

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.173/Ahd/2022
Assessment Year: 2017-18**

Hiteshkumar Patel, 5, Shree Nagar Society, Nr. Pioneer School, Anand – 388 001. (Gujarat) [PAN – AEPPP 4893 R] (Appellant)	Vs.	The Principal Commissioner of Income Tax-1, Vadodara – 1. (Respondent)
Assessee by	Shri Manish J. Shah, AR	
Revenue by	Shri H. Phani Raju, CIT-DR	
Date of Hearing	10.07.2024	
Date of Pronouncement	09.09.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 21.03.2022 passed by the PCIT, Vadodara-1 for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal :-

“1. *The Principal CIT erred in law and on fact in holding that assessment order passed under section 143(3) dated 18.12.2019 is erroneous and prejudicial to the interest of revenue by invoking the provision of section 263 of the Act and thereby directing the Assessing Officer to pass fresh assessment order,*

1.1 *The Principal CIT further erred in law and on fact in holding that Assessing Officer has not made any verification or inquiry in respect of gift received by the assessee of Rs.2 crores.”*

3. The assessee is a real estate dealer, developer and derives income from business and rent on properties. The assessee filed return of income on 07.11.2017 showing current year loss at (-) Rs.46,38,276/-. Subsequently, the case was selected for complete scrutiny and notice under Section 143(2) of the

Income tax Act, 1961 was issued on 09.08.2018. Thereafter, notice under Section 142(1) of the Act with questionnaire was issued on 12.03.2019. In response to the said notices, the assessee furnished details/documents which were verified by the Assessing Officer. After verifying the same, the Assessing Officer held that the assessee had not deducted tax at source on interest payments to the tune of Rs.1,15,270/- and, therefore, disallowed the same under Section 40(a)(ia) of the Act. The PCIT observed that during the year under consideration the assessee claimed to have received gift of Rs.2,00,00,000/- on 02.04.2016 from his sister and introduced the same as addition to his proprietor's capital for the year under consideration. In support of his claim of receipt of gift of Rs.2,00,00,000/-, the assessee furnished only a copy of the Bank statement for the month of April 2016 in respect of Bank Account in the name of his sister. The PCIT observed that the source of capital of Rs.2,00,00,000/- introduced in the capital account of the assessee in the form of gift during the year under consideration remains unexplained and noticed that the Assessing Officer has neither made any addition on this issue nor made any verification or enquiry regarding identity and creditworthiness of the donor and genuineness of the transaction under Section 68 of the Act. The PCIT invoked Section 263 of the Act and issued notice dated 28.02.2022 which was replied by the assessee vide submissions dated 07.03.2022. After taking cognisance of the same, the PCIT set aside the directions of the Assessing Officer and directed the Assessing Officer to pass fresh Assessment Order after taking into consideration the issues as mentioned in the order passed under Section 263 of the Act dated 21.03.2023.

4. Being aggrieved by the Order under Section 263 of the Act, the assessee filed appeal before us.

5. The Ld. AR submitted that at the time of assessment proceedings under Section 143(3) of the Act the assessee has categorically given the details and replied the query of the Assessing Officer vide submissions dated 30.11.2019 thereby stating that the increase in capital, the bifurcation given in the Balance Sheet categorically mention that the addition of Rs.4,00,07,975/- was on account of opening balance of Rs.7,975/- of HDFC Credit Card (recorded in books on opening date), Rs.2,00,00,000/- being Gift received from sister Sushmaben Patel

(copy of her NRE Bank Account for the relevant period from where the amount was received) and Rs.2,00,00,000/- being the amount of disclosure made by the assessee in Income Disclosure Scheme 2016 (the details of which were already with the Department). This explanation clearly gives the idea that the query was raised by the Assessing Officer related to increase in capital, as query 4(D) more specifically vide notice dated 12.03.2019 issued under Section 142(1) of the Act. The Ld. AR relied upon the decision of Hon'ble Apex Court in the case of PCIT vs Shreeji Prints (P.) Limited (2021) 130 taxmann.com 294(SC). The Ld. AR also relied upon the decision of Hon'ble Gujarat High Court in the case of Bhavesh Chandrakantbhai Bhatt vs. ACIT (R/Special Civil Application No.8240 of 2024). The Ld. AR submitted that NRE Account has to be from the foreign account and not that of Indian account holder and, therefore, the assessee has already shown the NRE Account and since the Assessing Officer has already made the enquiries in detail related to large increase in capital and towards gift received by the assessee and accepted the genuineness, creditworthiness and identity of the said gift while passing the Assessment Order under section 143(3) of the Act, the same cannot be considered as erroneous or prejudicial to the interest of Revenue as envisaged under Section 263 of the Act.

6. The Ld. DR relied upon the order of the PCIT passed under Section 263 of the Act. The Ld. DR further submitted that the Assessing Officer has not conducted any enquiry and only rendered Bank Account of the assessee. As relates to the decisions referred by the Ld. AR, the Ld. DR submitted that the Hon'ble Gujarat High Court's decision will not be applicable in assessee's case as the NRE Account is that of the assessee and not that of other person. The Assessing Officer should have referred the FDR transaction but has not made any enquiry. The Ld. DR relied upon the decision of Hon'ble Apex Court in the case of CIT vs Amitab Bachchan (order dated 11.05.2016) whereby it is held that even if the Assessing Officer applies mind and decides not to assess the expenditure as unexplained under Section 69C of the Act because the assessee withdrew the claim for deduction, the CIT is entitled to revise the assessment on the ground that the matter needs further investigation.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that vide notice under Section 142(1) of the Act dated 12.03.2019, the Assessing Officer has made enquiry related to the large increase in the capital for which the assessee has replied the same vide submissions dated 30.11.2019 thereby stating that the details of NRE Account of assessee's sister as well as the receipt of the money amounting to Rs.2,00,00,000/- from his sister including the Bank Statement of the assessee's sister. Thus, source was explained of receipt of Rs.2,00,00,000/- and, therefore, the full enquiry was conducted on the said issue related to Gift of Rs.2,00,00,000/- from assessee's sister to the assessee. The invocation of Section 263 of the Act has limited purpose that of when the Assessing Officer does not enquire while conducting assessment proceedings under Section 143(3) of the Act and when the Assessment Order is prejudicial to the interest of Revenue or erroneous. But, in the present case, the Assessing Officer, at the time of assessment proceedings under Section 143(3) of the Act, has conducted thorough enquiry and in fact has made disallowance where it was necessary to do so. Therefore, merely on the basis of taking different view by the PCIT that also which is outside the scope of Section 68 of the Act (source of source) if it has been explained already by the assessee, then invocation of Section 263 of the Act in the present assessee's case is not justifiable. In fact, Hon'ble Apex Court in case of Shreeji Prints (P.) Limited (supra) has categorically mentioned that when enquiries conducted by the Assessing Officer are in detail and the Assessing Officer has taken plausible view the same cannot be considered erroneous and prejudicial to the interest of Revenue and invocation of Section 263 of the Act is not justifiable.

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

Order pronounced in the open Court on this 9th September, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 9th day of September, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad