

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 1110, 1111 & 1112/Ahd/2024
(निर्धारण वर्ष / Assessment Years : 2013-14, 2014-15 & 2017-18)

Amruta Fabrics Pvt. Ltd. 199, New Cloth Market, Opp. Raipur Darwaja, Sarangpur, Ahmedabad, Gujarat, 380002	बनाम/ Vs.	The Pr. CIT Ahmedabad-1
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICA0877A		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Ms. Astha Maniar, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Sudhendu Das, CIT. DR

Date of Hearing	18/09/2024
Date of Pronouncement	21/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These three appeals are filed by the assessee against the order of the Principal Commissioner of Income Tax, Ahmedabad-1, (in short ‘the PCIT’), dated 29.02.2024 for A.Y. 2013-14 and dated 01.03.2024 for A.Ys. 2014-15 & 2017-18 respectively passed in the revisional jurisdiction under Section 263 of the Income Tax Act, 1961 (in short ‘the Act’).

2. There was a delay of 25 days in filing of all three appeals. The assessee has filed an affidavit explaining that the assessee had paid the challan for filing the appeals within the prescribed

period of 60 days and the matter was handed over to the Accountant to coordinate with the Tax Professional for filing of appeals. However, due to inadvertent omission on the part of the Accountant, there was a delay in consultation with the Tax Professionals as the Accountant was busy in finalization of accounts of various group concerns. This led to delay of 25 days in filing of the appeals. Considering the explanation of the assessee, the delay in filing of these appeals is condoned.

3. The issue involved in all three appeals is identical and were heard together. Therefore, these appeals are being disposed of vide this common order. We will take ITA No.1110/Ahd/2024 for A.Y. 2013-14 as the lead case.

ITA No.1110/Ahd/2024

4. The brief facts of the case are that the assessee had filed its return of income for A.Y. 2013-14 on 26.09.2013 declaring total income of Rs.4,43,980/-. The original assessment was completed u/s.143(3) of the Act on 04.11.2015 at total income of Rs.5,93,980/-. Subsequently, the case was reopened u/s.147 of the Act on the basis of information collected in the course of search u/s.132 of the Act in the case of one Shri Sanjay Govindram Agrawal on 12.04.2019, wherein it was found that the said Shri Sanjay Govindram Agrawal was providing accommodation entries to various persons. During the search, certain documents relating to financial transaction with the assessee was also found and seized, from which it transpired that the assessee had entered into accommodation entry for

Rs.58,95,384/- during F.Y. 2012-13. The AO, therefore, issued notice u/s. 148 of the Act on 28.03.2021 after recording his reason. The re-assessment was completed u/s.147 r.w.s. 144B of the Act on 30.03.2022 at total income of Rs.6,95,30,824/-, wherein the following additions were made:

<i>(i) Unexplained money being accommodation entry:</i>	<i>Rs.58,95,384/-</i>
<i>(ii)Unexplained investment on account of suppression of purchases:</i>	<i>Rs.4,96,66,841/-</i>
<i>(iii)Unexplained money being short disclosure of sales:</i>	<i>Rs.1,33,74,619/-</i>

5. The case record was subsequently called for and examined by the Ld. PCIT. He found that the total credits in the bank account of the assessee was Rs.46,76,84,671/-, whereas the total revenue from operations disclosed in the audited financials was Rs.35,07,55,071/- only. The difference of Rs.11,69,29,600/- was not reconciled by the assessee and the AO also did not seek any clarification in this regard while completing the assessment. The Ld. PCIT, therefore, held that since the AO had erred in not verifying the total credits in the bank account vis-à-vis the revenue from operation, the order of the AO was erroneous and prejudicial to the interest of revenue. Therefore, the impugned order u/s.263 of the Act dated 29.02.2024 was passed by the Ld. PCIT, after allowing an opportunity of being heard to the assessee, and the matter was set aside to the AO with a direction to complete the assessment de novo.

6. Aggrieved with the order of the Ld. PCIT, the assessee is in appeal before us. The following grounds have been taken in this appeal:

“1. The Ld. PCIT has grossly erred in law and on facts in issuing notice u/s 263 of the Act seeking revision of an invalid assessment order and hence, the same is bad in law.

2. Without prejudice to above, Ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s 263 of the Act on the erroneous grounds that the assessment order dated 30.03.2022 is erroneous in so far as it is prejudicial to the interest of the revenue

3.1 The Ld PCIT erred in law and on facts in not appreciating that the subject matter of revision proceedings was never an issue of reassessment proceedings

3.2 The Ld. PCIT has erred in law and on facts in not appreciating that the limitation period u/s 263(2) of the Act will be calculated from the date of passing of original assessment order dated 04.11.2015 and thus, the notice issued u/s 263 of the Act dated 29.02.2024 is barred by limitation

4. The Ld. PCIT further erred in not appreciating that in order to invoke the provisions of Section 263, two conditions must be fulfilled viz. the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, there is no material on record suggesting otherwise and therefore, there was no error in the impugned assessment order so as to justify action u/s 263 of the Act. Under the circumstances, the very assumption of power u/s 263 of the Act is unjustified and bad in law and therefore, order u/s 263 of the Act deserves to be quashed.”

7. Ms. Astha Maniar, Ld. AR appearing for the assessee submitted that the original assessment was completed in this case u/s.143(3) of the Act on 04.11.2015. Thereafter, the case was reopened u/s.147 of the Act for specific reason to examine the alleged accommodation entries of the assessee. In the re-assessment order, the AO had not only made additions in respect of accommodation entry but also on account of unexplained

investment in purchases as well as short disclosure of sales. The Ld. AR submitted that when the issue for which the case was reopened was duly examined by the AO, there cannot be any question of the re-assessment order being erroneous and prejudicial to the interest of the revenue. According to the Ld. AR, the mistake in respect of total credits in the bank account vis-à-vis revenue from operations, if any, was in the original assessment order and not in the re-assessment order. Therefore, the Ld. PCIT was not correct in invoking his revisional jurisdiction in respect of re-assessment order dated 30.03.2022 as the said order was neither erroneous nor prejudicial to the interest of revenue. On merits also, the Ld. AR challenged the order passed by the Ld. PCIT. She submitted that there can be no co-relation between the total credit in the bank account and the total revenue from operations as disclosed in the audited financials. She explained that the total credits in the bank accounts were in respect of realization of old debtors, transfer of maturity proceeds of fixed deposits, unsecured loans etc. which did not form part of total revenue. Therefore, the assessment order cannot be held as erroneous and prejudicial to the interest of revenue merely on account of difference in the credits in the bank account and the total revenue from operations.

8. Per contra, Shri Sudhendu Das, Ld. CIT.DR relied upon the order of Ld. PCIT.

9. We have carefully considered the rival submissions. We do not find any error or mistake in the re-assessment order u/s.147 of the Act dated 30.03.2022 passed by the AO. The case was

reopened to examine the accommodation entry of Rs.58,95,384/- taken by the assessee from Shri Sanjay Govindram Agrawal during the F.Y.2012-13. In the assessment, the AO had made the addition not only in respect of the accommodation entry but also in respect of suppression of purchases and short disclosure of sales. When the issue for which the case was reopened was duly examined and additions were made, the re-assessment order cannot be held as erroneous and prejudicial to the interest of revenue. Therefore, initiation of proceedings u/s.263 of the Act in respect of re-assessment order dated 30.03.2022 cannot be held as valid and correct.

10. It is further found that the basic reason for which the order of the AO was held as erroneous was itself flawed. The Ld. PCIT has held that there was a difference of Rs.11,69,29,600/- in total credits in the bank accounts and total revenue from operations as disclosed in the audited accounts. This is based on the presumption that all the credits in the bank accounts are in the nature of revenue receipt, which cannot be held as correct. In the course of proceeding u/s.263 of the Act, the assessee had explained that there was realization of Rs.32,85,38,338/- from debtors, which included realization from old debtors which were already accounted for as revenue in the earlier years. Further, the aggregate transfer of Rs.9,47,48,367/- from Bank of Baroda FD account also cannot be considered as the revenue for the current year, as only interest portion for this year has to be considered as income. Further, the assessee had taken unsecured loan of Rs.4,68,89,858/- which also cannot be considered as revenue receipt. The Ld. PCIT didn't deal with these submissions of the

assessee and mechanically held that the order of the AO was erroneous and prejudicial to the interest of the revenue. Even if it is accepted that the AO did not verify the difference in the total credit in the bank account vis-à-vis revenue from operations, this mistake had occurred in the original assessment dated 04.11.2015 and not in the re-assessment u/s.147 of the Act dated 30.03.2022. Therefore, the order of the Ld. PCIT passed u/s.263 of the Act in respect of the order u/s.147 of the Act dated 30.03.2022 cannot be held as correct as this order was neither erroneous nor prejudicial to the interest of the revenue. Therefore, the order u/s.263 of the Act dated 29.12.2024 for the A.Y. 2013-14 passed by the Ld. PCIT, is quashed.

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

ITA No. 1111/Ahd/2024 – A.Y. 2014-15

12. This appeal pertains to A.Y. 2014-15 and the facts are identical with ITA No.1110/Ahd/2024. The original assessment for this year was completed u/s.143(3) of the Act at total income of Rs.7,97,630/-. The case for this year was reopened by the AO to examine the accommodation entry of Rs.73,05,084/- and the re-assessment was completed u/s.147 of the Act on 30.03.2022 at total income of Rs.81,02,714/-, wherein addition of Rs.73,05,084/- was made in respect of accommodation entry. The Ld. PCIT had held that since the AO had erred in not verifying the total credits in the bank account vis-à-vis the revenue from operations (difference of Rs.15,40,40,617/-), the order of the AO was erroneous and prejudicial to the interest of revenue and had

accordingly passed order u/s 263 of the Act setting aside the order of the AO. Since, the other facts for this year are identical with A.Y. 2013-14, the finding as given in ITA No.1110/Ahd/2024 is applicable in this year as well. Therefore, the order u/s.263 of the Act passed by the Ld. PCIT for A.Y. 2014-15 is cancelled as the order of the AO was neither erroneous nor prejudicial to the interest of revenue.

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

ITA No. 1112/Ahd/2024 – A.Y. 2017-18

14. The assessee had filed return for A.Y. 2017-18 on 18.10.2017 declaring total income of Rs.9,53,980/-. The case was reopened u/s.147 of the Act to examine the accommodation entry of Rs.51,54,259/- and notice u/s.148 of the Act was issued on 30.03.2021. The assessment was completed u/s.147 r.w.s. 144B of the Act on 30.03.2022 at total income of Rs.61,08,239/- wherein addition of Rs.51,54,259/- was made in respect of the accommodation entry. The AO had also initiated penalty proceeding u/s.270A(9)(a) of the Act. The Ld. PCIT vide order u/s.263 of the Act dated 01.03.2024 has held that the order of the AO was erroneous and prejudicial to the interest of revenue for the reason that addition of Rs.51,54,259/- was made u/s.69A r.w.s. 115BE of the Act but the AO had initiated penalty proceeding u/s.271A(9)(a) of the Act. According to the Ld. PCIT, the penalty proceeding should have been initiated u/s.271AAC of the Act and not u/s. 270A of the Act. Further, the Ld. PCIT found that no addition u/s.69A of the Act was made on account of

commission paid to accommodation entry provider. He, therefore, held that the order of the AO was erroneous and prejudicial to the interest of the revenue and accordingly, set aside the order of the AO.

15. Ms. Astha Maniar, the Ld. AR of the assessee submitted that the order of the AO cannot be held as erroneous and prejudicial to the interest of the revenue for the reason that the AO had initiated penalty proceeding u/s.270A of the Act and not u/s.271AAC of the Act. She submitted that where two views are possible and the AO had taken one of the plausible views, with which the PCIT doesn't agree, it does not make the order of the AO erroneous and prejudicial to the interest of the revenue, as the view taken by the AO was sustainable in law. She also relied upon the judgement of *Hon'ble Gujarat High Court* in the case of *CIT vs. Parmanand M. Patel, 278 ITR 3 (Guj.)* and the decision of *Co-ordinate Bench of this Tribunal* in case of *Easy Transcription and Software Pvt. Ltd. vs. CIT (2017) 88 taxmann.com 772 (Ahd.-Trib.)* in support of her contention that the Commissioner was not empowered to record satisfaction for initiating penalty proceeding and that he cannot do it by directing the Assessing Authority to initiate penalty proceeding under particular section. As regarding commission income, the Ld. AR submitted that the case was not reopened to examine any commission income, neither any commission expenditure was mentioned in the reason as recorded by the AO. In the absence of any direct or definite material for payment of any commission to the accommodation entry provider, there was no question of making any such addition by the AO. Therefore, the order of the

AO cannot be held as erroneous as no addition for any commission payment was called for.

16. Per contra, Ld. CIT.DR submitted that the initiation of penalty proceeding was part of the assessment order. He submitted that the AO had initiated the penalty proceeding in the assessment order but under a wrong section. According to the Ld. CIT.DR, initiation of penalty proceeding under a wrong provision makes the order erroneous and prejudicial to the interest of the revenue. Therefore, the Ld. CIT(A) had rightly invoked the jurisdiction u/s.263 of the Act and directed the AO to initiate penalty proceeding u/s.271AAC of the Act. As regarding the issue of commission expenses, the Ld. CIT.DR relied upon the order of the PCIT.

17. We have carefully considered the rival submissions. So far as the commission payment is concerned, in the reason as recorded by the AO there was no mention of any commission expense. When the case was not reopened on the ground of payment of commission, the order of the AO cannot be held as erroneous and prejudicial to the interest of the revenue for non-addition of commission payment. In fact, no such addition was made in the other years as well. Therefore, the direction of the Ld. PCIT to set aside the assessment and to pass fresh assessment after taking into account the commission paid to accommodation entry provider cannot be held as correct.

18. As regards initiation of penalty proceeding is concerned, in the assessment order the AO had initiated the penalty proceeding

u/s.270A(9)(a) of the Act. The only addition made in the assessment was in respect of “unaccounted money u/s.69A being accommodation entry of Rs.51,54,259/-”. Therefore, the initiation of penalty proceeding was in respect of this addition only. The provision of Section 271AAC of the Act stipulates that where the income determined includes any income referred to in Section 69A of the Act, then penalty has to be computed @10% of tax payable u/s.115BBE(1)(i) of the Act. The provision of Section 271AAC not only overrides the other provisions of the Act but it also stipulates that no penalty u/s.270A of the Act shall be imposed in respect of income referred to in Section 69A of the Act. It is, thus, apparent that the AO had wrongly initiated penalty proceeding u/s.270A of the Act in place of initiating the penalty proceeding u/s.271AAC of the Act. To this extent, the Ld. PCIT had correctly held that the order of the AO was erroneous and prejudicial to the interest of the revenue as the penalty proceeding was not correctly initiated under the right provisions of the Act. The contention of the assessee is that where two views are possible and the AO had taken one view the order cannot be held as erroneous and prejudicial to the interest of the Revenue. As already discussed above, no two views are possible in this case. The provision of Section 271AAC of the Act clearly stipulates that in respect of income u/s.69A of the Act penalty under this section only can be imposed and not u/s. 270A of the Act. The initiation of penalty under the wrong section had made the order of the AO erroneous and prejudicial to the interest of revenue.

19. The reliance of the assessee on the decision of the Hon'ble Gujarat High Court in the case of *Parmanand M. Patel (supra)* is found to be misplaced. Hon'ble Gujarat High Court had held in that case that the Commissioner cannot exercise revisional power u/s.263 of the Act to direct the AO to initiate penalty proceeding once assessment proceedings are completed. Further that the satisfaction for initiation of penalty has to be recorded by the AO and the PCIT cannot record such satisfaction on behalf of the AO. In the present case the penalty proceeding was already initiated by the AO himself after recording satisfaction in the assessment order itself. This is not the case where the Ld. PCIT is substituting his satisfaction over the satisfaction of the AO. The AO had already recorded his satisfaction and initiated the penalty proceeding u/s.270A of the Act, which was found to be erroneous and prejudicial to the interest of the Revenue as no penalty u/s.270A of the Act could have been initiated in the facts of the case as already discussed above. Thus the facts of this case are totally different as the PCIT has neither recorded the satisfaction for initiating penalty proceeding nor directing the AO to initiate penalty after completion of assessment. The PCIT has merely directed the AO to rectify the mistake committed by him in initiating the penalty proceeding and directed to initiate the proceeding under the right provisions of the Act.

20. The reliance of the assessee on the decision of the Co-ordinate Bench of this Tribunal in the case of *Easy Transcription and Software Pvt. Ltd. (supra)* is also found to be misplaced. In that case, no penalty proceeding u/s.271(1)(c) of the Act was initiated while framing the assessment and the revisionary

jurisdiction with a direction to initiate the penalty proceeding was held as incorrect.

21. In view of the above facts and discussion, we are of the considered opinion that the Ld. PCIT has correctly exercised the revisional jurisdiction in respect of wrong initiation of penalty u/s.270A of the Act. Accordingly, the order of the Ld. PCIT is upheld to this extent only.

22. In the result, appeal filed by the assessee is allowed in part.

23. In the combined result, ITA Nos. 1110 & 1111/Ahd/2024 are allowed and ITA No.1112/Ahd/2024 is partly allowed.

This Order pronounced on 21/10/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 21/10/2024

S. K. SINHA

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad