

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT &  
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **58/CHD/2021**

निर्धारण वर्ष / Assessment Year : 2017-18

Smt. Renu Singla C/o M/s Singla Surgical & Maternity Hospital, Mahal Mubarak, Sangrur 148001	Vs. बनाम	The PCIT, Patiala
स्थायी लेखा सं./PAN No: ABNPS5997C		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(Hybrid Hearing)

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

सुनवाई की तारीख/Date of Hearing : 26.11.2024

उद्घोषणा की तारीख/Date of Pronouncement : 28.11.2024

**आदेश/Order**

**Per Krinwant Sahay, A.M.:**

Appeal in this case has been filed by the Assessee against the order dated 31.03.2021 of the Id. Principal Commissioner of Income Tax, Patiala [ herein referred to as 'PCIT'].

2. Grounds of appeal are as under: -

1. *That the Worthy PCIT, Patiala has erred in assuming the jurisdiction u/s 263(1) of the Income Tax Act, 1961, and, thereby, setting aside the assessment already framed u/s 143(3) vide order dated 25th March, 2019 to the file of the Assessing Officer.*
  2. *That the Worthy PCIT, Patiala has failed to appreciate that the assessment was completed after due application of mind by the concerned AO and, therefore, the provision of section 263 are not applicable.*
  3. *That the finding of the PCIT, about the sum of Rs. 40 lacs to the assessed u/s 69A r.w.s. 115BBE and to be charged to a special rate of tax is wholly misconceived and against the facts and circumstances of the case.*
  4. *That the case laws which have been cited by the PCIT, Patiala are not applicable to the facts of the case.*
  5. *That the worthy PCIT, Patiala has erred in applying the (Explanation 2) to section 263 inserted w.e.f 01.06.2015 as the concerned Assessing Officer had duly made appropriate enquiries and applied his mind and assessed the income offered during survey as business income.*
  6. *That the appellant craves leave to add, amend, and alter any of the grounds of appeal or to take any additional grounds of appeal before the appeal is disposed off.*
3. Brief facts, as per the written submissions filed by the Counsel of the Assessee, are as under: -

1. The assessee is a doctor engaged in her medical practice along with a retail sale of medicines at her clinic only. For the said profession, the assessee maintains a complete set of books of account which are duly audited by a chartered accountant and on the basis of such audited set of financial statements; the assessee files her return of income.

2. For the year under consideration, the assessee filed her return of income on 04.10.2017 wherein, the assessee declared her total income to the tune of Rs. 1,02,15,603/-.

3. During the FY 2016-17 i.e. on 30.08.2016, a survey action u/s 133A of the Act was carried out at the premises of the assessee and during the course of survey action, certain discrepancies were found / detected in form of excess cash and unaccounted advances and in order to cover up the discrepancies and to buy peace of mind, the assessee made surrender as follows:

S. No.	Particulars	Amount
1.	Surrender on account of unaccounted cash	9,30,000/-
2.	Surrender on account of unaccounted advances	30,70,000/-
	Total Amount of surrender	40,00,000/-

4. It is important to mention here that the said surrender was made by the assessee only in order to buy peace of mind. As her income over and above the normal income meaning thereby regular disclosed income and as the source of income is only from the profession of the assessee, hence,

the assessee credited the said amount of Rs. 40,00,000/- in her profit & loss account for the year ending 31.03.2017 and paid tax on the said surrender income. Furthermore, during the course of survey action, statement of the assessee was also recorded. It is noteworthy to mention here that the assessee does not have any other source of income other than the regular medical profession of the assessee.

5. Subsequent thereto, the return of income as filed by the assessee was processed and the case of the assessee was selected for scrutiny.

6. It is hereby submitted that in the said questionnaire, the ld. AO has asked the assessee to submit a brief note on the business activities of the assessee and the assessee in response to the said point has duly submitted as under:-

*"I am a doctor doing medical practice alongwith retail, sale of medicine at my clinic under the name and style of Mis. Singla Surgical & Maternity Hospital, Mubarak Kothi, Sangrur. I have no godown. My books of accounts are maintained at Mubarak Kothi, Sangrur."*

7. Thereafter, another notice dated 16.01.2019 was issued to the assessee wherein, vide Q. 1 and Q. 2, the ld. AO asked the assessee specifically about the surrender made by the assessee during the course of survey action. In response to the said questionnaire, the assessee filed her detailed reply dated 16.01.2019 wherein, the assessee has duly produced the books of account maintained by the assessee for verification by the Ld. AO.

8. Subsequently, after careful perusal of the records and documents and after due application of mind on the books of accounts produced by the assessee during the course of assessment proceedings, the assessment was concluded and the assessment order dated 25.03.2019 was passed u/s 143(3) of the Act. It is pertinent to mention here that the Ld. AO. has accepted the returned income of the assessee and assessed the total income of the assessee at returned income of the assessee without any adverse remark over the submissions made by the assessee during the course of assessment proceedings.

9. Thereafter, in the case of the assessee, jurisdiction u/s 263 of the Act was assumed by the PCIT and a Show Cause Notice ('SCN') dated 08.11.2019, 21.01.2021 was issued to the assessee wherein, the Worthy PCIT show caused the assessee as to why the original assessment in the case of the assessee should not be set aside and the case of the assessee be selected for revision assessment on the grounds that the amount surrendered by the assessee to the tune of Rs. 40,00,000/- during the survey action deserves to be taxed at 77.25% on the alleged application of provisions of section 115BBE of the Act.

10. In response to the said SCN, the assessee filed her reply dated 19.11.2019 and 28.01.2021 wherein, the assessee has duly stated that the surrender of Rs. 40,00,000/- was made only out of the professional income of assessee and thereby the said amount of Rs. 40,00,000/-

has been shown by the assessee in her profit and loss account for the year ending 31.03.2017. Further, in the said reply it was also duly stated that the provisions of this section were applicable from 15.12.2016 and in the case of the assessee. survey was conducted on 30.08.2016, hence, the said provisions of section 115BBE of the Act are not applicable in the case of the assessee.

11. Thereafter, on 12.03.2021, Worthy PCIT issued another notice dated 12.03.2021 wherein, out of nowhere the Worthy PCIT has stated that the assessee has credited her profit and loss account for Rs. 50,00,000/-. In response to the said notice, the assessee filed her reply dated 17.03.2021 wherein, the assessee has duly stated that the assessee have professional income only and there is no other source of income of the assessee and no part of surrender income of the assessee is covered u/s 68 to 69D of the Act.

12. However, the reply filed by the assessee in response to the SCN u/s 263 of the Act was not considered properly by the Worthy PCIT and order u/s 263 of the Act dated 31.03.2021 was passed wherein, the case of the assessee was set aside to the file of the AO on the issue of chargeability of tax @ 60% on income surrendered by the assessee.

4. During the proceedings before us, the Id. Counsel for the Assessee has filed a written submission on this issue, which is as under:-

1. At the outset, it is hereby submitted that the case of the assessee was selected for scrutiny only on the issue that a survey action was carried out at the business premises of the assessee and the assessee during the course of survey, surrendered an amount of Rs. 40,00,000/-. As per the assessment order, it has been written by the Ld. AO in para 1 as under:

*"Subsequently, the case was selected under Compulsory Manual Selection being survey case"*

Hence, the assessment in the case of the assessee was concluded after due verification of the facts and circumstances of the case of the assessee and after due application of mind as the only issue for selection of case of the assessee for scrutiny itself was the surrender made by the assessee during the course of survey action.

2. Furthermore, it is hereby pertinent to mention here that in the case of the assessee, the Ld. AO vide notice dated 16.01.2019 has specifically asked the assessee about the surrender of Rs. 40,00,000/- made by the assessee during the course action wherein, the Ld. AO has asked the assessee to justify the item wise surrender made by the assessee and in response to the said notice, the assessee has duly produced her books of account and

submitted a detailed explanation with regard to the amount surrendered by the Ld. AO vide her reply dated 20.01.2019. Hence, The AO took a POSSIBLE VIEW on the taxability of income surrendered by the assessee and accepted the sum surrendered as part of business income of the assessee vide his assessment order dated 24.12.2019 passed u/s 143(3) of the Act.

3. Further, the revision proceedings u/s 263 of the Act have been initiated merely on the basis of DIFFERENCE OF OPINION which cannot be taken as a ground to determine the order passed by the AO as erroneous and prejudicial to the revenue. Reliance in this regard is placed on the following judgments including the judgment of jurisdictional Bench of ITAT wherein it has been held that the action of the Worthy PCIT u/s 263 of the Act is bad in law where the AO, after due application of mind during the course of assessment proceeding, took a possible view which is different from the PCIT and has accepted the additional income surrendered as a business income of the assessee:

*CIT vs. Nirav Modi 77 Taxmann,.com 15 (SC)*

*PCIT vs. Shreeji Prints (P.) Ltd [2021] 1230 Taxmann.com 294 (SC).*

*Dev Raj Hi Tech Machines Ltd vs. DCIT 83 Taxmann.com 15 (Amritsar Trib.)*

*PCIT vs. Deccan Jewellers P. Ltd 132 Taxmann.com 73 (A)*

*Loil Continental Foods Limited vs. PCIT in ITA  
577/Chd/2017 (Chd. Trib)*

*M/s Venus Texspin Ltd vs. PCIT in ITA No. 793/Chd/2017*

*Pramod Kesharchand Shah vs. PCIT in ITA No.  
53/SRT/2018*

5. The ld. Counsel for the Assessee has argued the case on the line of the facts and case laws brought on record by him in his written submissions.

6. The ld. DR relied on the order of ld. PCIT.

7. The ld. Counsel also brought on record an order passed by the Chandigarh Bench of the ITAT in the case of Gandhi Ram in ITA No. 121/Chd/2021 which is almost on similar kind of facts. These submissions of the ld. Counsel are as under: -

*“6. Without prejudice to our above submissions and even on merits, the view of the Ld. PCIT is not consistent with the view taken by the Jurisdictional Chandigarh Bench. It is hereby also submitted that in the case of the assessee, during the course of survey action, an amount of Rs. 40,00,000/- was surrendered, the details of the same areas under:*

Particulars	Value as on the date of survey	Value as per books of accounts	Surrender made by the assessee
Cash	20,88,313/-	11,58,313/-	9,30,000/-
Advances as per notebook	30,70,000/-		30,70,000/-

7. *It is hereby submitted that the assessee is engaged only in the medical profession and other than this, the assessee does not have any other source of income. From the statement of the assessee recorded during the course of survey action, the assessee has duly stated vide her reply to Q 3 that the assessee is a proprietor of M/s. Singla Surgical a Maternity Hospital, Sangrur and apart from this the assessee have other income from other sources.. Hence, the income from medical profession is the only source of income of the assessee. In this regard, it is hereby submitted when the assessee does not have any source of income other than the medical profession whether known or unknown and no adverse remark has been passed by the Ld. AO with regard to the same in the assessment order, hence, the source of excess cash found and advances is only the business income of the assessee and therefore, the same has correctly been showed by the assessee in his profit and loss account. Reliance in this regard is placed on the judgment of Hon'ble Chandigarh Bench of ITAT in the case of Gandhi Ram in ITA No. 121/CHD/2021.*

8. We have considered the findings given by the ld. PCIT in his order passed u/s 263 and we have also considered the arguments made by the ld. DR during the proceedings before us. We have gone through the written submissions filed by the Counsel of the Assessee and we have also seen different case laws brought on record. We find that the Chandigarh Bench of the Tribunal in the case of Gandhi Ram in ITA No. 121/Chd/2021 (supra) has very clearly given its findings

almost on the same issue. The Tribunal in the case of Gandhi Ram in ITA No. 121/CHD/2021 has given its findings as under:-

*"We therefore find that the Assessing officer has duly taken cognizance of statement of the assessee recorded during the course of survey, the surrender letter and the return of income, and after examination thereof and due application of mind has not drawn any adverse inference and income has been rightly assessed under the head "business income". In light of the same, we are of the considered view that the order so passed by the Assessing officer cannot be held as erroneous due to lack of enquiry or for that matter, requisite enquiry on the part of the Assessing officer. Where the Assessing officer after due appreciation of facts and circumstances of the case, assessed the income under the head "business income" and didn't invoke the deeming provisions as so suggested by the Id PCIT, we do not believe that there is any error on part of the Assessing officer and the order so passed by him cannot be held as erroneous. As we have stated above, the Id. PCIT without recording any specific findings as to the applicability of deeming provisions has gone ahead and held that the deeming provisions are applicable in the instant case. Even for sake of argument, where such a view is taken on face value, it would be a case where a*

*different view has been expressed by the Id PCIT, however, the same doesn't lead to the conclusion that the view taken by the Assessing officer as erroneous as the AO has taken into consideration the entirety of facts and circumstances of the case, the explanation offered by the assessee during the course of survey regarding the source of such income and thereafter, has assessed the income under the head "business income". The view so taken by the Assessing officer is after due application of mind and is not unsustainable in the eyes of law. In the facts and circumstances of the present case, where there are specific questions asked during the course of survey regarding the nature and source of income and which has been adequately responded to by the assessee and thereafter acted upon in terms of disclosing the income in the return of income under the appropriate head of income and where the same is duly examined and taken into consideration by the Assessing officer during the course of assessment proceedings, the order so passed by the Assessing officer cannot be held as erroneous in nature. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, the order so passed by the Id PCIT u/s 263 cannot be sustained in the eyes of law and is hereby set-aside and that of the Assessing officer is sustained."*

9. As the instant case is squarely covered by the finding given by the Chandigarh Bench of the Tribunal in the case of Gandhi Ram (supra) in ITA No.121, we find no reason to disturb the ratio given by the Chandigarh Bench of the Tribunal in that case. Accordingly, the order passed by the PCIT u/s 263 of the Act cannot be sustained. Hence, Assessee's appeal on this issue is allowed.

10. In the result, the appeal is allowed.

Order pronounced on 28.11.2024.

**Sd/-**  
**( RAJPAL YADAV )**  
**Vice President**

**Sd/-**  
**( KRINWANT SAHAY )**  
**Accountant Member**

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar