

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.482/SRT/2024**

(Assessment Year: 2018-19)

(Physical Hearing)

Jitendrasinh Bharatsinh Chauhan, Plot No.9-Naroli, Athal, Silvassa, D & NH – 396230.	Vs.	The PCIT, Valsad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABKPC8431C		
(Appellant)		(Respondent)

Appellant by	Shri Rajesh Upadhyay, AR
Respondent by	Shri Ravi Kant Gupta, CIT-DR
Date of Hearing	22/07/2024
Date of Pronouncement	27/08/2024

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 263 of the Income-tax Act [in short, 'the Act'] of the Learned Principal Commissioner of Income-tax (Appeals), Valsad, [in short, 'the Ld. PCIT'], dated 15.03.2024 for the assessment year (AY) 2018-19.

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

"1. On facts and circumstances as well as on law, Ld. PCIT has erred in law and on facts to invoke his revisional powers u/s 263 of the Act. And thereby issued show cause u/s 263 dated 07/02/2024.

2. Ld. PCIT, Valsad has erred in law and on facts to reopen appellant's assessment u/s 263 of the Act and finally directed the AO to frame fresh Assessment Order ignoring the fact and law that Assessment Order of the AO; NFAC, Delhi dated 15/04/2021 is not erroneous as well as prejudicial to the interest of the Revenue within the meaning of Section 263 of the Act."

3. The facts of the case in brief are that assessee filed his return of income for the AY.2018-19 on 16.01.2019, declaring total income of Rs.1,61,48,000/-. The assessee's case was selected for complete scrutiny on the issue of "share capital/other capital." The AO had issued notices u/s 143(2) on 22.09.2019 and u/s 142(1) dated 08.03.2021. In compliance to the said notices, assessee filed relevant details / documents through e-portal. After examining the submission of the assessee, the assessment order was passed by the AO u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act on 15.01.2021, determining total income of Rs.2,15,02,840/- after making addition of Rs.1,24,039/- on account of disallowance of expenditure u/s 14A and Rs.52,30,000/- on account of unexplained credit (capital account). Subsequently, the Ld. PCIT called for the record and examined the same. On verification of the assessment records, the Ld. PCIT found that the AO issued a notice u/s 142(1) dated 08.03.2021 calling for the details about the gift of Rs.30,00,000/- received by the assessee from his grandmother, Smt. Chandaben G. Parmar during the previous year 2017-18 relevant to assessment year 2018-19. The assessee had been requested by AO to submit the bank account statement where this amount was received, a confirmation letter from the donor, details such as her PAN, sources of income, ITR copy, bank statements or any other details to prove her creditworthiness and also to substantiate the claim of exemption for this amount from income-tax. However, the AO has not made any addition in this regard. Thereafter, the Ld. PCIT issued show cause notice u/s 263 on 07.02.2024 wherein it was

observed that amount of Rs.30,00,000/- received was credited to the capital account of his proprietorship firm named as M/s Shree Sai Petroleum during the financial year 2017-18.

3.1 In response to the query in this regard, the assessee has stated that the donor Smt. Chandaben G. Parmar is his grandmother who is very old. The above-mentioned gift amount was credited through bank cheques only. The assessee had also filed an affidavit of Smt. Chandaben G. Parmar where it was stated that her husband had left cash which she deposited in her bank account and the gift was given out of the said money. However, on verification of the bank statement of Smt. Chandaben G. Parmar, it was noticed that no cash was deposited in her account since 2011. Further, the same account had a credit of Rs.29,69,585/- on 20.05.2017 received through cheque. The account statement of Shri Jitendrasinh Bharatsinh Chauhan showing corresponding credit entries of Rs.30,00,000/- was not submitted by the assessee. Therefore, the amount received of Rs.30,00,000/- was required to be brought to tax u/s 68 of the Act as unexplained cash credit and was required to be taxed under section 115BBE of the Act. However, AO failed to make the above addition though assessee failed to prove creditworthiness and genuineness of the transactions. Hence, the order passed u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act was erroneous and prejudicial to the interests of revenue. In response to the above show cause notice of the Ld. PCIT, assessee filed reply which has been reproduced at page 6 and 7 of the 263 order. The assessee stated that in

compliance to notice u/s 142(1) dated 08.02.2021, the assessee had filed submission dated 22.02.2021 where a detailed chart for increase in capital was submitted. Another notice u/s 142(1) dated 08.03.2021 was issued by AO with a specific query with regard to gift of Rs.30,00,000/- from Smt. Chandaben G.Parmar. The AO had also issued final show cause notice dated 07.04.2021 wherein at para (v), the gift Rs.30,00,000/- was sought to be taxed as unexplained gift. The assessee submitted reply dated 12.04.2021 which included copy of gift deed, copy Aadhar, copy of bank statement, copy of sogondnama in Gujarathi and copy of death certificate. After considering these details, AO has finalized the assessment order u/s 143(3) of the Act. Therefore, AO had duly considered and applied his mind in the matter of gift from grandmother. Regarding deposit of cheques of Rs.29,69,585/- on 20.05.2017 in the donor's account it was stated that the said amount was the maturity sum received from Muthoot Finance Ltd. Bond. In view of the above, the assessee submitted that the order was neither erroneous nor prejudicial to the interest of revenue.

3.2 The Ld. PCIT was, however not satisfied with the reply of the assessee. He observed that there was no cash deposited in her bank account since 2011. Further, the bank account has a credit of Rs.29,69,585/- on 22.05.2017 received through cheque. The balance in the said account remained low both before and after these transactions. The account statement of the assessee showing credit entry of Rs.30,00,000/- was not submitted by assessee.

Therefore, creditworthiness and genuineness of the transaction could not be established by the assessee. The Ld. PCIT further observed that AO failed to examine the credits in the bank account and source of investment of such amount by Smt. Chandaben G. Parmar in 2011. Thereafter, the Ld. PCIT extracted section 263 of the Act and referred to the decision of Hon'ble Supreme Court in case of Malabar Industries Ltd. vs. CIT, 243 ITR 83 (SC) where it was held that twin conditions viz., (i) the order of the AO must be erroneous and (ii) it should be prejudicial to the interest of revenue should be satisfied cumulatively to revise the order of AO u/s 263 of the Act. The Hon'ble Supreme Court held that the order can be said to be erroneous if (i) AO passed the order on incorrect assumption of facts or incorrect application of law or (ii) AO's order is in violation of principles of natural justice or (iii) order is passed without application of mind or (iv) the AO has not investigated the issue before him. In the present case, assessee was recipient of gift of Rs.30,00,000/- from Smt. Chandaben G. Parmar, grandmother, but AO accepted the explanation of the assessee as genuine without verification of fact available on record and without application of mind and correct law. Regarding the second limb, the Ld. PCIT held that revenue has lost lawful tax of Rs.23,17,500/- on income of Rs.30,00,000/-. The Ld. PCIT held that provision of section 68 are clearly attracted to the facts of the instant case. He also relied on the following decisions namely; (i) CIT vs. Pushpa Devi, 164 ITR 639, (ii) CIT vs. Seshasayee Paper & Boards Ltd., 242 ITR 490, (iii) CIT vs. Himachal Pradesh Financial

Corporation, 186 Taxman 105, (iv) CIT vs. Sunil Goyal, 176 Taxman 184, (v) CIT vs. Modi Brother, 164 Taxman 331, (vi) Manulal Matadeen vs. CIT, 152 Taxman 125, (vii) CIT vs. Bhagwan Das, 142 Taxman 1, (viii) Gee Vee Enterprise vs. Addl. CIT, 99 ITR 375 and (ix) CIT vs. Amitabh Bachchan, 240 Taxman 221 (SC). The Ld. PCIT issued direction to the AO to conduct proper and meaningful enquiry of the source of the gift, verify affidavit filed by Smt. Chandaben G. Parmar, verify bank account of assessee and his grandmother, verify the trail of gift as to how the maturity of Muthooth Bond is the source of gift in the bank account of Smt. Chandaben G. Parmar and finally to verify the genuineness and creditworthiness of the alleged gift with proper supporting evidences. With this direction, the Ld. PCIT set aside the order passed u/s 143(3) dated 15.04.2021. Aggrieved by the order of Ld. PCIT, the assessee has filed present appeal before the Tribunal.

4. The Ld. AR of the assessee strongly objected the order of Ld. PCIT and submitted paper book containing pages 1 to 33. During the argument, he has relied on the decisions of the Hon'ble Supreme Court in case of Malabar Industries Ltd. (supra) and the decision of Bombay High Court in the case of CIT vs. Nirav Modi, 241 Taxman 255 (Bom). He submitted that assessment order is neither erroneous nor prejudicial to the interests of revenue because the AO has taken a possible view with respect to the alleged gift of Rs.30,00,000/- which the Ld. PCIT seeks to tax u/s 68 of the Act. The Ld. AR of the assessee submitted that the AO has made inquiries during assessment proceedings by

issue of notice u/s 143(2) dated 22.09.2019, notices u/s 142(1) dated 15.12.2020, 08.02.2021, 08.03.2021 and 26.03.2021 and show cause notice dated 07.04.2021. The assessee has replied to the AO vide letter dated 22.02.2021 and 12.04.2021. The reply of the assessee is at pages 24 to 26 of the paper book. The assessee had also filed deed of gift which is at page 27 to 29 of the paper book. The assessee also filed affidavit of Smt. Chandaben G. Parmar which is at page 31 and 32 of the paper book. The assessee has stated that his is not a case of 'no inquiry' or 'lack of inquiry.' The Ld.AR of the assessee submitted that Ld. PCIT as well as Ld. CIT-DR, have emphasized that it is a case of assessment without proper inquiries/verification. But, the Ld.AR stated that AO has, in fact, applied his mind to the issue of gift and the order u/s 263 is not valid. Ld. AR of the assessee further submitted that Ld. PCIT has not made any inquiry during the proceedings u/s 263. He submitted that the Ld. PCIT, before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the AO is erroneous. The AO considered the detailed reply of assessee vide letter dated 12.04.2021 and being satisfied, did not make any addition on account of the impugned gift of Rs.30,00,000/-. Hence, the order of the AO is neither erroneous nor prejudicial to the interest of revenue. The Ld. AR further relied on the decision in case of CIT vs. Nirav Modi, (2016) 241 Taxman 255 (Bom.) where direction of Ld. PCIT to make addition u/s 68 in the revisional order u/s 263 was set aside by the Hon'ble High Court.

5. On the other hand, the Learned Commissioner of Income-tax – Departmental Representative (Ld. CIT-DR) has strongly relied on the order passed by Ld. PCIT. He has stated that Ld. PCIT has called for the records and duly examined it including the assessment order passed u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act. He has also referred to provisions of section 263 of the Act and stated that the present case is covered by the scope and ambit of Section 263 of the Act because the AO has not made any inquiry regarding the gift which should have been made to come to a proper conclusion. He also relied upon the decisions which were referred to in the order passed u/s 263 of the Act by Ld. PCIT. We find that the AO had duly called for details vide notices u/s 142(1) of the Act and final show cause notice dated 07.04.2021. The assessee filed reply to the show cause notice vide letter dated 12.04.2021 along with supporting evidences. Being satisfied with the reply, the AO decided not to make addition of the impugned gift though he had made two other additions in the assessment order. Hence, AO has applied his mind and taken a considered decision.

6. We have heard rival submissions and perused materials on record. We have also deliberated upon the decisions relied upon by both parties. We have also gone through the provisions of Section 263 of the Act. We find that impugned order was passed by the AO u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act.

7. Let us now discuss the scope and ambit of Section 263 of the Act. A bare reading of the section reveals that the Ld. PCIT can call for and examine the record of any proceedings under the Act and if he considers that any order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving opportunity of hearing and after making or causing to be made such inquiry as he deems necessary, pass such order as the circumstances of the case justify. For ready reference, section 263 of the Act reproduced below:

“263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or] Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,-

- (i) An order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or*
- (ii) An order modifying the order under section 92CA; or*
- (iii) An order cancelling the order under section 92CA and directing a fresh order under the said section].*

8. The Hon’ble Apex Court in case of CIT vs. Greenworld Corporation, 314 ITR 81 (SC) held that the jurisdiction u/s 263 can be exercised only when both the following conditions are satisfied *i.e.*, (i) the order of the Assessing Officer should be erroneous and (ii) it should be prejudicial to the interests of revenue. These conditions are conjunctive. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible. The Hon’ble Apex Court in case of Max India Ltd. vs. CIT 295 ITR 282 (SC) held that the Commissioner has to be satisfied of the twin conditions as

stated above. If one of them is absent, recourse cannot be had to Section 263 of the Act. We find that the impugned issue of gift from Smt. Chandaben G. Parmar was duly considered by the AO at the time of assessment proceedings. He has certainly examined the above issue by calling for the details from the assessee and after examination he accepted the explanation given by the assessee. Therefore, the issue which requires deliberation is whether the AO duly considered the explanation of the assessee regarding the gift received by assessee from Smt. Chandaben G. Parmar. From facts narrated above, it is clear that on being satisfied with the replies of the assessee, AO has not made any addition on the impugned issue of gift of Rs.30,00,000/- from Smt. Chandaben G. Parmar. He has, however, made additions of Rs.52,30,000/- and Rs.1,24,039/- on account of unexplained credit (capital account) and disallowance u/s 14A respectively. Thus, the AO has duly considered the issue, applied his mind and taken a considered view.

9. In the instant case, the Assessing Officer had called for the explanation on item in question (gift) from the assessee and assessee had furnished his explanation, which clearly shows that the AO had undertaken the exercise of examining as to whether the gift from Smt. Chandaben G. Parmar is duly explained. It is clear that the AO was satisfied with the assessee's explanation and therefore he accepted same. The grievance of the Ld. PCIT is that the AO should have made further inquiry in respect of the impugned gift in the light of provisions of section 68 of the Act, rather than accepting the assessee's

explanation. Therefore, it could not be said that it was the case of “*lack of inquiry*”. There is a distinction between “*lack of inquiry*” and “*inadequate inquiry*”. If there was any inquiry, even inadequate, that could not, by itself, give occasion to the Ld. PCIT to pass order u/s 263 of the Act merely because he has different opinion in the matter. It is only in cases of lack of inquiry that such a course of action could be opened. In the present case, the Assessing Officer has duly examined the facts and formed an opinion that no addition is necessary in view of the reply of the assessee on the subject-issue. Therefore, the decision of Ld. PCIT that the order passed by AO was erroneous and prejudicial to the interest of revenue is not correct. Reliance for this view is based on the decision of Hon’ble Delhi High Court in case of CIT vs. Sunbean Auto Ltd. [20110] 189 Taxman 436 (Del) and Nirav Modi (supra).

10. The Ld.AR has relied on the decision of Hon’ble Bombay High Court in the case of Nirav Modi (supra). In the said decision, the Hon’ble Court observed that it is settled position in law that powers u/s 263 of the Act can be exercised by the CIT on satisfaction of twin conditions viz. the assessment order should be erroneous and prejudicial to the revenue. By erroneous is meant contrary to law. Thus, this power cannot be exercised unless the CIT is able to establish that the order of the AO is erroneous and prejudicial to the revenue. Thus where there are two possible views and the AO has taken one of the possible views, no occasion to exercise powers of revision, can arise. Nor can revisional power be exercised for directing a fuller inquiry to find out if the view taken is

erroneous, when a view has already been taken after inquiry. This power of revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry. The Hon'ble High Court also held that revisional order passed by the Commissioner directing AO to inquire into the capacity of the donors and to decide genuineness of gift afresh was not sustainable as AO after making proper and detailed enquiries took a view that amount received by the assessee as gift from his relatives was a genuine transaction. The facts of the present case are similar to the facts of the case relied upon. In this case the assessee has received gift from his grandmother for which he has supplied affidavit, gift deed, bank statement of both donor and donee, ledger statement of Muthooth Finance etc. The assessee had also given a reply dated 12.04.2021 to the specific show cause notice issued by the AO dated 07.04.2021. The show cause notice is at page 18 to 23 of the paper book and reply of the assessee is at pages 24 to 26 of the paper book. The question regarding unexplained gift of Rs.30,00,000/- is at para 2(iv) of the show cause notice and the reply is at para (iv) vide paper book page 25. We also find that the grandmother of the assessee had given Rs.25,00,000/- and Rs.5,00,000/- which is reflected in the bank statement maintained with Indusind Bank (page 15 of the paper book). The said amount is reflected in assessee's account with Indusind Bank at page 11 and 13 of the paper book. Bond ledger statement from Muthooth Finance Ltd. with their cheque dated 20.03.2017 is at page 16 and 17 of the paper book. The account

payee cheque has been signed by the authorized signatory for Muthooth Finance Ltd. These facts clearly established that the grandmother of the assessee has given Rs.30,00,000/- through banking channel which has been duly reflected in the bank statement of the assessee. Therefore, the explanation of the assessee was found acceptable by AO and he made no addition. He has taken a possible view which cannot be considered as perverse. Even the Ld. PCIT has not given any reason as to why the explanation of assessee is not acceptable. The facts of the present case are similar to the case of Nirav Modi (supra) and we find no reasons to deviate from the finding of Hon'ble Bombay High Court. Hence, the order of the Ld. PCIT is not sustainable in view of the factual and legal positions stated hereinabove and the precedents cited supra. We accordingly set aside the order passed u/s 263 of the Act. This ground of appeal is allowed.

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

Order pronounced on 27/08/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 27/08/2024

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat