

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
And
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

Sr. No.	ITA No.	Assessment Year	Name of Appellant	Name of Respondent
1.	No.1045/Ahd/2024	2013-14	Manoj Padaliya, B-24, Pragti Park Society, Opp. Adishwar Nagar, Nr. Parag School, Naroda, Ahmedabad-382330. PAN: AXYPP4093M	The Principle Commissioner of Income Tax-3, Ahmedabad.
2.	No.1074/Ahd/2024	2015-16	Bipinbhai Moradiya, B-7, Shivganga Resi. Flat, Gopal Chowk Road, Nikol, Ahmedabad-382350. PAN: ALNPM1725E	The Principle Commissioner of Income Tax-3, Ahmedabad.
3.	No.1050/Ahd/2024	2015-16	Suresh Vallabhbbhai Kapadiya, E-6, Shivang Intercity, B/H Power Station, Opp. Sundervan Soc., Nikol Gam Road, Ahmedabad-382350. PAN: BSVPK7188P	The Principle Commissioner of Income Tax-3, Ahmedabad.
4.	No.1049/Ahd/2024	2015-16	Pravinbhai Jivrajbbhai Savsani, A/201, Kavya Residency, Nr. Sadhana Soc. Gopal Chowk, New Naroda, Ahmedabad-382425. PAN: BLNPS6049A	The Principle Commissioner of Income Tax-3, Ahmedabad.
5.	No.1046/Ahd/2024	2016-17	Ramjibhai Ghilabhai Vaghasiya, 45, Indravihar Society, Indraprastha Park, Nikol-Odhav, Ahmedabad-382350. PAN: ADZPV7826K	The Principle Commissioner of Income Tax-3, Ahmedabad.
6.	No.1047/Ahd/2024	2016-17	Paresh Nagjibhai Vahanka, D-1, Shivganga Resi.	The Principle Commissioner of Income Tax-3,

			Flat, Gopal Chowk Road, Thakkarbapannagar, Ahmedabad-382350. PAN: AFAPV0921L	Ahmedabad.
7.	No.1048/Ahd/2024	2016-17	Kalpeshbhai Savani, B/6, Shivganga Resi. Flat, Gopal Flat, Gopal Chowk Road, Nikol Gam Road, Ahmedabad-380059. PAN: BTLPS1983H	The Principle Commissioner of Income Tax-3, Ahmedabad.
8.	No.1051/Ahd/2024	2016-17	Vishnubhai Valjibhai Patel, 16, Sarjan Villa, Nr. Sankalp School, Nikol, Ahmedabad-382350. PAN: ARGPP8382B	The Principle Commissioner of Income Tax-3, Ahmedabad.
9.	No.1052/Ahd/2024	2016-17	Mansukhlal Maneklal Goyani, C/94, Vikramaditya Society, B/H, Bajrang Temple, Saijpur-Bogha, Ahmedabad-382415. PAN: AELPG9219A	The Principle Commissioner of Income Tax-3, Ahmedabad.

Assessee by :	Shri Vartik Chokshi, AR with Shri Biren Shah, AR
Revenue by :	Shri V Nandakumar, C.I.T DR

सुनवाई की तारीख / **Date of Hearing** : **04/12/2024**
घोषणा की तारीख / **Date of Pronouncement**: **06/12/2024**

आदेश/ORDER

PER BENCH:

These are nine appeals filed by the different assessee's arising out of orders passed u/s. 263 of the Act, by the Ld.PCIT for various Assessment Years under consideration before us. Since the basis for initiation of proceedings u/s.263 are

similar for all the assessee's before us, all the cases although relating to different assessee's and different assessment years are being taken up together.

2. We shall take up the case of **Manojbhai Padaliya in ITA No.1045/Ahd/2024 for AY 2013-14**, which shall serve as the lead assessment year and our observations for this year would be applicable to the case of other assessee's and other assessment years as well. The assessee has raised the following grounds of appeal:

1. In law and in the facts and circumstances of the Appellant's case, the impugned order u/s. 263 passed by the Ld. CIT is bad in law and deserves to be quashed.

2. In law and in the facts and circumstances of the Appellant's case, the Ld. CIT has erred in holding that the assessment order was passed without making enquiry in respect of transactions carried out with M/s V. Nitin and Kiran Gems Pvt. Ltd. and on that ground, invoking provisions of Section-263 of the Income Tax Act.

2.1 The Ld. CIT has failed to appreciate that the Assessing Officer had made inquiry in respect receipt from M/s V Nitin and M/s Kiran Gems Pvt. Ltd. and after considering the explanation given to him accepted genuineness of receipts. Thus, the assessment order was not erroneous and prejudicial to interest of revenue. The different view held by CIT does not justify involving Section-263.

3. In law and in the facts and circumstances of the Appellant's case, the order passed by the Ld. CIT may please be held to be unjustified, unwarranted and may please be quashed.

4. The appellant craves leave to add to amend or to raise any further grounds of appeal as case may arise.

3. The brief facts of the case are that the assessee file his original return of income for AY 2013-14 declaring total income at Rs.3,31,310/-. The case was re-opened u/s.147 of the Act for verification of the transactions of Rs.1,64,28,519/- with Mr. V Nitin and M/s. Kiran Gems Pvt. Ltd. The assessment was finalized, without making any addition.

4. The Ld.PCIT on verification of the case records observed that during the year under consideration, in the case of another assessee Shri Mahendrakuma S Mathukiya for AY 2013-14 had also received similar amount of money

Rs.1,50,95,174/- from Mr. V Nitin and M/s.Kiren Gems Pvt. Ltd. which were added u/s.68 of the Act in his re-assessment order, whereas no such addition was made in the case of assessee with respect of receipt of money from same parties. On this basis, Ld.PCIT was of the view that the assessment order framed in assessee's case is erroneous in prejudicial to the interest of the Revenue.

5. In response to notice u/s.263 of the Act, the assessee filed several details and submitted that this issue was duly examined during the course of re-assessment proceedings in the case of the assessee u/s.148 of the Act. No addition/disallowance in the case of M/s.Kiran Gems Pvt. Ltd. for corresponding payment to the assessee were made for AY 2013-14. The AO on examination of the assessee's set of facts took a legally plausible view and therefore, in the instant case the assessment order cannot be held to be erroneous and prejudicial to the interest of Revenue. However, the Ld.PCIT held that in one of the labour contractor's case, being Mahendrakumar S Mathukiya, the Ld. AO had made addition u/s.68 of the Act with respect to similar receipt of income from same parties i.e Mr. V Nitin and M/s.Kiran Gems Pvt. Ltd. and therefore the AO was directed to verify the facts submitted by the assessee and if the assessee is not able to prove the veracity of its submission, the AO would be at liberty to pass an appropriate order in accordance with law.

6. Before us, the first contention of the Ld.Counsel for the assessee is that on perusal of notice u/s.263 of the Act, it is evident that there is no specific allegation as to how the assessment order was erroneous and prejudicial to the interest of the revenue. Secondly, the Ld.Counsel for the assessee drew our attention on the reasons recorded for re-opening the assessment u/s.147 of the Act and pointed out that the very reason for re-opening the case of the assessee u/s.147 of the Act was that the assessee was a beneficiary of suspicious transaction with Mr. V Nitin & M/s.Kiran Gems Pvt Ltd. and the assessee was required to furnish details of unexplained credits in his bank account of Rs.1,64,28,519/- from Mr. V

Nitin and M/s.Kiran Gems Pvt. Ltd. The Ld.Counsel for the assessee drew our attention to objection filed against the issuance of notice u/s.147 of the Act dated 06.12.2021. Further, the Ld.Counsel for the assessee drew our attention to the notice issued u/s.142(1) of the Act dated 17.12.2021 issued by the AO, wherein at para no.2(iv) of the questionnaire, the assessee was asked to furnished the source of huge credits amounting to Rs.1,64,24,519/- in his bank account. In response, the assessee furnished reply dated 23.12.2021 in which various details like copy of labour income, agreement between assessee and M/s. Kiran Gems Pvt. Ltd., details of TDS in form no. 26AS, computation of income statement, copy of tax audit report, copy of bank account statements and explanation regarding source of transaction made in the bank account were submitted before the AO. Further, the assessee also furnished the copy of the bank account statement to show that all the receipts were through banking channels only. The assessee also filed confirmation of ledger account from M/s.Kiran Gems Pvt. Ltd. as well. The Ld.Counsel for the assessee submitted before us that Ms/.Kiran Gems Pvt. Ltd. is one of the largest diamond manufacturer/traders in Surat and all the payments had been made to the assessee through banking channels, after due deduction of tax at source. Therefore, in the instant case, it is not a case of any lack of inquiry on the part of the AO and further, even the Ld.PCIT has not pointed out any specific error in the assessment order, while setting-aside the same as being erroneous and prejudicial to the interest of revenue.

7. In response, the Ld.DR submitted that a perusal of the assessment order would demonstrate that the same is very cryptic in nature and it is a non-speaking order in which the critical issue regarding the suspicious unexplained credit has not been discussed. The Ld.DR submitted that in the instant case Explanation to section 263 of the Act is liable to be invoked since necessary verification was not carried out by the AO, which was required to be done looking into the instant fact. Accordingly, the Ld.DR was of the view that the Ld.PCIT has correctly set-aside

the assessment order as being erroneous and prejudicial to the interest of Revenue.

8. We have heard the rival contentions and perused the material available on record. The first fact which we observe on reading of 263 order is that the Ld.PCIT has not recorded any satisfaction/has not given any specific finding as to how the assessment order is erroneous and prejudicial to the interest of Revenue. A perusal of 263 order shows that the only basis of issuance of notice u/s.263 of the Act is that in case of similar labour payments to one Shri Mahindrakumar Shantilal Mathukiya for AY 2013-14 from Mr. V N Nitin and M/s. Kiran Gems Pvt Ltd. amounting to Rs.1,50,95,178/- an addition was made u/s.68 of the Act. However, in our considered view in order to invoke the provisions of section 263 of the Act, the foundation/ basis of initiation of 263 proceedings must emanate from the findings given by the AO in his assessment order of the assessee itself and 263 cannot be initiated on the basis of "borrowed satisfaction" (i.e on the basis of findings in assessment done in case of a third person). Therefore, in our considered view, the very basis of initiation of 263 proceeding in the present case is fallacious and for this reason u/s.263 proceedings are liable to be set-aside.

9. Secondly, we observe from the contents of the 263 order that the Ld.PCIT has not given any specific findings or observation nor has pointed any defect in the assessment order so as to make the assessment order erroneous and prejudicial to the interest of Revenue. Further, there is also no specific observation in 263 order that there was any lack of inquiry by the AO, during the course of assessment proceedings. It would be useful to reproduce the relevant extract of the 263 order for ready reference.

On careful consideration of relevant facts on records and submission filed by assessee, assessee has claimed that during the course of reassessment proceedings, he had submitted all the relevant details to establish that he was engaged in diamond cutting and polishing work and receipts are duly offered to tax. The assessee has claimed that reassessment order has been passed in his case after due verification by AO, after

applying his mind hence present notice under Section 263 of the Act is not justified. In support of above referred argument, assessee has referred to various submissions made in his case, reassessment orders passed in the case of V. Nitin and Kiran Gems Pvt. Limited accepting the labour payments, various orders passed under Section 148A(d) of the Act in various cases of labour contractors and various reassessment orders passed in other cases of labour contractors wherein similar transactions are accepted. On the other hand, it is found that in one of the labour contractor's case being Mahendra Shantilal Mathukiya, Assessing Officer had made addition under Section 68 of the Act for such similar labour income. The Assessee has relied upon following evidences.

(i) During the course of proceedings, the assessee has referred to order under Section 148A(d) of the Act dated 29-08-2022 passed in the case of Mahendra Mathukiya for AY 2014-15 wherein after verification of all the facts, it was found that case was not fit for issuance of notice under Section 148 of the Act. It is observed that such order was passed subsequent to reassessment order dated 31-03-2022 in case of Mr. Mahendra Mathukiya for AY 2013-14 which means that subsequent Assessing Officer has accepted receipt by labour contractor as genuine receipt.

(ii) The assessee has stated that in his own case for AY 2014-15, order under Section 148A(d) was passed on 29-08-2022 wherein also on similar ground it was held that it was not a fit case for issuance of notice under Section 148 and such order was passed after obtaining statutory approvals under Section 151 of the Act.

(iii) During the course of reassessment proceedings, assessee has submitted complete details relating to labour activities carried out by him and proved that amount received from contractors are offered to tax. On this basis assessee has claimed that Assessing Officer has applied his mind before passing the assessment order.

(iv) The assessee has brought on record that reassessment order has been passed in case of V. Nitin and Kiran Gems Pvt. Limited for year under consideration wherein no addition for labour payment made to assessee has been disallowed.

4.1 It is observed that notice under Section 263 of the Act was issued mainly on the ground **that in reassessment order passed in one of the labour contractors being Mr. Mahendra Mathukiya for AY 2013-14, addition under Section 68 was made whereas assessee has brought on record that in subsequent year, order under Section 148A(d) for AY 2014-15 was accepted in the case of the, same contractor. The assessee has further claimed that when labour payment has been found to be genuine in the case of V. Nitin and Kiran Gems Pvt Limited for year under consideration, then same labour receipt in the hand of assessee contractor cannot be disallowed considering it to be non genuine particularly when in other labour contractors case as referred by assessee, same is allowed. In light of above referred submission and evidences filed by assessee, the Assessing Officer is directed to verify above referred facts and if it is found that order under Section 148A(d) has been passed in assessee's own case in other assessment years or in the case of Mahendra Mathukiya for AY 2014-15, without any adverse view and relevant submissions were filed before Assessing Officer in reassessment proceedings and if labour payment has been held to be genuine in the case of V Nitin or Kiran Gems Pvt Limited, no adverse view can be taken in the hands of labour contractor for same labour payment receipt. However, if assessee is not able to prove such contentions as stated herein above, Assessing Officer would pass necessary order after giving proper opportunity of being heard to assessee.**

4.2 In view of above observations, the reassessment order passed by the A.O. u/s 147 of the IT Act dated 12-03-2022 is hereby set aside and the A.O. is directed to pass a fresh assessment order as per direction contained herein above. The assessee will be at liberty to adduce the relevant evidence/material before the Assessing Officer and the Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions.

10. From the contents of the 263 order it is seen that the Ld.PCIT has only asked the AO to make the further inquiries on the basis of additions made in the case of a third person, who had received similar payments from Mr.V Nitin and M/s.Kiran Gems Pvt. Ltd. and in the 263 order and there is no specific finding/observation as to how the assessment order is erroneous and prejudicial to the interest of Revenue. Therefore, for this reason as well, the order u/s.263 of the Act is liable to be set-aside.

11. The next issue for consideration is whether from the case records of the assessee, can it be concluded that there was lack of inquiry on the part of the AO, while finalizing order u/s.147 of the Act. We observe that, the very basis of initiation of proceeding u/s.147 of the Act was on account of suspicious receipt from Mr. V Nitin and M/s.Kiran Gems Pvt. Ltd. where AO on various dates had issued notices to the assessee for giving explanation regarding source of credits from these two parties appearing in the assessee's bank account. The assessee also filed replies to the specific query raised by the AO along with the supporting documents. It was after taken into consideration the replies filed by the assessee that no additions were made in the hands of the assessee. The details of correspondence between the AO and the assessee have been reproduced in earlier part of the order. It is also observed that the assessee had also furnished various details including copy of bank statements, confirmation of ledger account from M/s. Kiran Gems Pvt. Ltd., tax audit report, copy of bank statement, copy of form 26AS which demonstrates that all payment to the assessee were subject to tax deduction at source etc. Therefore, the facts as coming from the case records itself shows that there is no lack of inquiry on the part of the AO, looking into this

case. Another noteworthy point is that in the assessment order for M/s. Kiran Gems Pvt. Ltd. which has been produced before us for our perusal for this very assessment year 2013-14, no disallowance was made in the case of M/s. Kiran Gems Pvt. Ltd. with respect to payment made to various parties (including the assessee) towards labour charges which also lends support to the argument of the assessee that since no disallowance with respect to aforesaid payment to various parties including the present assessee, was made in the assessment of M/s. Kiran Gems Pvt. Ltd., therefore for this reason as well the order passed u/s.147 of the Act in the case of assessee is not erroneous and prejudicial to the interest of Revenue. In view of the above discussion, we are of the considered view that the assessment order in the instant case is not erroneous and prejudicial to the interest of Revenue and hence the order passed by Ld.PCIT u/s.263 of the Act, is liable to be set-aside.

12. We observe that the facts and issues for consideration in other assessment years and the basis of order u/s.263 of the Act, passed by the Ld.PCIT is also same. Therefore, in the light of the above observations, the order u/s.263 of the Act for other assessee's are also directed to be set-aside. In the result, the appeals of the assessee are allowed for all the assessment years before us.

13. In the combined result, the appeals filed by the different assessee are allowed.

Order pronounced in the Court on 06/12/2024 at Ahmedabad.

Sd/-
(NARENDRA PRASAD SINHA)
JUDICIAL MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(True Copy)

Ahmedabad; Dated 06/12/2024
Manish

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

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 / DR,
ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad