

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**Shri Manish Borad, Accountant Member
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 579/Kol/2024
Assessment Year: 2019-20**

Medisi Barkiah,
81/1, Ward No. 7, Shorepoint,
Bambooflat Ferrargujn - 744107
[PAN: AYUPB7572J]**Appellant**

vs.

Pr. CIT-1, Kolkata,
Aayakar Bhavan, P-7,
Chowringhee Square,
Kolkata – 700069 **Respondent**

Appearances by:

Assessee represented by : Akkal Dudhwewala, AR
Department represented by : Rakesh Kumar Das, CIT-DR
A. Kundu, CIT-DR

Date of concluding the hearing : October 29, 2024

Date of pronouncing the order : October,30,2024

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been filed by the assessee pertaining to the Assessment Year (in short 'AY') 2019-20 against the order dated 16.02.2024 passed by the Principal Commissioner of Income Tax (in short "the Ld. PCIT") u/s 263 of the Income Tax Act, 1961 (in short the 'Act') whereby the order of Assessing Officer (AO) dated 03.05.2021, passed u/s 143(3) of the Act was set aside.

2. The Assessee has raised the following grounds of appeal:

"1. For that on the facts and in the circumstances of the case and in law, the Ld. PCIT-1, Kolkata did not hold valid jurisdiction over the appellant to exercise revisionary powers u/s 263 of the Act and in that view of the matter, the impugned order stood vitiated in law and thus deserves to be quashed.

For that on the facts and in the circumstances of the case and in law, the Ld. PCIT was unjustified in law and on facts in revising the assessment order u/s 143(3) of the Act dated 03.05.2021 even though the said order was neither erroneous nor prejudicial to the interest of the Revenue for the reasons set out in the show cause notice.

For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT failed to appreciate that the issue raised in the SCN as well as the impugned order had already been examined and enquired into by the Assessing Officer in the original assessment completed u/s 143(3) of the Act and the order of the AO could not be held to be erroneous and prejudicial to the interests of the Revenue

For that on the facts and in the circumstances of the case and in law, the assessee having substantiated before the Ld. Pr. CIT that source of cash found in the course of search action was from the proceeds received on sale of agricultural land, the Ld. Pr. CIT was unjustified in setting aside the assessment and directing the AO on pure surmises and conjectures which clearly shows that the assessment order was neither erroneous nor prejudicial to the interest of the Revenue.

For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

3. The Ld. PCIT was of the opinion that the assessment order passed by the Ld. AO was erroneous and prejudicial to the interest of the revenue. The assessee has challenged the validity of proceeding initiated u/s 263 of the Act on the ground that the Ld. PCIT wrongly assumed jurisdiction and that the order of AO was neither erroneous nor prejudicial to the interest of the revenue. The facts of the case are that assessee is a retired forest guard, who during the post-retirement period engaged in the agricultural activities on his ancestral agricultural land. He filed his income tax return for the AY 2019-20 by declaring income of Rs. 1,17,600/-. During the course of assessment proceedings, the Ld. AO noted that the assessee was intercepted at Port Blair on 12.11.2018, where he was found carry cash

amounting to Rs. 51,83,750/-. A search and seizure operation was carried out u/s 132 of the Act and subsequent notice u/s 153A of the Act was issued to the assessee. The assessee responded by the filing of return of income for the AY 2019-20 on 14.10.2020 u/s 139(4) of the Act disclosing the above amount. During the course of assessment proceedings, the assessee explained that the source of cash was two-fold (i) i.e. Rs. 20.16 lacs from the sale of ancestral agricultural land and (ii) Rs. 31.16 lacs in accumulated cash withdrawal from his bank account and agricultural income over time. The assessee and his wife planning to permanently relocate to the Andaman and Nicobar Islands and they were carrying through life saving in cash for that purpose. During the assessment proceedings, the assessee furnished necessary documents including bank statement, sale deeds and cash book covering the period from 01.04.2012 to 10.11.2018 which reflected regular withdrawals from the bank and agricultural income. Based on this information, the Ld. AO accepted the return of income and completed the assessment u/s 143(3) on 03.05.2021 without making further addition.

4. The Ld. PCIT, however issued the show cause notice u/s 263 of the Act stating that AO had failed to properly verified the source of cash seized from the assessee and had passed an erroneous order that was prejudicial to the interest of revenue. The Ld. PCIT noted that sale of agricultural land take place on 19.11.2018 which was after the date of the cash seizure on 12.11.2018 and raised doubts about the assessee's explanation. The Ld. PCIT after considering the various submissions made by the assessee in response to the show cause notice, the PCIT passed the impugned order on 16.02.2024 by setting aside the AO's order and directing the AO to conduct fresh assessment after re-examining the source of cash.

5. The Ld. Counsel for the assessee submitted that the assumption of jurisdiction by the PCIT u/s 263 of the Act was invalid in law. The Ld. Counsel

argued that the AO had conducted a detailed enquiry into the assessee's financial affairs during the original assessment proceedings and had considered all the necessary documents, including the cash book, bank statement, and sale deeds. The Ld. Counsel emphasized that the sale proceeds from the agricultural land amounting to Rs. 20.16 lacs were not the sole source of cash seized. The assessee had accumulated Rs. 31.67 lacs in cash from regular withdrawal from his bank account over the years and the cash book clearly reflected this. Moreover, the agricultural income earned from the cultivation of rice and other paddy on the assessee ancestral agricultural land were exempted from tax under section 10(1) of the Act. The contention of the Ld. AR that the Ld. AO had examined the cash book for the period 01.04.2012 to 10.11.2018 which was supported by the bank statements. The cash book recorded regular cash withdrawals debit alginate with the assessee's explanation. Therefore, the AO's acceptance of the return of income was based on proper enquiry and the Ld. PCIT conclusion that the assessment order was erroneous and prejudicial to the interest of the revenue was unwarranted.

6. On the other hand, the Ld. DR supported the order passed by the Ld. PCIT stating that the Ld. AO had failed to verify the source of the cash seized during the search operation thoroughly. The Ld. AR contended that sale of agricultural land took place after the seizure, which cast doubts on the assessee's explanation. The Ld. DR contended that the Ld. AO had not properly scrutinized the assessee's claims regarding the agricultural income and the accumulation of cash. This failure to conduct a detail enquiry rendered the assessment order erroneous and prejudicial to the interest of the revenue, justifying the invocation of section 263 of the Act.

7. We have considered the rival submissions, perusing the material available on record and examining the facts of the case in detail. The primary

issue for our consideration is whether the order passed by the Ld. AO u/s 143(3) of the Act was erroneous and prejudicial to the interest of the revenue, thereby justifying the invocation of jurisdiction by the Ld. PCIT u/s 263 of the Act. Section 263 of the Act empowers the Ld. PCIT revised the assessment order if it is both erroneous and prejudicial to the interest of the revenue. However, it is well settled that not every erroneous order can be revised under this section. The Ld. PCIT must established that the AO's order both erroneous and prejudicial to the interest of the Revenue.

8. In the present case, the Ld. AO issued notice u/s 142(1) of the Act and sought relevant details from the assessee, which were duly furnished by the assessee. The assessee provided the AO with a cash book covering period from 01.04.2012 to 10.11.2018 reflecting the regular cash withdrawals. The Ld. AO also examine the bank statements, sale deeds and other supporting documents. It is evident from the records that the Ld. AO conducted detailed enquiry into the assessee's financial affairs particularly source of cash seized and in this connection the Ld. AR furnished and supported the documents before us containing in the paper book from page 1 to 120 and copy of the reply letter dated 16.04.2021 at page no. 63 to 65, bank statements at page no. 66 to 78 cash books for the period 01.04.2012 to 10.11.2018 from page no. 79 to 88, respectively which are clearly reveals that the assessee furnished supported documents before the AO at the time of framing of the assessment order. The assessee's explanation that part of the cash from the sale proceeds of agricultural land and rest was accumulated from withdrawals over several years substantiate by documents placed before the AO. The sale of agricultural land take place shortly after the cash seizure and the Ld. AO was satisfied with the assessee's their explanation regarding the timing and source of the cash. The Ld. PCIT in exercise of jurisdiction u/s 263 as merely expressed different opinion on same set of facts that were

already examined by the AO. The assessee had submitted comprehensive documentary evidence during the original assessment proceedings and the Ld. AO had accepted the assessee's explanation after due inquiry. It is well established that when the AO takes plausible view based on the facts and evidence, the Ld. PCIT cannot invoke section 263 of the Act merely because he disagrees with the conclusion reached by the Ld. AO. In the case of Malabar Industries Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC) is relevant in this context. The Hon'ble Supreme Court held that phrase "prejudicial to the interest of the Revenue" cannot be read in isolation but has to be read in conjunction with the expression "erroneous". If the AO has conducted enquiry and formed an opinion based on the facts of the case, the order cannot be termed as erroneous simply because the Ld. PCIT holds a different view. In the present case, the Ld. AO made an informed decision after examining all the relevant documents. There is no evidence to suggest that the AO's order was erroneous or prejudicial to the interest of the Revenue. As such, the invocation of section 263 of the Act by the Ld. PCIT was not justified. In the light of the above finding, we hold that the order passed by the Ld. PCIT u/s 263 of the Act is unsustainable in law. The Ld. AO was conducted a proper enquiry and passed the assessment order after considering all relevant facts and documents. Accordingly, the appeal of the assessee is allowed and the order of Ld. PCIT dated 16.02.2024 is set aside.

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

Kolkata, the 30th October, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 30.10.2024.

AK, PS

Copy of the order forwarded to:

1. Medisi Barkiah
2. Pr. CIT-1, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches