**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH "B" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**
**AND**
**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.787/Del/2022
(Assessment Year: 2012-13)

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| Dharambir<br>Village-Nakhrola, Naharpur,<br>Gurgaon, Haryana.<br>PAN No.AUMPD4924E | Vs. | Pr. CIT<br>C.R. Building, Faridabad,<br>Haryana. |
| **(APPELLANT)** | | **(RESPONDENT)** |

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| Assessee by | Shri Pramod Jain, CA |
| Revenue by | Shri Surender Pal, CIT DR |

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| Date of hearing: | 08.10.2024 |
| Date of Pronouncement: | 21.10.2024 |

**O R D E R**

**PER PRADIP KUMAR KEDIA, AM:**

The captioned appeal has been filed at the instance of the assessee against the Principal Commissioner of Income Tax, Faridabad (PCIT) dated 21.03.2022 passed under s. 263 of the Income Tax Act, 1961 (the Act), whereby assessment order passed by the Assessing Officer (AO) dated 18.12.2019 under s. 143(3) r.w.s. 147 of the Act concerning the AY 2012-13 was sought to be set aside for reframing reassessment order afresh in terms of supervisory directions.

2. As per the grounds of appeal, the assessee has sought to challenge the jurisdiction assumed by the PCIT under s. 263 of the Act and as a corollary,

sought to impugn the revisional order passed by the PCIT under s. 263 of the Act. Briefly stated, the assessee an individual was found by the Department to have deposited large cash amount to the tune of Rs.1.95 crores in financial year relevant to AY 2012-13. Consequently, a notice under s. 148 of the Act dated 29.03.2019 were issued to the assessee and the reassessment proceedings under s. 147 was set in motion. Pursuant thereto, the assessee filed Income tax return on 28.11.2019 and declared taxable income of Rs.7,83,580/-. In the course of reassessment proceedings, the show-cause notices were issued under s. 142(1) of the Act seeking to make enquiry on the source of cash deposits for which the proceedings under s. 147 r.w.s. 148 were initiated. The Assessing Officer (AO) vide show-cause notice dated 21.11.2019 asked the assessee to provide the source of cash deposits of Rs.1,95,00,000/- in the bank account and the assessee was cautioned that the assessment will be framed *ex parte* in the event of non furnishing of such source. The reassessment order was ultimately framed dated 18.12.2019, wherein the Assessing Officer vouched that assessee has duly filed the information/documents electronically on requisitioned during the reassessment proceedings. Source of cash deposits along with relevant documents in this regard were also furnished by the assessee as observed in the assessment order. The AO further observed that after examination of the documents furnished, returned income of the assessee was accepted and assessed without any adjustment. The penalty proceedings under s. 271F were however

initiated for belated filing of return of income. In essence, the AO did not find any deficiency in the explanation offered by the assessee towards source of cash deposits under enquiry in the reassessment proceedings. To put it differently, in the light of material placed in the reassessment proceedings by the assessee, the belief initially formed towards alleged escapement of income by the AO for exercise of powers under s. 147 of the Act were not applied adverse to the assessee and no additions were consequently made in the reassessment order.

3. Thereafter, the PCIT in exercise of its revisionary powers, issued show cause notice dated 21.01.2021 under s. 263 of the Act requiring the assessee to show cause as to why the impugned assessment so framed under s. 143(3) r.w.s. 147 of the Act dated 18.12.2019 should not be modified/set aside on the ground that such order is erroneous in so far as it is prejudicial to the interest of the Revenue. On a broader reckoning, the PCIT opined as per the show cause notice that the impugned assessment orders passed under s. 143(3) r.w.s. 147 of the Act is being considered erroneous and prejudicial to the interest of the Revenue under s. 263 of the Act on three counts: -

A. *"Non examination of the sources as required of Cash deposits amounting to Rs.1,95,00,000/- and its explanations;*

B. *Non taxing of Long-Term Capital gains on account of sale of two land pieces;*

C. *Initiation of Penalty Proceedings for non-filing of Income Tax Return and violation of other provisions of Income Tax Act, 1961."*

4. With reference to first allegation, the PCIT assailed the action of the AO on the correctness of source of cash deposit on the ground that AO has failed to examine the full facts and failed to make requisite enquiry.

4.1 With reference to second allegation, the show cause notice pointed out that the AO has failed to verify the facts towards non taxability of capital gains arising on sale of land parcels on the counters of s. 10(37) of the Act. The AO was thus not justified in accepting the long term capital gains on sale of agricultural land parcels to be non taxable as claimed by the assessee.

4.2 With reference to third allegation, the PCIT observed that the AO failed to initiate penalty proceedings for non filing of Income tax return and violation of penal provisions of the Act in this regard.

5. The PCIT thus concluded that the assessment order passed under s. 143(3) r.w.s. 147 of the Act is erroneous in so far as prejudicial to the interest of the Revenue as contemplated under s. 263(3) of the Act.

6. The response and the explanation of the assessee towards show-cause notice was recorded by the PCIT in its revisional order. On consideration thereof, the PCIT passed an order under s. 263 of the Act whereby the impugned reassessment order was set aside to make fresh assessment after suitable enquiries on the points as directed in the order. The relevant directions of the revisional order in respect of issues raised are reproduced hereunder for ready reference: -

> *"29. From the above, it is clear that during the course of proceedings under s. 263, the assessee has accepted that properties*

*are in question is a capital asset under the Income Tax Act, 1961 and claimed wrong dedication under s. 10(37) of the Income Tax Act, 1961 which is not allowed as per the above discussion. Therefore, the Assessing Officer is directed to charge the tax on the capital gain arise from the sale of land located at Rajokari as well as land located at Hassanpur (Tijara) as the assessee has wrongly claimed the deduction under s. 10(37) of the Income Tax Act, 1961 and also charge tax on the cash deposit made during the year under consideration. He will examine the cost of acquisition and determination of capital gains. He is directed to examine the eligibility of indexed cost of acquisition, amount of capital gains, fulfillment of various conditions of clause (ii) & (iii) and applicability of provisions of section 10(37) and 54B in the facts of the case, applicability/initiation of penalty proceedings under s. 271(1)(c) of the Income Tax Act, 1961, if deemed fit in the facts, charging of interest.*

*30. In view of facts and legal position stated above, it is hereby held that assessment order under s. 143(3)/147 of Income Tax Act,1961 dated 18.12.2019 passed in this case for AY 2012-13 is erroneous in so far as it is prejudicial to the interest of Revenue. Consequently, in exercise of the power conferred in the s. 263 of the Income Tax Act, 1961, the said assessment order dated 18.12.2019 is set aside, but only to the extent as discussed in the order. The Assessing Officer is directed to pass a fresh assessment order and re-compute the assessee's income after making further enquiries as directed in the foregoing paragraphs and after giving due opportunity to the assessee and perusing the necessary evidence."*

7. Aggrieved by the aforesaid action of the PCIT, the assessee is in appeal before the Tribunal agitating the supervisory jurisdiction usurped by the PCIT under s. 263 of the Act.

8. The Ld. Counsel for the assessee broadly reiterated its detailed submissions made before the AO in the course of assessment proceedings and before PCIT in revisional proceedings and submitted that the PCIT has misdirected himself in law and facts in resorting to revisional jurisdiction in the present case where the issues involved were duly examined in the reassessment

proceedings as entitled within the scope of s. 147 of the Act. We shall appropriately refer to deal with the various facets of the arguments in succeeding paragraphs.

9. The Ld. CIT DR for the Revenue, on the other hand, relied upon the revisional order passed by the PCIT.

10. We have objectively and dispassionately considered the facts of the case, the revisional order and the reassessment order along with the material referred to rely upon in the course of hearing and case law cited. Section 263 of the Act confers power upon the Pr.CIT/CIT to call for and examine the records of a proceeding under the Act and revise any order if he considers the same to be erroneous and prejudicial to the interests of the Revenue. The Pr.CIT can take recourse to revision under Section 263 of the Act where the assessment order is erroneous as well as prejudicial to the interest of Revenue. The twin conditions are required to be satisfied simultaneously. The Pr.CIT in the present case has purported to act in exercise of power under s.263 of the Act and thereby has sought to cancel the assessment order of the AO passed under s. 143(3) r.w. 147 of the Act.

11. As pointed out on behalf of the assessee, two pre-requisites must coexist before the designated authority could exercise the revisional jurisdiction conferred on him namely; the order should be (i) erroneous & (ii) the error must be such that it is prejudicial to the interests of the Revenue. However, an erroneous order does not necessarily mean an order with which the Pr.CIT is

unable to agree. The AO while passing an order of assessment, performs judicial functions. An order of assessment passed by the AO cannot be interfered only because an another view is also possible on the issue as held in CIT vs. Greenworld Corporation (2009) 181 Taxman 111 (SC). If in given facts and circumstances of the case, two views are possible and one view as legally plausible has been adopted by the AO then existence of other possible view alone would not be sufficient to exercise powers under s.263 of the Act by the Pr.CIT /CIT concerned. Hence, there can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO. It is only when an order is erroneous and causing prejudice, that the Section will be attracted. An incorrect assumption of facts or incorrect application of law will satisfy the requirements of the order being erroneous.

12. The substantive case of the PCIT wherein heavy emphasis has been placed on wrong allowability of exemption under s. 10(37) of the Act on gains arising from sale of agricultural land. Per contra, it is the case of the assessee that the dispute raised by the PCIT on the touch stone of s. 10(37) of the Act is wholly untenable in law in the factual matrix of the case. The PCIT has expressed its discord with the claim of the assessee under s. 10(37) of the Act towards gain arising from sale of agricultural land in disregard of the alternate conditions provided in s. 10(37) of the Act for eligibility of exemption. The PCIT claims that the AO has failed to verify as to whether the conditions embedded in s. 10(37) of the Act has been fulfilled by the assessee or not. In respect of sale of land parcel located at Hassanpur (Tijara) and Rajokari, the PCIT has made an

averment to the effect that the land in Village Rajokari is within the municipal area and the consideration received on sale of land is not on account of any compulsory acquisition and, therefore, the preconditions under s. 10(37) is not satisfied. Likewise, whether the land located at Hassanpur (Tijara) is outside the municipality limit of 8 kms or not is unknown. As pointed out on behalf of the assessee, in defense we observe that s. 10(37) of the Act provides for exemption of income on transfer of agricultural land in alternative situations as provided therein. It was the case of the assessee before the PCIT that such land was used for agricultural purposes during the period of two years immediately preceding the date of transfer and, therefore, regardless of such agricultural land being urban land (falling within 8 kms of municipal limit), the exemption under s. 10(37) is still available. The PCIT has not controverted this aspect. Secondly, the proof of land being falling outside the municipal limits was placed before the PCIT which was brushed aside on trivial grounds and based on suspicion harboured. As further pointed out on behalf of the assessee, the PCIT under s. 263 of the Act is precluded to give directions towards for revision on the points which are not covered for the formation of belief towards escapement under s. 148(2) of the Act. It is the contention of the assessee that the notice under s. 148 was issued to verify the source of cash deposits and no more. The taxability of gains arising on sale of agricultural land parcels was not subject matter of reopening the assessment and, therefore, once the *bona fide* of source of cash deposits for which the case was reopened has been duly accepted, the PCIT cannot, while exercising the power under s. 263 of the Act expand the scope of

powers available to the AO under s. 147 of the Act.

13. We find potency in such plea. The erstwhile scheme of s. 147 of the Act envisaged that the AO is required to frame reassessment of the income chargeable to tax which has escaped assessment as recorded in the reasons before issuance of notice. The jurisdiction of the AO also extends to "other income" which may come to his notice subsequently in the course of reassessment proceedings indeed. However, this extension of jurisdiction to include 'other income' cannot be stretched to hold fishing and roving enquiries without a reasonable belief that assessee has omitted or failed to disclose such other chargeable income. In other words, no fishing enquiry is permissible to merely explore if some "other income" has also escaped or not. In the reassessment proceedings, the AO is ordinarily expected to focus on points of escapement recorded at the time of issuance of notice and is not expected to chase *will o' the wisp* to find not something adverse to the Assessee. From the case records, it is ostensible that for the purposes of issuance of notices under s. 148 of the Act, the solitary issue before the AO was source of cash deposits. No statutory obligation was thus cast on the AO under law to enter into roving enquiries on all aspects unconnected to the issue on which reopening was made. Besides, from the phraseology of erstwhile s. 147 of the Act, it is ostensible that issues relating to discovery of 'other income' is within the domain of AO and nobody else. The AO while passing an order of assessment on reassessment performs judicial functions. The PCIT in exercise of powers under s. 263 cannot rake up different issues not connected to the purpose for which the case was reopened, indirectly by way of

directions in the garb of revisional proceedings. It is trite that the subject matter of reassessment is distinct and different. The action of the AO in not embarking on enquiries under s. 10(37) of the Act by the AO cannot be termed as 'erroneous' *per se* when tested in conjunction with scope of powers available under s. 147 of the Act.

14. Besides, the action of the PCIT seeking revision is grossly contrary to the observations made by the Hon'ble Delhi High Court in the case of *ITO Vs. DG Housing Projects Ltd. (2012) 343 ITR 329* (Del.), wherein a case of inadequate enquiry and lack of enquiry has been clearly distinguished and a burden albit on somewhat lower pedestal has been placed upon PCIT to conduct some minimum enquiry himself to prevent misuse of revisional jurisdiction. In the instant case, the PCIT could have gathered the apparent facts without any exertion, to our mind. The Hon'ble Delhi High Court recently in the case of *PCIT Vs. Clix Finance India Pvt. Ltd. [ITA No.1428/2018 judgment dated 01.03.2024*] has reiterated the view that some inadequacy in enquiry by the AO with respect to certain claims would not in itself be a reason to invoke powers enshrined in s. 263 of the Act. In the instant case, there was no statutory compulsion upon the Assessing Officer to extend the scope of reassessment to 'other income' if any more so where the reason for which case was reopened was found un-sustainable by the AO himself. In the absence of any such compulsion, the PCIT in exercise of powers under s. 263 cannot, in our view, compel the AO to examine all together different points and fasten uncalled for burden upon the assessee to comply with protracted proceedings after the lapse of 8-10 years. Besides, it

needs to borne in mind that it is a case of an agriculturist with humble background and little understanding of law. Hence, the circumstances need to be seen benignly and with utmost care. In the instant case, the directions given to the AO while setting aside the reassessment order qua examination of propriety of exemption claimed under s. 10(37) of the Act is outside the jurisdiction conferred under s. 263 of the Act thus unsustainable in law.

15. We now advert to the directions to initiate penalty proceedings under s. 271(1)(c) of the Act and other provision the Act in the set aside proceedings. The issue is squarely covered in favour of the assessee and against the Revenue by the decision of the coordinate bench in the case of *Easy Transcription & Software Pvt. Ltd. Vs. CIT* [ITA No. 327/Ahd./2015 order dated 10.01.2017] wherein it was held that non initiation of penalty proceedings by the AO is not a justifiable ground for not invoking revisional powers under s. 263 of the Act. Be that as it may, the power to initiate penalty proceeding on additions and disallowance is not automatic but lelf to the statutory discretion of the AO. The superior authority cannot compel the AO to exercise such discretion in a particular manner. In consonance with such view, the directions given in the revisional order to this extent do not have the force of law and thus, requires to be set aside.

16. We now advert to the allegation in the revisional order towards inadequacy in the verification on source of cash deposits. As pointed out on behalf of the assessee, specific enquiries were raised by the AO in this regard. Cash flow statement was furnished showing source of cash deposits to be financed out of

sale proceeds of agricultural land. The cash deposits were also shown to have been made immediately about the time on which the agricultural land was sold. Similar cash deposits were made in the bank account of other co-owners/co-transferors on sale of agricultural land. The assessee has no other discernible source of income. The assessee thus demonstrated that necessary enquiries were made by the AO in exercise of quasi judicial powers vested with him. The AO in the assessment order has clearly and specifically recorded that source of cash deposits along with relevant documents were furnished by the assessee in the course of assessment proceedings. The assessee all along had submitted that the cash deposited in the bank account represents part of the sale consideration received in cash on transfer of agricultural land parcels. The AO appears to have accepted the explanation offered towards source of cash deposits having regard to the compelling surrounding circumstances. Noticeably, there are very few entries in the bank account of the assessee which mainly represents the consideration received by cheque and cash on sale of land parcel. There being no other income arising to the assessee, the explanation offered towards source of cash deposits out of past withdrawals and consideration record on sale of land in cash as agreed by the AO, cannot be discarded outright. The view taken by the AO appears to be a plausible view and coincides with the attendant circumstances. The source of cash deposits as explained by the assessee before the AO as well as before the PCIT cannot be summarily impugned. In the wake of satisfaction derived by AO in the reassessment order, the directions given by the revisionary Commissioner on this score too is without justification. The assessee thus, succeeds in its

contentions.

17. In view of the delineations noted above, the assessment order under revision cannot be seen to suffer from vice of error which can be regarded as prejudicial to the interest of the Revenue. The impugned revisional order thus, deserves to be set aside and cancelled.

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

**Order was pronounced in the open Court on 21/10/2024.**

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| **Sd/-** | **Sd/-** |
| **[YOGESH KUMAR US]** | **[PRADIP KUMAR KEDIA]** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated**: 21 /10/2024**

*Kavita Arora, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar
ITAT, New Delhi