

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.816/PUN/2024
Assessment Year : 2017-18**

Madhuri Dilip Gaikwad PL No 10, Prem Vaibhav Laxmi Nagar, Near Bakavwolf Colony, LIN Chinchwad, Pune – 411033	Vs.	PCIT (Central), Pune
PAN : AOAPG3705L		
(Appellant)		(Respondent)

**ITA No.817/PUN/2024
Assessment Year : 2017-18**

Vaibhav Gaikwad Flat No.502, Sr. No.26, Princeton Flair, North Main Road, Meeranagar, Koregaon Park, Pune – 411001	Vs.	PCIT (Central), Pune
PAN : BCEPG1347M		
(Appellant)		(Respondent)

**ITA No.818/PUN/2024
Assessment Year : 2017-18**

Prem Dilip Gaikwad Flat No.502, Sr. No.26 2, Princeton Flair, North Main Road, Meeranagar, Koregaon Park, Pune – 411001	Vs.	PCIT (Central), Pune
PAN : AQCPG9164B		
(Appellant)		(Respondent)

Assessee by : Ms Vaishnavi Badwe
Department by : Shri Keyur Patel, CIT-DR
Date of hearing : 21-08-2024
Date of pronouncement : 09-09-2024

ORDER**PER R. K. PANDA, VP :**

The above 3 appeals filed by the respective assesseees are directed against the separate orders dated 22.02.2024 & 23.02.2024 of the Ld. PCIT (Central), Pune, passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to assessment year 2017-18. Since identical grounds have been raised in all these appeals, therefore, for the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. First, we take up ITA No.817/PUN/2024 as the lead case. Facts of the case in brief, are that the assessee is an individual and he has a family business of construction in the name and style M/s D B Developers Ltd., in which the assessee is a director. A Survey action u/s 133A of the Act dated 03.03.2017 was carried out in the case of D B Developers Pvt. Ltd., during which it was observed that there were huge cash deposits in the name of the company as well as in the name of its director. Also there were cash deposits in old high denomination currency in the bank account of company and its directors. Since the source of cash deposits could not be satisfactorily explained, the assessee and its director then opted for disclosure under PMGKY, 2016. The details of undisclosed income offered under PMGKY, 2016 are as under:

<i>Name of the Assessee</i>	<i>Deposit made during period 10.11.2016 to 31.12.2016</i>
<i>D.B. Developers Ltd.</i>	<i>2958000</i>
<i>Prem Gaikwad</i>	<i>599000</i>
<i>Vaibhav Gaikwad</i>	<i>459500</i>
<i>Madhuri Gaikwad</i>	<i>544500</i>
	<i>4561000</i>

3. Since the assessee had deposited an amount of Rs.4,59,500/- being the cash deposit during the demonetization period which has been disclosed under PMGKY, 2016 but has not explained the source of cash of Rs.3,71,000/- deposited during the period between 01.04.2016 to 08.11.2016 and 01.01.2017 to 03.03.2017 and had also not filed its return of income, the Assessing Officer after obtaining prior approval of the competent authority initiated proceedings u/s 147 of the Act and notice u/s 148 of the Act was issued on 27.03.2021. Subsequently, the assessee filed his return of income on 19.02.2022 in response to the notice u/s 148 of the Act declaring total income at Rs.180/-. The Assessing Officer thereafter issued statutory notices u/s 143(2) and 142(1) of the Act and asked the assessee to explain the source of cash deposit of Rs.3,71,000/-. The Assessing Officer further noted that the various family members of the assessee namely Prem Gaikwad and Madhuri Gaikwad have also deposited cash in the bank accounts and their cases are under scrutiny, the details of which are as under:

<i>Sr. No.</i>	<i>Name</i>	<i>Total cash deposited</i>	<i>Pre Demonetization period</i>	<i>Demonetization period</i>	<i>Post Demonetization period</i>
<i>1</i>	<i>Madhuri Gaikwad</i>	<i>2194500</i>	<i>1650000</i>	<i>544500</i>	<i>0</i>
<i>2</i>	<i>Vaibhav Gaikwad</i>	<i>830500</i>	<i>371000</i>	<i>459500</i>	<i>0</i>
<i>3</i>	<i>Prem Gaikwad</i>	<i>3648700</i>	<i>3096200</i>	<i>542500</i>	<i>10000</i>
	<i>Total</i>	<i>6673700</i>	<i>5117200</i>	<i>1546500</i>	<i>10000</i>

4. On being asked by the Assessing Officer, the assessee in a consolidated reply dated 30.03.2022 filed the following details:

“For the remaining amount of Rs.50,91,200/- the assessee has stated that Cash Gift of Rs.40.00 lakhs was received from in-laws of Prem Gaikwad and Rs.17,54,003/- received from relatives and friends on the occasion of marriage ceremony of Prem Gaikwad. In support, she has enclosed copy of Gift deed dt.23.09.2016 by in-laws of Prem Gaikwad, saving account statement and loan account statement. Further, the assessee submitted list of relatives and friends. The assessee claimed receipt of cash gifts of Rs.17,54,003/- from relatives and friends on occasion of marriage of Prem Gaikwad, The details are as under:

Sr. No.	Name	Gift Amount (Rs.)
1	K V Desai	151000
2	Shankar Kalbhor	151000
3	Yashwant Gaikwad	200000
4	Laxman Magar	350001
5	Shubham Garg	51001
6	Sandip Daddikar	51001
7	Ravindra Gaikwad	200000
8	Kalyan Kate	150000
9	Rajesh Shinde	150000
10	Dnuaneshwar Gaikwad	100000
11	Vishwajit Gaikwad	200000
	Total	17,54,003

In support, the assessee has submitted affidavits/ITR/7'12 extracts of persons from Sr.No.1 to 5, totaling to Rs.9,03,002/-. Hence the assessee could explain the source of cash deposits of Rs.49,03,002/-, out of remaining amount of Rs.50,91,200/-. Hence, Cash deposits of Rs.1,88,198/- remained explained.”

5. It was explained that they have offered Rs.15,82,500/- under the PMGKY scheme and copy of challan for taxes paid under PMGKY scheme in respect of all three family members were filed. So far as the balance amount of Rs.50,91,200/- is concerned, the assessee filed various details. The Assessing Officer after considering the explanation given by the assessee accepted the source of cash deposit of Rs.3,71,000/- in the hands of the present assessee, Rs.5,44,500/- in the

hands of Madhuri Gaikwad but made addition of Rs.1,88,198/- u/s 69A of the Act in the hands of Prem Dilip Gaikwad by recording as under:

“6. Scrutiny proceedings of other family members viz. Madhuri Gaikwad and Prem Gaikwad are also underway. They have explained source of cash deposits in bank accounts generated from cash gifts received on occasion of wedding ceremony of Shri Prem Gaikwad. Still difference amount of Rs.1,88,198/- is not explained by any member of family. In absence of any reply, the AO added the difference amount of Rs.1,88,198/- in the hands of Prem Gaikwad, since the same is received on occasion of wedding ceremony of Prem Gaikwad.

7. In view of the above and considering the assessee's submission and explanation offered by the assessee, assessment is completed as under-

Computation of income

<i>Sr. No.</i>	<i>Description</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>Total income as per return of income filed on 19.02.2022</i>	<i>180</i>	
	<i>Assessed Income</i>	<i>180</i>	<i>180</i>

6. Subsequently, the PCIT on examination of the record noted that the Assessing Officer had not properly examined the case and has not made addition on account of cash received from the in-laws of his brother i.e. Prem Dilip Gaikwad by invoking the provisions of section 56(2) of the Act. He, therefore, was of the opinion that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. He thereafter issued a show cause notice u/s 263 of the Act on 10.01.2024, the contents of which have been reproduced by the PCIT in the body of the order and which reads as under:

“02. In the above mentioned case, on verification of case records for A.Y. 2017-18 it has been observed that the assessee had not filed return of income for AY 2017-18. Accordingly, proceedings u/s 147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') were initiated and notice u/s 148 of the Act was issued. In response, the assessee filed return of income on 19.02.2022 declaring income at Rs.180/- only. The scrutiny assessment was completed u/s 143(3) r.w.s 147 of the Act on 31.03.2022 by accepting returned income.

03. On perusal of the assessment records it is seen that the assessee had deposited cash amounting to Rs.8,30,500/- in his bank account during the year under consideration. It has been claimed by the assessee that out of the same, Rs.4,59,500/- was offered under the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (PMGKY) and has submitted the challan of deposit. For the balance amount of Rs.3,71,000/-, it had been claimed that the said amount had been received from the in-laws of his brother i.e. Shri Prem Ditip Gaikwad. Since the in-laws of Shri Prem Gaikwad are not relatives as per Section 56 of the Act, the balance amount of cash deposit being Rs.3,71,000/- was required to be added to the total income of the assessee u/s 56(2) of the Act. However, the Assessing Officer (AO) has not added the same to the total income of the assessee.

04. Thus, the gift claimed to be deposited in the account of the assessee (brother of Shri Prem Gaikwad) is taxable in the hands of the assessee u/s. 56 of the Act as the assessee does not fall within the definition of relative provided u/s. 56(2) of the Act. The AO failed to add the same to the total income of the assessee and the aspect that such gift in the hands of assessee is taxable u/s. 56(2) of the Act, has not been examined by the A.O.

05. In view of the above, it is found that no verification on the aforesaid issues has been done in the assessment proceedings by the AO. As per explanation (2) to section 263(1) of the Act an order without making inquiries or verification which should have been made is deemed to be erroneous in so far as it is prejudicial to the interest of revenue.

06. Considering the above facts of the case it is seen that the AO has not examined and verified the above issues. Therefore, assessment order u/s 143(3) r.w.s 147 of the Act dated 31.03.2022 passed by the AO for A.Y. 2017-18 appears to be erroneous in so far as it is prejudicial to the interest of revenue.

07. In view of the facts and circumstances mentioned above, the assessment order passed u/s 143(3) r.w.s 147 of the Act dated 31.03.2022 in the case of Vaibhav Dilip Gaikwad in A.Y. 2017-18 prima facie appears to be erroneous in so far as it is prejudicial to the interest of revenue in terms of the provisions of Explanation-(2)(a) to Section 263(1) of the Income Tax Act. I, therefore, intend to set aside/modify the assessment order within the meaning of section 263 of the I.T. Act, 1961. An opportunity of being heard is therefore, given to you. You are requested to attend in person or through your authorized representative on **19.01.2024 at 12:00 PM** in my office.

08. If you have authorized any representative to attend on your behalf, please ensure that the Power of Attorney with proper court fee stamp is filed on or before the date of hearing. If you do not wish to attend in person or through your authorized representative, you may file written submission along with necessary evidence in support of your contention before the due date of hearing. Further, it may be noted that no adjournment will be provided and in case on non appearance/non submission of reply, order will be passed on merits.”

7. In response to the same, the assessee filed his submissions, according to which the Assessing Officer had examined the issue during the course of assessment proceedings, therefore, the revisional proceedings u/s 263 of the Act should be dropped. The assessee also relied on various case laws. However, the PCIT was not satisfied with the arguments advanced by the assessee. He noted that the issue of applicability of provisions of section 56(2) of the Act was not at all examined / verified / enquired by the Assessing Officer. Further, the assessee had not submitted the details regarding the source of cash deposited in his case. From the various details furnished by the assessee during the course of assessment proceedings, he noted that nowhere it was mentioned as to how much gift was received by the assessee from the in-laws of his brother Prem Gaikwad. He noted that the assessee before him made a fresh claim that only Rs.50,000/- was gifted to him by his brother's in-laws on the occasion of his brother's marriage and the amount of Rs.3 lacs deposited was out of cash gifts received by his brother which was subsequently given to him. The assessee submitted a fresh affidavit from his brother regarding the same. He, therefore, held that the assessee had not submitted these details before the Assessing Officer during the course of assessment proceedings and the Assessing Officer also did not carry out proper examination / verification / enquiries during the course of assessment proceedings on these issues of source of cash deposits in his bank account and the applicability of section 56(2) of the Act. Thus, the order passed by the Assessing Officer has become erroneous and prejudicial to the interest of Revenue. He accordingly set aside the order

passed by the Assessing Officer for examining the issue in detail while framing the fresh assessment order.

8. Aggrieved with such order of the PCIT, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

1. *The Ld PCIT(Central) - Pune erred in initiating proceedings and exercising jurisdiction u/s 263 of the IT Act and setting aside the order passed by the Ld AO u/s 143(3) r.w.s. 147 of the IT Act.*
2. *The Ld PCIT(Central) - Pune erred in law and in facts in holding the assessment order dt 31.03.2022 passed by the Ld AO u/s 143(3)rws 147 of the IT Act is erroneous and prejudicial to the interest of the Revenue as the source of the gift on the occasion of marriage of the appellant's brother was already explained before the Ld AO.*
3. *On the facts and in the circumstances of the case and in law, The Ld PCIT(Central) – Pune erred in holding the order of the Ld AO erroneous and setting aside the order on the grounds that:*
 - a. *The issue of the applicability of sec 56(2) of the Act to the case of the appellant was not at all examined by the AO.*
 - b. *The appellant had not submitted the details regarding the source of cash deposits.*
 - c. *The Ld PCIT(Central) - Pune has erred in not appreciating the fact that the consolidated submissions of the Gaikwad family made before the Ld AO were thoroughly explained to the Ld AO and examined by him.”*

9. The Ld. Counsel for the assessee submitted that the assessee and his brother are staying together with their parents. The assessee has received cash from his brother which he had received from the in-laws at the time of his marriage, out of which he had given an amount of Rs.3 lacs to the assessee. In the consolidated reply given before the Assessing Officer, all the three assesseees have explained the source of such cash deposits which was received on the occasion of Prem

Gaikwad's wedding from his in-laws. She submitted that the amount was received by Prem Gaikwad who in turn, had given various amounts to the assessee and Ms. Madhuri Dilip Gaikwad. She submitted that the cash gift given by Prem Gaikwad to Vaibhav Gaikwad and Madhuri Dilip Gaikwad was explained before the PCIT by filing a fresh affidavit which he should have considered, considering the smallness of the amount. Since the Assessing Officer in the instant case has examined the issue and has taken a possible view and it is not a case of lack of enquiry, therefore, the PCIT is not justified in invoking the provisions of section 263 of the Act. She submitted that the revision proceedings were initiated on account of audit objection which is beyond the jurisdiction of PCIT. Relying on various decisions, she submitted that the 263 proceedings initiated by Ld. PCIT are not in accordance with law.

10. The Ld. DR on the other hand strongly supported the order of the PCIT. He submitted that when the assessee has received more than Rs.50,000/- from the in-laws of Prem Gaikwad who is not a related party, the provisions of section 56(2) of the Act should have been invoked by the Assessing Officer which he failed to do and therefore, the PCIT was fully justified in invoking the revisionary powers conferred upon him u/s 263 of the Act. He accordingly submitted that the grounds raised by the assessee should be dismissed.

11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. PCIT and the paper book filed on behalf of

the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case on the basis of information gathered during the course of survey and post survey enquiries that the assessee has made cash deposits in the bank and had not filed his return of income, reopened the assessment u/s 147 of the Act. The assessee in response to the same filed the return of income declaring the total income of Rs.180/-. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the source of cash deposits of Rs.3,71,000/- during pre and post demonetization period, to which the assessee in a consolidated explanation gave the source of cash deposit of Rs.51,27,200/- in the bank accounts of the family members. The Assessing Officer after examining the various details, made addition of Rs.1,88,198/- in the hands of Prem Dilip Gaikwad but no addition was made in the hands of Vaibhav Gaikwad and Madhuri Dilip Gaikwad. We find the PCIT after examining the records noted that when the cash gifts received by the various family members, the provisions of section 56(2) of the Act should have been invoked by the Assessing Officer as they are not related persons as per section 56(2) of the Act and therefore, the order has become erroneous and prejudicial to the interest of Revenue, for which he set aside the order to the file of the Assessing Officer for examining the issue afresh and after providing due opportunity of being heard to the assessee.

12. We find the assessee before the PCIT had explained that he has received Rs.50,000/- from the in-laws of Prem Gaikwad and an amount of Rs.3 lacs was

received from Prem Gaikwad out of the cash gifts received by him and for which an affidavit from Prem Gaikwad was also filed before him. Since the assessee is a very small assessee and had duly explained before the Assessing Officer regarding the source of cash deposits in a consolidated reply of all the three family members who stay together and which has also not been disputed by the PCIT, who only was of the opinion that the provisions of section 56(2) of the Act should have been invoked, therefore, we are of the considered opinion that no revisionary proceedings u/s 263 of the Act are warranted in the instant case. In the instant case, we find the Assessing Officer had examined the source of cash deposits of all the three family members together which were submitted with supporting evidences and has applied his mind though not to the satisfaction of the PCIT. Further, the submission of Ld. Counsel for the assessee that the 263 proceedings were initiated on the basis of audit objection could not be controverted by the Ld. DR. Therefore, under the facts and circumstances of the case and considering the smallness of the amount involved and the assessee being a very small assessee who is not having any taxable income, the provisions of section 263 of the Act in our opinion, are not warranted. We, therefore, set aside the order of the PCIT and the proceedings initiated u/s 263 of the Act are quashed.

13. Identical grounds have been raised in other two appeals. We have already decided the issue and the grounds raised in ITA No.817/PUN/2024 have been allowed. Following similar reasoning, proceedings initiated u/s 263 of the Act in

the other two appeals are also quashed. All the three appeals filed by the respective assesseees are accordingly allowed.

14. In the result, all the three appeals by the respective assesseees are allowed.

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

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 9th September, 2024

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. DR, ITAT, 'A' Bench, Pune
4. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	21.08.2024		Sr. PS/PS
2	Draft placed before author	22.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			