong reliance on the order of Ld. PCIT. He submitted that the inquiries were conducted by the Ld. AO but those are not proper and correct, therefore, provisions of explanations-2 to section 263 are very much triggered in the present case, wherein there was non application of mind by the Ld. AO and, therefore, Ld. PCIT has rightly set aside the order of Ld. AO to make necessary inquiries and re-adjudicate the issue afresh. Under such a scenario, the order of Ld. PCIT u/s 263 was reasonable, justified and well within the mandate of law, therefore, the same needs to be sustained.

11. We have considered the rival submissions, perused the material available on record and the judicial pronouncements relied upon. On perusal of the assessee's PB, order of Ld. AO and the impugned order of Ld. PCIT, it is observed that during the reopening assessment u/s 147, assessee was required to furnish necessary information and explanations *qua* the cash deposited in her bank account to the tune of Rs. 13,84,000/- and interest income of Rs. 13,105/-. The reopening was done for the reason that as per available information with the department huge cash amounts were deposited by the assessee, whereas ROI for the relevant AY was not submitted. During the course of reassessment proceedings notice u/s 142(1) were issued twice and the onus to respond towards such notices was duly complied by the

assessee. No further explanations were sought by the Ld. AO, shows that the Ld. AO was satisfied with the submissions of the assessee and, therefore, the assessment was completed accepting the returned income of the assessee. Revisionary proceedings u/s 263 were initiated, which were led only for the reason that the assessee has a surplus of Rs. 16 lac as opening cash balance which was subsequently deposited in the bank account in piecemeal manner on 92 occasions @ Rs.25,000/- each. Such deposits surely have the reason for Ld. PCIT to revisit the assessment, however the amount proposed to be treated as unexplained money u/s 69A was mostly emanating from the opening cash balance. Under such circumstances, the amount escaped assessment pertains to AY 2012-13 and not relevant for the year under consideration. On the basis of such information, the department may have adopted the recourse available with them to reopen the income escaping assessment u/s 147 for the AY 2012-13. However, in the present case wherein enquires are made, explanations are offered, and a plausible view has been adopted, which cannot be set to be without application of mind by the Ld. AO, who had initiated the revisionary proceedings by issuing the notice u/s 148 on 25.02.2020 and completed the assessment u/s 147 on 14.09.2021. In such a scenario, we observed that specific inquiries, as expected from the Ld. AO were made and after receipt of necessary information, explanation and compliances by the assessee, a plausible view have been taken and the returned income was

accepted, therefore, the initiation of revisionary proceedings u/s 263 are not according to settled principle of law as laid down by Hon'ble Gujarat High Court in the case of **PCIT vs Mukesh Chand (supra)**, we, therefore, are of the considered view that the order of Ld. PCIT u/s 263 was under misconception that the Ld. AO had not conducted necessary inquiries on the issue or there was non-application of mind by the Ld. AO to reach on the conclusion leading thereby an erroneous order u/s 147, thus, the order passed u/s 263, being bereft of merits cannot sustain in the eyes of law, hence, quashed.

12. In result, appeal of the assessee stands allowed, in terms of our aforesaid observation.

Order pronounced in the open court on 22/08/2024.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 22/08/2024

*Vaibhav Shrivastav*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. The Pr. CIT, Raipur(1), CG
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**  
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur