

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. **379/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2013-14

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|---|-------------|------------------------|
| Guljeet Kaur Johal, H.No. 107, Sector 28-A, Chandigarh 160019 | Vs. बनाम | PCIT-1, Chandigarh |
| स्थायी लेखा सं./PAN No: AKLPJ8345G | | |
| अपीलार्थी/ APPELLANT | | प्रत्यर्थी/ RESPONDENT |

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 29.10.2024

उद्घोषणा की तारीख/Date of Pronouncement : 25.11.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Assessee against the order dated 19.03.2024 of the Id. Principal Commissioner of Income Tax -1, Chandigarh [herein referred to as 'PCIT'].

2. Grounds of appeal are as under: -

1. *That on law, facts & circumstances of the case, the Worthy Pr. CIT has grossly erred in assuming jurisdiction u/s 263 even when:*

- 1.1. *The original assessment order passed u/s 143(3) did not satisfy the twin conditions of being an 'erroneous order' and 'prejudicial to the interest of revenue'.*
- 1.2. *The Worthy Pr. CIT has erred in setting aside the original assessment order and in directing the AO to make assessment afresh on the ground that AO had not conducted worthwhile enquiries during the assessment proceeding even when the AO had conducted thorough enquiries and also most importantly the Pr. CIT failed to carry out any enquiry himself and also failed to demonstrate which most necessary enquiry the Ld. AO failed to carry out.*
- 1.3. *The Worthy Pr. CIT failed to appreciate that inadequate inquiry does not amount to lack of inquiry so as to assume valid jurisdiction u/s 263.*
- 1.4. *The Worthy Pr. CIT has erred in setting aside the original assessment on the ground that the assessee had made Term Deposits of Rs. 34,00,000/- even when no such deposits were made during the year and even the PCIT had no such evidence in hand.*
- 1.5. *The Worthy Pr. CIT has conducted the impugned proceedings u/s 263 in extreme haste and without affording reasonable opportunity of being heard to the appellant.*

That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.

3. Brief facts of the case, as per PCIT's orders are as under:-

The brief facts of the case are that the case was reopened u/s 147 of the Act based on the information that the assessee had made following transactions: -

| Sr. No. | Nature of Transaction | Amount involved (in Rs.) |
|---------|---------------------------|--------------------------|
| 1 | Cash Deposit | 35,25,000/- |
| 2 | Term Deposit | 34,00,000/- |
| 3 | Interest income from bank | 84,399/- |

Thereafter, notice u/s 148 was issued to the Assessee on 28.02.2020. The assessee, however, did not file the return of income. Subsequently, the assessment u/s 147 r.w.s. 144B of the Income Tax Act, 1961 was completed on 24.09.2021 by making the addition on the transactions mentioned at Sr. No. 1 & 3 supra.

2. A perusal of the relevant assessment records revealed that the assessing officer failed to add the amount of Rs. 34,00,000/- (term deposit) despite the fact that no explanation was offered by the assessee during the course of the assessment proceedings. Therefore, a notice u/s 263 was issued to the assessee vide letter ITBA/REV/F/ REV1/2023-24/1061622805(1) dated 27.02.2024 by fixing the hearing on 04.03.2024.

4. In response to the PCIT's notice u/s 263 of the Income Tax Act, 1961 (in short 'the Act'), the Assessee filed its reply as under:-

“2. Arguments in respect of alleged unexplained term deposits of Rs. 34 lakhs:

- 2.1. *The fact of investment of Rs. 34 Lacs made by the assessee in fixed deposits in bank during the year is factually incorrect. During the year in question, no fresh investment was made in the form of FDRs. This fact is duly evident from bank statements of the assessee. Copy of statement of all 5 Bank accounts of the assessee for the year in question are enclosed herewith.*
- 2.2. *Further, the fact that the assessee did not make any such investment of Rs. 34 Lacs in FDRs during the year has been confirmed by the assessee through her duly sworn and attested affidavit, which is enclosed herewith.*
- 2.3. *It is when the Ld. AO found this issue of investment in FDRs of Rs. 34 Lacs as a non-existent or factually incorrect issue that he rightly did not make any addition.*
- 2.4. *In case your goodself has any evidence that the assessee made investment of Rs. 34 Lacs in FDRs in Bank during the year, the same may please be confronted to the assessee. Mere passing on of general information through a letter by the bank cannot be held as evidence to make the addition. The assessee has already discharged the onus by producing her bank statements and affidavit to show that no such FDR was made and the information in your good self’s possession, if any, is factually incorrect. Therefore, the proceedings-initiated u/s 263 may please be dropped.*

3. Legal Arguments:

3.1. *Firstly, the contention raised in the notice u/s 263, that these issues were not examined by the Ld. AO, is factually incorrect. The assessment proceedings u/s 147 was initiated on same issues. In our reply, we have clearly demonstrated that these issues were already raised during assessment proceedings also. Out of the three issues raised during the assessment proceedings, the Ld. AO duly examined the facts and rightly did not make addition on account of alleged unexplained term deposits of Rs. 34 lakhs.*

3.2. *It is a settled law that the revisionary proceedings u/s 263 can be invoked wherein the twin conditions of A.O.'s order being "erroneous" as well as "prejudicial to the interest of the revenue" are satisfied. In the present case, the order of the Ld. A.O. is not erroneous. However, it is prejudicial to the interest of the revenue. We further rely upon the ratio of following judgements:*

- (i) Malabar Industrial Co. Ltd. vs CIT[2000] 243 ITR 83 (SC)*
- (ii) CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del)*
- (iii) ITO vs. DG Housing Projects ltd. 343 ITR 329 (Del)."*

5. During proceedings before us, the ld. Counsel of the Assessee has filed a written submission which is almost the same as it was filed before the ld. PCIT. The ld. Counsel has also argued on the line of written submission filed by him.

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

7. We have considered the findings given by the Id. PCIT in his order passed u/s 263, which is as under:-

“6. In view of the discussion above, at this time, the assessment order passed u/s 147 r.w.s. 144B of the Act dated 24.09.2021 can be held to be erroneous as well as prejudicial to the interests of revenue only if the factual verifications directed to be carried out by the Jurisdictional Assessing officer (JAO) lead to a finding that is contrary to the submission made by the assessee, which prima facie does not appear to be the case here.

7. In consequence having considered the facts and circumstances of the instant case, I am, at this time, of the considered opinion that the assessment order u/s 147 r.w.s. 144B of the IT. Act, 1961 dated 24.09.2021 passed by the Assessing Officer would be erroneous as well as prejudicial to the interests of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act only if the factual verifications as above directed to be carried out by the JAO are found to yield results inconsistent with the stand of the assessee. This is because the order then would not have been passed in accordance with the law, which should have been done, thus making such assessment order passed not only erroneous but also prejudicial to the interests of revenue in the matter of genuineness of the assessee's claim that no Term Deposits were made during the F.Y. 2012-13. The Jurisdictional Assessing Officer (JAO) is therefore directed to verify the factual submissions as above made by the assessee being that NO Term Deposits including for the impugned amount of Rs. 34,00,000/- had been made in any bank in the impugned F.Y. 2012-13, and

only if found correct and satisfactory, pass the necessary order u/s 143 of the Act dropping the matter in reference. In any unlikely contrary scenario emerging as the factual position, the JAO is at liberty to process the matter for further necessary action of assessment, and initiation/ imposition of statutory penalties as applicable. The assessee is at liberty to adduce the facts as deemed relevant before the JAO in consequence to this order. The JAO shall allow the assessee adequate opportunity of being heard and to make relevant submissions, and reverify the submissions already made. It may be ensured that any fresh assessment order is passed within the prescribed time as stipulated under section 153(3) of the Act.”

8. After considering the order passed by the PCIT u/s 263 of the Act and after going through the written submission filed by the Counsel of the Assessee and his arguments made during the proceedings before us, we are of this considered view, that the findings given by the ld. PCIT in his order passed u/s 263 is not based on facts but is mostly based on hypothetical situation, imagination, conjecture and surmises. Even in his order, the ld. PCIT has directed the Assessing Officer to verify the claim of the Assessee and made additions only if the claim of the Assessee is found to be incorrect.

9. The spirit of section 263 of the Act requires a clear-cut finding by the PCIT bringing out on record the elements of ‘erroneous’ and ‘prejudicial to the interest of Revenue’ in an order passed by the A.O.

The true spirit of section 263 also requires a clear-cut finding of the PCIT on twin conditions of satisfaction that an order passed by the Assessing Officer is 'erroneous' and 'prejudicial to the interest of Revenue'. It never pre-supposes any hypothetical situation wherein, something could or could not happen based on some future enquiry. Therefore, an order u/s 263 cannot be passed without clearly bringing on records twin elements of being erroneous and prejudicial to the interest of Revenue. In an order passed by an Assessing Officer, if the applicability of section 263 depends on some investigation / verification to be made by the Assessing Officer in future, then it may not be termed as erroneous as prejudicial to the interest of Revenue on the basis of facts on record brought out by the PCIT. In brief, an order u/s 263 can be passed only on facts what they are as on record and not on the basis of result of verification to be made in future. Therefore, we are of the considered view that the order passed by the PCIT in this case is against the basic requirement and spirit of section 263 of the Income Tax Act, 1961. Accordingly, this order cannot be sustained. As a result, Assessee's appeal is allowed.

9. In the result, the appeal is allowed.

Order pronounced on 25.11.2024.

Sd/-
(RAJPAL YADAV)
Vice President

XSd/-
(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