

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.1032/Ahd/2024
(Assessment Year: 2014-15)

Mrugesh Jitendrabhai Shah, D-3, Harish App., Vibhag-2, Shantivan, Paldi, Ahmedabad-380007	Vs.	Principal Commissioner of Income Tax, Ahmedabad-1, Ahmedabad
[PAN No.APZPS3513E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Divatia, A.R.
Respondent by:	Shri Prithviraj Meena, CIT DR

Date of Hearing	27.11.2024
Date of Pronouncement	28.11.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Ahmedabad-1, vide order dated 21.03.2024 passed for A.Y. 2014-15.

2. The Assessee has taken the following grounds of appeal:-

“1.1 The Order U/s. 263 passed on 21-03-2024 by Pr.CIT, Ahmedabad-1, A’bad (for short Pr. CIT) for AY 2014-15 holding that the order of assessment u/s 147 rws 144B passed on 28.03.2022 by AO was erroneous and prejudicial to the interest of the revenue on account of failure to inquire about the cash payment of Rs. 20,82,500/- is wholly illegal, unlawful and against the principles of natural justice.

2.1 The ld. Pr. CIT has grievously erred in law and or on facts in holding that the order of assessment u/s 147 rws 144B passed on 28.03.2022 by AO was erroneous and prejudicial to the interest of the revenue.

2.2 That the in the facts and circumstances of the ld. Pr. CIT ought not to have invoked the powers of revision u/s 263 and thereby holding that the source of cash payment of Rs. 20,82,500/- was neither examined nor addition made by AO.

3.1 The ld. Pr. CIT has grievously erred in law and or on facts in holding that the provision of Explanation-2 to sec.263 was attracted in the facts of the case.

3.2 That the in the facts and circumstances of the ld. Pr. CIT ought not to have directed AO to pass a fresh order of fresh assessment order as per the observations made in the impugned order by him in respect of the source of investment in the industrial shed.”

3. The brief facts of the case are that the assessee is an individual and is engaged in the business in the name of M/s. M. J. Marketing and is engaged in the business of share trading. For the impugned assessment year, the assessee filed return of income declaring total income of Rs. 2,28,870/-. Assessment order under Section 147 of the Act was passed with an addition of Rs. 4,79,700/- on account of unexplained investment. On perusal of the case records, the PCIT observed that the case of the assessee was reopened on the basis of information of cash payment i.e. for payment of “on-money” of Rs. 20,82,500/- to Kushal Industrial Park by M/s. Kushal Infrastructure Pvt. Ltd. The PCIT observed that the AO had made addition of Rs. 4,79,700/- on account of difference of document value of property. From the records, the PCIT observed the document value of the property in which the investment made by the assessee was Rs. 14,79,700/- and the assessee had explained sources of Rs. 10,00,000/- being bank loan. The PCIT was of the view that the AO had verified only the document value of investment, but he has failed to verify cash payment of Rs. 20,82,500/- appearing in the seized documents. Accordingly, the PCIT held that the order of the AO was erroneous and prejudicial to the interest of the Revenue, since the AO failed to carry out the necessary verification.

4. The assessee is in appeal before us against the aforesaid order passed by Ld. PCIT. The Counsel for the assessee submitted that if one takes a closure look at the case records, it would be evident that the AO had carried out due enquiries on the issue and it was only after taking into consideration the replies filed by the assessee that the assessment order

had been framed. The Counsel for the assessee drew our attention to the order passed by the AO dated 28.03.2022 and submitted that in the assessment order itself there is a specific mention that the basis for reopening itself was that the assessee had paid cash amounting to Rs. 20,82,500/- towards purchase of property vide sale deed dated 15.04.2013. Therefore, it is not a case where there is no discussion in the assessment order regarding the payment in cash of Rs. 20,82,500/-. Further, from para 2 of the assessment order, it is evident that the AO issued notices dated 15.01.2022, 17.02.2022 and 02.03.2022 for furnishing documents for carrying out necessary verification. Thirdly, the Counsel for the assessee drew our attention to reply of the assessee dated 18.02.2022, wherein the assessee's gave details regarding purchase of the aforesaid property and at para 7 of the said reply filed by the assessee, the assessee specifically stated that the assessee **had not made any cash payment and the property in question was bought for a sum of Rs. 14,10,500/- through banking channels.** The Counsel for the assessee also drew our attention to pages 22 of the Paper Book, wherein the details of the aforesaid property were duly submitted before the AO for his consideration. Further, the Counsel for the assessee drew our attention to draft assessment order dated 12.03.2022 in which various additions were proposed by the AO including a disallowance of Rs. 14,79,700/- in relation to purchase of the aforesaid property. On receipt of the above draft assessment order proposing to make variations to the income of the assessee, the assessee immediately requested for a Video Conference on 22.03.2022 with the Assessing Officer and submitted necessary details in relation to the property including copies of bank statement etc. and most importantly upon going through the various replies filed by the assessee, in the final assessment order, with respect to very same property in

question, the Ld. AO disallowed a sum of Rs. 4,79,700/- as unexplained investment towards purchase of the aforesaid property. Therefore, the Counsel for the assessee submitted that clearly detailed enquiry regarding the purchase of the aforesaid property had been made by the AO, therefore, this is not a fit case where the assessment order is liable to be set-aside on the grounds that it is erroneous and prejudicial to the interest of the Revenue for the reason that firstly, the AO had made specific enquiries in relation to purchase of the aforesaid property. Secondly, vide letter dated 18.0.2022, the assessee had specifically submitted that the assessee had not made any cash payments towards purchase of property and thirdly, after due application of mind the AO in the final assessment had disallowed a sum of Rs. 4,79,700/- as unexplained investment with respect to investment the same property.

5. In response, Ld. DR placed reliance on the observations made by Ld. PCIT in the 263 order.

6. We have heard the rival contentions and perused the material on record.

7. On going through the facts of the instant case, we observe that this is a case where AO had made specific reference to the cash payment of Rs. 20,82,500/-, the assessee had given a specific reply that the assessee had not made any cash payment towards purchase of this property, the assessee had furnished details regarding investment in the said property including furnishing of bank statement and upon due application of mind, the AO with respect to the same property in question, had disallowed a sum of Rs. 4,79,700/- while finalizing the assessment. Therefore, this is

not a case where there was any lack of enquiries or non-application of mind on part of the Assessing Officer.

8. The Hon'ble Punjab & Haryana High Court in the case of **CIT v. Indo German Fabs IT Appeal No. 248 of 2012, dated 24 12-2014**, in the following words:

"Section 263 of the Act confers power to examine an assessment order so as to ascertain whether it is erroneous and prejudicial to the interest of the revenue but does not confer jurisdiction upon the CIT to substitute his opinion for the opinion of the Assessing Officer. The words prejudicial and erroneous have to be read in conjunction and therefore, it is not each and every error in an assessment that invites exercise of powers under Section 263 of the Act, but only orders that are erroneous and prejudicial to the interest of the revenue."

9. The Delhi HC in the case of Delhi High Court in the case of **CIT Vs. Sunbeam Auto 332 ITR 167 (Del.)** has made the following observations in this regard:

"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous."

10. In the case of **Rajgul Credit Invest P. Ltd. Vs. PCIT, I.T.A. No. 2519/DEL/2019, dt. 19.09.2019**, made the following observations on this aspect of the matter:

"Thus, we are of the view that the assessing officer has taken a plausible view in the facts and circumstances of the case. Even though the Ld Pr. CIT has drawn certain adverse inferences from the document, yet it can be seen that they are debatable in nature. Further, as noticed earlier, the Ld Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inferences. He has also not shown that the view taken by him is not sustainable in law. Thus, we are of the view that the Ld Pr. CIT has passed the impugned revision orders only to carry out fishing and roving enquiries with the objective of substituting his views with that of the AO. Hence we are of the view that the Ld Pr. CIT was not justified was not correct in law in holding that the impugned assessment orders were erroneous."

11. Accordingly, looking into the instant facts and the judicial precedents cited above, once it is found that the AO had made due enquiries during the course of assessment proceedings and thereafter, had made certain additions, then the PCIT is precluded from taking recourse to 263 proceedings only with the objective of substituting his own view with a view taken by the AO during the course of assessment proceedings, unless the view taken by the Ld. AO is wholly unsustainable in law. Accordingly, looking into the instant facts, we are of the considered view that the assessment order is not erroneous and prejudicial to the interest of the Revenue.

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

This Order pronounced in Open Court on	28/11/2024
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Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/11/2024

TANMAY, Sr. PS

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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