

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Makarand V. Mahadeokar, Accountant Member**

**ITA No. 1007/Ahd/2024
Assessment Year 2014-15**

Ghanshyambhai Ambalal Patel, 1, Collage road, Ashram Road, Nadia SO Nadiad, Kheda-387001 PAN: ABNPP6052D (Appellant)	Vs	Pr. CIT-1, Ahmedabad (Respondent)
---	----	---

**Assessee by: Shri Divyakant Parikh, A.R.
Revenue by: Shri Prothviraj Meena, CIT-D.R.**

Date of hearing : 08-10-2024
Date of pronouncement : 28-10-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed against the order dated 21-03-2024 passed by Principal Commissioner of Income Tax, PCIT for assessment year 2014-15.

2. The grounds of appeal are as under:-

"1. The learned Principals CIT-1 Ahmedabad has erred both in law and in facts in revising and setting aside the Order passed by ld A.O. u/s 147 R.W.5 144 WITH S. 144B on the ground that the AO erred in accepting the submission of the assessee appellant regarding sources of cash deposited in bank account when the

ld AO has examined the facts and explanations regarding sources of cash deposited taking a plausible view. The Order of AO being neither erroneous nor prejudicial to interest of revenue the ld Pr. CIT erred in revising the same.

2. On the facts and circumstances of the case and considering the details and evidences furnished, order passed by AO being neither erroneous nor prejudicial to interest of revenue PR CIT erred in revising the said Order on invoking jurisdiction u/s 263 relying on irrelevant judgments and merely on his own view of the matter when sources of cash deposited were fully and satisfactorily explained. It be so held now and order u/s 263 dated 21.03.2024 be set aside.

3. The learned Principal CIT further grievously erred in law and on facts in revising and setting aside the order of assessment passed by AO u/s 147 on the ground that the AO did not call for details/explanations and did not make inquiry and also that he did not make addition. The Order u/s 147 being passed after application of mind to the issue and considering submissions, evidences and details furnished by appellant the order is neither erroneous nor prejudicial to interest of revenue. It be so held now and order passed u/s 263 be set aside

4. The ld Principal CIT further erred both in law and on facts in not appreciating the order passed u/s 147 r.w.s 1448 after detailed scrutiny and necessary inquiry, the same could not be held to be erroneous merely because in him opinion, further Inquiry is required to be made Considering the explanations and details given and in view of settled legal position, regarding the law with regard to onus about capital introduced by partners, the order passed by AO is not erroneous or prejudicial to interest of revenue. It be so held now.

5. There being no material or different facts to hold that the order passed by ld AO after due application of mind taking a correct view the order u/s 147 (r.w.s 144 & 144B) could not be treated as prejudicial to interest of revenue considering the status of the appellant as the provisions of section 69A of the I.T. Act, 1961 could not have been invoked it be so held now and order passed u/s 263 be cancelled.

6. The ld Principal CIT erred in law and on facts in not properly and fully considering the appellants submissions before him and placing reliance on Explanation-2 to section 263 since it is settled legal position as considered by various judicial pronouncements that it does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues. It be so held now and order passed by ld Pr.CIT be cancelled.

7. The appellant craves leave to add, alter, modify or delete any of the grounds at the time of hearing.”

Additional Ground of Appeal

“Appellant craves leave to raise this additional ground of appeal before the Hon'ble ITAT as attached herewith.

This ground is against the Order passed u/s 263 of Income tax Act. 1961 whereby the Id PCIT-1 Ahmedabad Set aside the so called Order of the Id A.O. in proceedings u/s. 147 of the Income tax Act.

This additional Ground is purely Legal Ground that challenges the very jurisdiction and invocation of proceedings u/s 263 which may, please, be admitted in the interest of justice as facts are on record.

Additional Ground No:8

Without prejudice to the other grounds and in addition to the same, the Learned Principal CIT grievously erred in law and on facts in invoking section 263 of the I.T. Act as there is no order which can be revised in terms of the provisions of the law as per settled position of law. It may be so held now and the Order passed u/s 263 be quashed.”

3. The assessee is an individual and filed return of income for assessment year 2014-15 on 05-01-2015 declaring total income of Rs. 3,29,240/-. The Assessing Officer observed that the said return u/s. 139(9) was filed belatedly and was not processed by the CPC being time barred. The Assessing Officer was having an information forwarded by the DDII, Investigation Vadodara with regard to cash deposits made by the assessee relevant to assessment year 2014-15. The Assessing Officer observed that the assessee failed to file valid return though having a valid PAN after making cash deposit in his bank account in HDFC bank during assessment year 2013-14 amounting to Rs. 31,81,000/-. The case was reopened and notice u/s. 148 dated 29-03-2021 was served to the assessee. Another notice u/s. 142(1) dated 30-11-2021 was issued to the assessee. The assessee made his compliance on 26-12-2021 and requested to consider the return of income filed u/s. 139(1) dated 05-01-2018 for reopening proceedings also. The assessee also requested to provide reasons for reopening which was

provided on 31-12-2021. After issuance of statutory notices and taking cognizance of the assessee's reply, the Assessing Officer proposed to treat the cash deposit in the bank account to the tune of Rs. 31,81,000/- as unexplained money u/s. 69A in the hands of the assessee and under the head income from sources and charged the same at a special rate u/s. 115BBE of the Act. After giving final notice u/s. 142(1) dated 12-03-2022, the Assessing Officer has accepted the return of income filed by the assessee. The Pr. CIT observed that the Assessing Officer accepted the assessee's return vide order dated 22-03-2022 any further detailed inquiries and thus issued notice u/s. 263 of the Act dated 04-03-2024. In response to the said notice, the assessee submitted his reply. The Pr. CIT after going through the submissions observed that the Assessing Officer has erred in not accepting submissions with regard to cash deposits in the bank account maintained with HDFC Bank and thus this resulted in assessment of income and thereby sought levy of taxes to such extent. Thus, the Pr. CIT while invoking the provisions u/s. 263 set aside the assessment order passed u/s. 147 r.w.s. 144 r.w.s. 144B with the direction to the Assessing Officer to pass a fresh order in accordance with law.

4. Being aggrieved by the order passed u/s. 263 of the Act, the assessee filed appeal before us.

5. The Id. A.R. submitted that so-called assessment order is not an assessment order as when the Assessing Officer accepted the return of income of the assessee while reopening the assessee's case, the same ceases to become an assessment order and therefore invocation of 263 is not

justified as there is no assessment order as such. This ground is taken as additional ground no. 1 by the Id. A.R. The Id. A.R. further submitted that the Pr. CIT erred in revising and setting aside the assessment order when the Assessing Officer has examined the facts and explanations regarding source of cash deposits and has taken a subsidiary views after verifying all the details and evidences filed by the assessee during the assessment proceedings envisaged u/s. 147. The Id. A.R. further submitted that the Pr. CIT was not right in revising the assessment order as the Pr. CIT has given a different view from the Assessing Officer which amounts to the second view which is not permissible u/s. 263 of the Act. The Id. A.R. submitted that the assessee has explained all the details and sources of the cash deposits and after verifying the same, the Assessing Officer has accepted the return of income of the assessee. The Id. A.R. further submitted that the order u/s. 147 was passed after application of mind to the issues and after considering the submissions, evidences and details furnished by the assessee, thus, the assessment order is neither erroneous nor prejudicial to the interest of revenue. The Id. A.R. further submitted that the Pr. CIT was not justified in not considering the assessee's submissions before the Pr. CIT and reliance/invocation of explanation 2 to section 263 will not come in the picture as the Assessing Officer has verified all the aspects about the details of cash deposits. The A.R. further stated that in respect of no assessment order, the Hon'ble Gujarat High Court in case of Kunal Organics Pvt. Ltd. vs. DCIT Special Civil Application No. 16347 of 2004 order dated 03-03-2024. The Id. A.R. also filed the submissions which are as follows:-

*“SYNOPSIS OF SUBMISSIONS OF ASSESSEE:
Date: 08.10.2024*

1. At the outset, the appellant respectfully submits that the Order dated 21.03.2024 in respect of SO CALLED Order dated 22.03.2022 u/s 147 r.w.s 144B is without jurisdiction and is illegal and void.

Amongst the other grounds, the appellant submits on the Additional Legal Ground No:8 filed on 30.09.2024 which is raised as under:

Ground No: 8:

Without prejudice to the other grounds and in addition to the same, the Learned Principal CIT grievously erred in law and on facts in invoking section 263 of the I.T.Act as there is no order which can be revised in terms of the provisions of the law as per settled position of law, It may be so held now and the Order passed u/s 263 be quashed.

2.1

The submission on this ground is Two fold.

Firstly as there is no Order in the eye of law when the Id AO has accepted Returned income in Reassessment Proceedings after considering appellants submission, reply and documents AND NO ADDITION IS MADE FOR THE Reasons recorded, the so called ORDER is merely dropping the reassessment proceedings and in SUBSTANCE, IS NOT AN ORDER, if there is no Order, then the question of Revising Order u/s 263 does not arise.

Secondly, from the so called REASON on the basis of which reassessment proceedings were initiated is that there was cash deposit in the Bank account and that such cash deposit is "ESCAPED INCOME" However, as per settled position of law emerging from various decided cases of ITAT Delhi, Ahmedabad, Amritsar and other courts, this cannot be valid REASON TO BELIEVE REASSESSMENT PROCEEDINGS ARE HELD TO BE BAD IN LAW AND QUASHED. When the so called Order u/s 147 itself is illegal and void and bad in law, the same cannot be Revised u/s 263 of the Act.

The facts are not disputed that the assessment was reopened in the case of appellant for the REASON that the appellant had deposited Cash in the Bank account and that such cash deposit was "believed to be escaped income". This so called REASON is evident from assessment order u/s 147 dated 22.03.2022 passed by National Faceless Assessment centre as also, from para 2 of the Order u/s 263 dated 21.03.2024.

3. As is undisputed, and as concluded in para 6 of the so called order dated 22.03.2022 by National Faceless Assessment Centre considering the reply of appellant dated 16.03.2022 \ Paper Book Page 35 to 121 with evidences of source of bank deposits] it is categorically stated that " Considering reply filed by the assessee, the income returned is accepted "

4. It is therefore clear as per settled legal position, that when the very basis for which so called REASON WAS RECORDED, vanished when no addition was made after initiation of reassessment proceedings and after considering reply and evidences furnished to the Id AO. This amounts to dropping of the Proceedings

U/s 147 and hence in substance, there is no ORDER which can be revised as section 263 only permits an ORDER to be revised by the Id PCIT.

5. This issue has been dealt with in a number of cases attached herewith viz: [i]SMT. DAYA RANI VS PR CIT ITA No: 402/DEL/2021-Copy attached herewith EXHIBIT -A Sr. page 1-10 Observational at Sr. page 5-6 para 7 that:

"7. At the outset, we find once the Ld. AO having recorded the reasons for reopening the assessment and having formed a belief that income of the assessee had escaped assessment, had not made any addition in the reassessment proceedings in respect of issues that are subject matter of reopening. Hence, the very basis of formation of belief for the ld. AO vanishes. Hence, the Ld. AO could not have framed any reassessment per se. Logically the Ld. AO should have simply dropped the initiation of reassessment proceedings instead of passing reassessment order. Once, the reassessment order per se framed by the Ld. AO is not sustainable in the eyes of law, any revision order passed thereon u/s 263 seeking to revise such unsustainable order cannot be accepted in the eyes of law and consequential revision order also passed u/s 263 of the Act deserves to be quashed. Our view is further fortified by the crown of Delhi Tribunal in the case of Sh. Pramajit Singh vs. PCIT in ITA No. 446/Del/2022 separate dated 01/12/2023 wherein the Tribunal placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Software Consultants in ITA No. 914 of 2010 dated 17/01/2012."

(ii) SHRI PARAMJIT SINGH VS THE PR CIT ITA NO: 446/del/2022 [Copy attached herewith EXHIBIT-B Sr. page no: 11-18 held at para 14 Sr. page 22 that:

"In our considered opinion, for exercise of power u/s 263 of the Act. it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. A perusal of the assessment order shows that the returned income was accepted by the Assessing Officer and n no addition was made for reasons recorded at the time of issue of notice u/s 148 of the Act."

(iii) GAUTAM ENTERPRISE VS PR.CIT ITA NO: 1217/MUM/2021 (Copy attached herewith EXHIBIT-C SR. PAGE 31 TO 43] the Hon'ble ITAT considered similar issue in case of R.K.Steel Syndicate vs. ITO ITA No: 316/M/2005 and HELD AT PARA 014. Sr. page 36 that:

Subsequently the reassessment proceedings, no addition was made and returned income was assessed. Subsequently, the Commissioner of income exercised power under Section 263 of the Act on January, 2003, which culminated into an order passed under Section 263 of the Act. Therefore, the coordinate Bench was concerned that whether the order dated 28th of August, 2002 passed by the assessing officer is to be viewed as a 'reassessment order' or is to be viewed as an order dropping the reassessment proceedings

The Hon'ble ITAT reproduced the conclusion of the ITAT in above case as under [Sr page 37)

"We do not think it is permissible for us to take this order, which is nothing more than an order dropping the assessment proceedings, for computing lime limit available to the Commissioner to revise the assessment framed by the Assessing Officer on the points which are not even touched by this orders incorrect to plead that such an order can be viewed as anything but an order dropping the reassessment proceedings. It cannot be viewed as an assessment order, though termed so, in the eyes of the law....."

.....It would thus follow that what is to be really looked out is the 'substance' and not the 'form' alone, and that legal rights of the parties are to be settled as per substance of the proceedings irrespective of whatever nomenclature is assigned to the proceedings.

.....Seen in this right, what is termed as a reassessment order is really required to be viewed as an order dropping the reassessment proceedings. The assessee could not have been aggrieved of this order per se because it did not prejudice the assessee at that stage as it did not actually assess any income which was not already assessed in the original assessment order."

Therefore, it is submitted that considering the above decisions when there is in substance, no ORDER and reassessment proceedings are to be taken as being dropped, the Id PCIT had no jurisdiction to invoke section 263 of the Act. It be so held now.

(iv) Again, the issue whether when the AO being convinced that based on reasons recorded in reassessment after considering reply and submission by assessee, there is no case for addition and hence he does not make any such addition for which reason was recorded then the AO has to drop the reassessment proceedings came before our Ahmedabad ITAT in the case of GUJARAT GAS FINANCIAL SERVICES LTD VS DCIT Copy attached herewith EXHIBIT-D Sr. page 44 to 53 where in the Hon'ble ITAT referred to decision of the coordinate Bench of Amritsar ITA No: 222/ASR/2014 and reproduced the observations made therein [at Sr page 49 herewith] as under:

".....when the Assessing Officer is satisfied that no additions can be made on the basis of the reasons of reopening, as recorded by him, he has to drop the reassessment proceedings at this initial stage itself."

(v) The above observations and conclusion of the legal position that when no addition is found by AO to be made in reassessment, he has to drop the proceedings has also been considered by Hon'ble HYDERABAD ITAT in the case of Clarion Power Corporation Ltd vs. ACIT ITA No: 1336/HYD/2018 \ Copy attached EXHIBIT-F Sr. page No: 63 to 69 relevant observations so reproduced at Sr. page 67

(vi) Again, In the case of ASIHWARYA RAI BACHCHAN VS The PR CIT ITA No:754/Mum/2021 [Copy attached herewith EXHIBIT-G Sr. page 70 to 75] in which at Sr. page 74 para 4.1 the Hon'ble ITAT has also confirmed the above legal position and held that

"One more excruciating fact that needs to be addressed in the instant case is that the Id. PCIT herein is only seeking to revise the order passed by the Id. AD

u/s.143(3) r.w.s. 147 of the Act dated 12/12/2018. In the said re-assessment proceedings, the Id. AO had not even made any addition despite the fact that he had reason to believe that income of Rs.11,55,330/- had escaped assessment in the hands of the assessee which was sought to be taxed u/s.56 of the Act as per the reasons recorded. Hence, when the very basis of reasons recorded by the Id. AO was ultimately not added by the Id. AO in the re-assessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such re-assessment cannot be treated as a valid order in the eyes of law. The same is to be declared as void ab initio... When an assessment framed by the Id. AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of section 263 proceedings. On this count also, the revision order passed by the Id. PCIT u/s.263 of the Act deserves to be quashed.

4.2. In view of the aforesaid observations, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act for more than one reason as detailed supra”

5.1 Second reason to hold that proceedings u/s 263 of the Act is illegal and deserves to be quashed is that assuming the so called ORDER of reassessment as an Order, the said Reassessment Order itself was invalid and illegal as there was no valid REASON to believe that income had escaped assessment. When the very so called ORDER is illegal, the same cannot be Revised u/s 263 of the Act.

HOW THE SO CALLED REASSESSMENT ORDER OF A.O. DATED 22.03.2022 IS INAVLID:

Kind attention in this regard is drawn to the following decisions in which it is held that if the reopening of assessment is initiated for the Reason that there was cash deposited in bank account, the reassessment proceedings are invalid and order deserved to be quashed since cash deposited in bank account cannot be believed to be escaped income.

[I] MARIUM ISMAIL RAJWANI ITA NO: 676/AHD/2016 \ Copy attached EXHIBIT-H Sr. Page No: 76-81] in which at Sr. Page 81 Para

6. the jurisdictional Ahmedabad ITAT following decision in the case of Bir Bahadur Singh Sijwali vs ITO 68 SOT 197 [which in turn had followed Apex Court and other High Courts judgment I held that "In the present case also, there is nothing more than cash deposit of R.12,76,000/- in the bank account to justify the reopening of assessment by holding the belief that income has escaped assessment. A mere cash deposit in the bank account, however, cannot justify such a belief or inference, in this view of the matter, and d respectfully respectfully following f the division bench order in the case of Bir Bahadur Singh Sijwali (supra), hold that the very initiation of reassessment proceedings, on the facts of this case, were unsustainable in law. I, therefore, quash the reassessment proceedings and the impugned reassessment order. As the reassessment itself stands quashed all other issue raised in the appeal are rendered infructuous and do not coil for any adjudication"

[II] BIR BAHADUR SINGH SIJWAMLI VS ITA ITA NO: 3814/DEL/2011

[Copy attached EXHIBIT-I Sr. Page 82-87] in which at sr page 85 para 8 it is held that:

"The Assessing Officer has opined that an income of Rs. 10,24,100 has escaped assessment of income because the assessee has Rs. 10,24,100 in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of assessee."

The Honble ITAT quashed reassessment since reasons recorded as above were not sufficient for reopening.

[III] PRAVEENKUMAR JAIN VS ITO ITA NO: 1331/DEL/2015 \ Copy attached EXHIBIT-J page Sr. No: 88-97] in which at page 92 it is held that:

"The deposit in the bank account of the assessee does not establish any live nexus between the information and formation of the believe that there was escapement of the income by the assessee. There may be end number of reasons and sources of deposit of cash in the bank which may not constitute the same as income of the assessee and therefore merely deposit of cash in bank itself would not lead to the conclusion or believe that the said amount is assessable income of the assessee and escapement of assessment"

The Hon'ble ITAT quashed reassessment.

5.2 Identical issue is also decided in several other cases namely Ashish Natverlal Vashi ITA No:3522/Ahd/2016 SURAT ITAT,, Munni Devi Vs ITO ITA No: 3534/DEL/2014, Amrik Singh vs ITO-159 ITD 329 (Amritsar/ ITA No: 630/ASR/2015 in which it is held that reassessment on the so called REASON that there being cash deposited in bank, there was escapement of income is invalid and was quashed.

6.1 In view of the above legal position also, the Id PCIT was not justified in Revising an illegal and invalid so called Reassessment Order. It be so held now.

6.2 It is settled law that assessee can challenge the Validity of re-assessment proceedings in collateral proceedings (relating to examination of validity of Order passed) under section 263 of the I.T.Act. Kind attention is drawn to the decision in case of M/s Super Sonic Technologies Pvt Ltd vs The PCIT ITA No: 2269/Del./2017 [Copy attached EXHIBIT-K Sr. Page 98 to 108] in which at Sr Page 107 para 6.1 it is held that

"It is well settled Law that assessee can challenge the validity of the re assessment proceedings in the collateral proceedings & relating to examination of validity of Order passed) under section 263 of the I.T. Act, We rely upon the Order of ITAT Mumbai Bench in the case of Westlife Development Ltd vs PCIT 49 ITR (Trib)) 406 in which it was held that "allowing the appeal (i) that jurisdiction aspect of the Order passed in the primary proceedings can be examined in collateral proceedings also. Thus the assessee could be permitted to challenge the validity of the order passed under section 263 on the ground that the assessment order was non-est". Since the re-assessment order itself is bad in law, therefore Ld Counsel for the Assessee rightly contended that the same cannot be revised under section 263 of the I T. Act Only valid re-assessment order can be revised under section 263 of the T. Act

6.3 The Jurisdictional ITAT Ahmedabad "D" bench in the case of Shri Jignesh Lilachand Shah vs The PR CIT ITA No 149/Ahd/2021 vide Order dated 21.03.2023 hrs also followed various decisions including above cited Mumbai (TAT decision in case of Westlife Development Ltd and other decisions of PUNE and Lucknow Bench to hold that no revision u/s 263 is permissible of order u/s 147 which is not valid order of reassessment and does not stand in eye of law.

In view of above legal position on both the above grounds that there is no reassessment order, it is not revisable and also even technically it may be an order, the same being illegal and invalid, the revision of such order is not permissible. It is therefore prayed that the order passed u/s 263 of the Act by Ld PCIT be set aside and quashed 71 Without prejudice to the above ground on legality of Revision proceedings, it is submitted that the ld AO, while accepting the submission of the appellant along with evidences like confirmation of the donors which are from Son in law with copy of their IT returns and PAN for the explanation of sources of cash deposited in bank account as also as also, there being no further inquiry or opportunity as per appellants submission to the ld AO paper book page 21 to 121 a plausible view was taken by ld AO national Faceless Assessment

Centre) and hence no addition was made Merely because ld PCIT does not agree, revision u/s 263 is not permissible

As per Judgment of Apex Court in the case of Malabar Industries Co Ltd vs CIT 243 ITR 83 in which it is held that

"The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to on erroneous order of the Income-tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income-tax Officer is unsustainable in law"

Therefore Order passed considering totality of facts is not Erroneous nor prejudicial to the interest of revenue.

7.2 As regards Explanation to Section 263, it is now well settled that said Explanation has not expanded Scope of section 263 and as held in several cases including by Ahmedabad ITAT and as noted in M/S Arun Kumar Garg HUF vs. PCIT, ITA No. 3391/Del/2018, dt. 08.01.2019

"5.6 Although, there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 1.6.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues

already examined during the course of assessment proceedings. The Mumbai ITAT Bench has dealt with Explanation 2 as inserted by Finance Act, 2015 in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 taxman.com 227 to hold that the said Explanation cannot be said to have overridden the liability as interpreted by Hon'ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the assessment order was unsustainable in law. The ITAT Mumbai Bench has further held that the intention of the legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings"

8.1 In view of the above facts and legal position, all the grounds of appeal be, it is prayed, allowed now"

6. The ld. D.R. submitted that the assessee has filed the return of income but the same cannot be framed as return of income as it was filed belatedly. The Pr. CIT has categorically given the findings that the Assessing Officer has reopened the assessee's case on the basis of information about cash deposits totaling to Rs. 31,81,000/- deposited in the bank account maintained with HDFC bank by the assessee and the assessee has given arbitrary details of generation of cash during the assessment proceedings which was accepted by the Assessing Officer without any further detailed inquiry. Thus, it is erroneous and prejudicial to the interest of revenue. The ld. D.R. relied on the order passed u/s. 263 of the Act. As regards the additional ground no. 8, the ld. D.R. submitted that the reassessment order passed u/s. 147 r.w.s. 144 r.w.s. 144B was an assessment order and therefore it cannot be treated as no assessment order passed u/s. 147 whether it has been accepted the return of the income of the assessee will not tantamount it that the same is not assessment order. In fact, it is a valid re-assessment order. The ld. D.R. further submitted that the decision of Hon'ble Gujarat High Court in case of Kunal Organics Pvt. Ltd. supra has a distinguishing facts and therefore, it

will not be applicable in assessee's case. The ld. D.R. further pointed out that the assessee has not challenged the order u/s. 147 of the Act and therefore cannot be stated that there is no valid order as such.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the additional ground taken by the assessee stating that there is no valid assessment order passed u/s. 147 of the Act thereby relying upon the decision of Hon'ble Gujarat High Court as well as the decision of Tribunal (Calcutta Bench). The sum and substance in those two cases are different from the assessee's case as in case of Kunal Organics Pvt. Ltd. (supra), the proceedings u/s. 148 was dropped and therefore the said assessment u/s. 143(3) will not amount assessment order itself. In case of Concord Infra Project Pvt. Ltd. the observation taken on record by the Tribunal in respect of ITA No. 174/Kol/2021 dt. 13-10-2021) is related to the law established that decree passed by court without jurisdiction is a nullity. But in the present case, it is a decree to valid assessment order after reopening the assessee's case for the component of verifying and obtaining details of cash deposits in assessee's bank account. Thus, both these cases will not be applicable in present assessee's case. Further, the assessee at no point of time has challenged the order u/s. 147 in any court of law stating that the Assessing Officer has accepted its income therefore the assessment order passed u/s. 147 r.w.s. 144 r.w.s 144B of the Act is justified. Thus, additional ground no. 8 taken by the assessee is dismissed. Now coming to the merits of invocation of section 263 of the Act in assessee's case. From the perusal of the relevant statutory notices issued during the re-assessment proceedings/reopening of the assessee's case u/s.

147, the assessee as it has taken categorically called upon for cash deposits in his bank account for assessment year 2013-14 for which the assessee has given the details and therefore the invocation of section 263 on the very same issue cannot be justified on the part of the Pr. CIT(A) as this issue was verified by the Assessing Officer during the assessment proceedings conducted u/s. 147 of the Act. Thus, the order u/s. 263 is not justifiable as it is just second opinion and the invocation of 263 is not allowable for taking a different view. The assessment order is not at all erroneous or prejudicial to the interest of revenue and therefore the order passed u/s. 263 of the Act by the Pr. CIT does not sustain.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28-10-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 28/10/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद