

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.960/Del/2022  
Assessment Year: 2015-16

<b>Sh Rishab Jhunjunwala E-28 Geetanjali Enclave, Delhi PAN No. AEUPJ8955M</b>	<b>Vs</b>	<b>PCIT, Delhi-1</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellants by	<b>Sh Rajeev Saxena Advocate Ms Sumangla Saxena Advocate Sh Shyam Sunder Advocate</b>
Respondent by	<b>Ms. Rajinder Kaur CIT DR</b>

Date of hearing:	07/11/2024
Date of Pronouncement:	20 /12/2024

**ORDER**

**PER SUDHIR KUMAR: Judicial Member:**

This appeal by the assessee is preferred against the order of the Ld Pr. CIT(A) Delhi -1 dated 30-03-2021 pertaining to A.Y. 2015-16.

2. The grievance of the assessee is that the PCIT erred in assuming jurisdiction u/s 263 of the Income -tax Act, 1961 [hereinafter referred to as The Act ] and further erred in treating the assessment

order dated 21-12-2017 framed u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue.

3. The appeal is time barred by 345 days. It is submitted that Hon'ble Supreme Court of India has extended the limitation period due to COVID-19. The impugned order passed during the COVID period therefore the ground is sufficient for condonation the delay. The delay is condoned and appeal is admitted for hearing on merit.

4. The assessee has raised the following grounds in appeal as under:

1. That Ld. Pr. CIT has erred in law as well as on facts in setting aside the assessment order passed by AO on 21-12-2017 u/s 143(3) of the IT Act, 1961 because:

(a) neither the assessment was erroneous nor pre-judicial to the interest of revenue as the same was passed after due examination and scrutinizing the case and thereafter only huge addition of Rs. 1,32,45,855/- u/s 68 and or Rs.5.61,405/- u/s 69C of the IT Act. were made.

(b) He did not appreciate that as per decision of Apex Court, both the limbs are required to be fulfilled and merely because of difference of opinion between him and the assessing officer on certain issues, the assessment cannot become erroneous.

(c) He did not appreciate that assessee belongs to an affluent family and availability of cash for deposits was already appreciated by the AO in the original assessment and it cannot be re-examined on the same set of facts without bringing any material on record contrary to what was submitted by the AO.

2. That the order u/s 263 of IT Act is bad in law as the same was passed without providing reasonable and sufficient opportunity to the assessee defying principles of natural justice.

The above grounds of appeal are independent of, and without prejudice to each other.

5. The representative of both the sides were heard at length and perused the records. We have considered the documentary evidence brought on record in the form of Paper Book in the light of Rule 18(6) of the ITAT Rules.

6. The brief fact of the case is that the assessee has filed return of income declaring total income of Rs.7,25,000/- The case was selected for scrutiny assessment through CASS under Compete Scrutiny. The assessment was completed at an assessed income of Rs.1,4532,260/- by making the addition under Section 143(3) of the Act. The contention of the PCIT is that while framing the assessment order the Assessing officer has not enquired about the cash deposits amounting to Rs. 835000/- there by making the assessment order not only erroneous but also prejudicial to the interest of the revenue.

7. The PCIT served the following notice assuming jurisdiction us 263 of the Act:

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX  
PCIT 1, DELHI

To,

RISHAB JHUNJHUNWALA  
E-28, GEETANJALI ENCLAVE  
NEW DELHI 110017, Delhi  
India

PAN: AEUPJ8955M	Assessment Year: 2015-16	Dated: 27/01/2020	DIN & Letter No : ITBA/COM/F/17/2019-20/1024304491(1) / 2486
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Sir/ Madam/ M/s,

Subject: Show Cause Notice u/s 263 of Income-tax Act in the case of Shri Rishabh Jhunjunwala (PAN –AEUPJ8955M) for A.Y. 2015-16-Reg

Ref: Assessment Order passed u/s 143(3) of Income –tax Act on 21.12.2017 for A.Y. 2015-16

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In this case, return of income for A.Y. 2015-16 was e-filed on 25.08.2016 therein declaring income, of Rs. 7,25,000/-. The case was selected for completed u/s 143(3) of I.Tax Act, 1961 on 21.12.2017, assessing the total income at Rs. 1,45,32,260/- after making following additions:-

1. Addition of Rs. 1,32,45,855/- u/s 68 of I. Tax Act, 1961 on account of accommodation entries.
2. Addition of Rs. 5,61,405/- u/s 69C of the I.Tax Act, 1961 on account of undisclosed commission expenses.

2. On perusal of assessment records revealed that during the year under consideration there are few cash deposits amounting to Rs. 8,35,000/- in bank accounts of the assessee and in PPF account of his minor son Sh. Avir jhunjunwala (D.O.B. 25.02.2015). The details of cash deposits are as under:-

Sr. No.	Detail of bank account	Date of deposit	Amount

Note: If digitally signed, the date of digital signature may be taken as date of document.  
.C R BUILDING\_ITO, I P ESTATE, NEW DELHI, DELHI, Delhi, 110002

1	SB A/c 00271600002360 in HDFC bank	03.11.2014	5,00,000
2		21.01.2015	10,000
3		07.03.2015	1,75,000
4	PPF account no. 60450PPF000000000008 in the name of Avir jhunjhunwala (Minor Son of assessee)	11.03.2015	1,00,000
5		30.03.2015	50,000
		<b>Total</b>	<b>8,35,000</b>

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3. AO has not inquired into source of these cash deposits during the assessment proceedings. Assessee has total withdrawal of Rs. 8,65,000/- during the year and vide reply dated 02.11.2017, assessee submitted that these cash were utilized for personal expenses. In view of above, it appears that income of Rs. 8,35,000/- remained unassessed for A.Y. 2015-16.

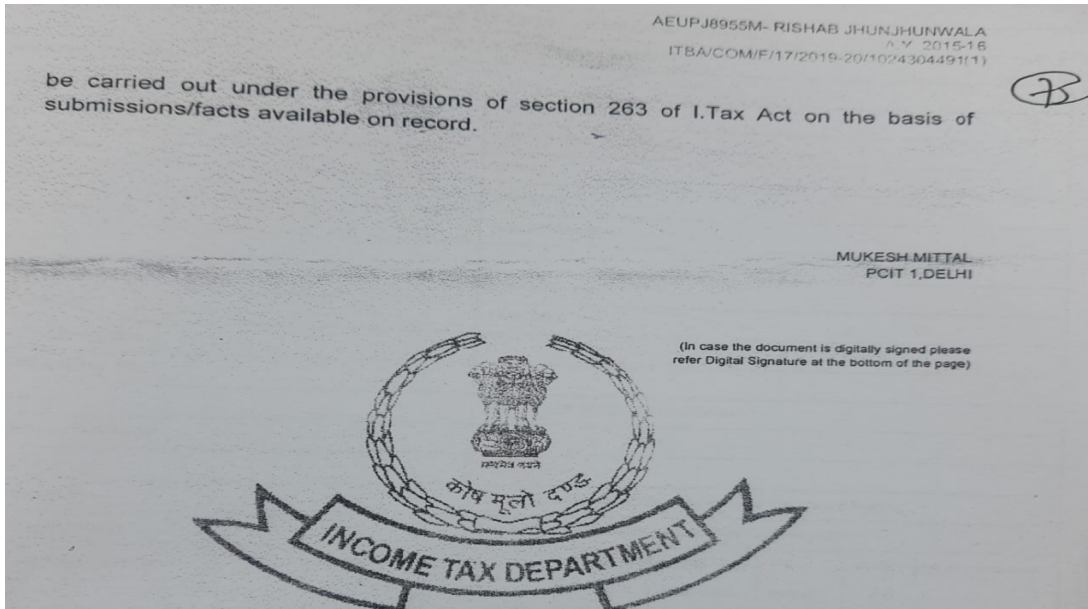
4. In view of the facts narrated above, the assessment completed in this case u/s. 143(3) of I. Tax Act, 1961 for A.Y. 2015-16 on 21.12.2017 is erroneous in so far as it is prejudicial to the interest of revenue under the ambit of the provisions of section 263 of I. Tax Act, 1961 on the issue of unexplained cash deposits.

5. You are, therefore, allowed on opportunity of being heard wither personally or through your duly authorized representative and to submit your explanation **on or before 29.01.2020** in Room No. 363A, C.R. Building, I.P. Estate, New Delhi-110002, giving reasons as to why the assessment order passes by the Assessing Officer in your case on 21.12.2017 for A.Y. 2015-16 be not revised and depending upon the circumstances of the case, pass such order including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

6. You may also send your reply by email at: [delhi.cit@incometax.gov.in](mailto:delhi.cit@incometax.gov.in).

7. Please ensure that your reply reaches the office of the undersigned positively by **29.01.2020** in Room No. 363A, C.R. Building, New Delhi-110002 failing which it shall be presumed that you have no objection for the proposed action u/s 263 of Income-tax Act, 1961 and the revision of assessment order, as referred above, will

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8. A perusal of the aforementioned notice shows that the Principal CIT has alleged that the assessee has not shown the cash deposit of Rs.8,35,000/- in the bank account of the assessee and in PPF account of his minor son. Further, the assessee put our attention to the following factual position:

“I have gone through the assessment record, issue raised and the details received from NSDL on the issue. The following pertinent observations are made:

i) I have gone through the facts and circumstances of the case as well as examined the assessment record of the assessee for A.Y. 2015-16. It is clear that the Assessing Officer was under obligation to properly verify the source of cash deposit into bank accounts of the assessee. However, the Assessing Officer, without making proper verification, completed the assessment.

ii) That despite the unexplained cash deposit of Rs. 8,35,000/-, and known involvement of assessee in manipulated share transaction of Penny Stocks; the AO failed to enquire all his Demat accounts, as there was every likelihood of assessee indulging in more such transactions. It was AOs duty to atleast call for Demat Accounts, if any linked to its bank branch in HDFC Bank, Greater Kailash-II, New Delhi.

iii) The Demat Account details of the assessee have been received for the period 01.04.2013 to 31.03.2016. It was observed that the assessee had sold & dealt with various other shares including of Central Bank Of India, Global Corporation Limited ( Transaction of 5,75,100 shares by you), Reliance Power Limited, Tulsyan Nec Ltd. etc: during the relevant previous year but these are not reflected in assessee's income, ITR & details filed in the assessment proceedings.

In view of afore-stated discussion, it is clearly evidenced that the Assessing Officer failed to make enquiries/verification which should have been made for determining the correct total income u/s 143(3) of the Income Tax Act; in terms of not enquiring into source of cash deposits and all securities/stock/share transactions during the year, the source and income resulting thereof.”

9. We find that the notice under Section 142(1) of the Act dated 18-10-2017 was issued and served upon the assessee to which, on 02-11-2017 the assessee filed a detailed reply submitting copy of reply filed by assessee before assessing officer, copy of acknowledgment slip dated 01-01-2013, copy of letter of allotment,

copy of notes, copy of ledger and copy of details of value of securities transaction. Relevant reply is as under:

To,  
Income Tax Officer,  
Ward 1(2),  
New Delhi.

02-11-2017

(22)

RdJ  
10/11

Dear Sir,

Reg:Rishab Jhunjunwala – Asstt.Year 2015-16

We are in receipt of notice u/s 142 dated 18-10-2017.In this connection it is stated as under:

1.Computation of income is attached as Annexure 1.The assessee does not need to get his accounts audited therefore no audited accounts are attached. The assessee does not maintain any books of account.

2.Detail of companies:

	31-03-2015		31-03-2014
Aadya Overseas Ltd.	Director		Director
Ascorp Global Ltd.	Director		Director
SRJ Mansion Pvt.Ltd.	Director		Director
BDSK Developers Pvt.Ltd.			Director
BDSK Developers Pvt.Ltd	-		Director
Aryaman Promoters Pvt. Ltd.	Director		Director

3. Bank statement of HDFC Bank is enclosed as Annexure 2.

4.Demat account for F.Y. 2014-15 is enclosed as Annexure 3.

5.The shares of M/S HPC Bio Science Ltd were issued directly by the company as under:

03-01-2013	10,000 shares.
Received bonus shares	10,000 shares

Sale of these shares in F.Y.2014-15:

No.of shares	
6,900	28-05-2014
12,900	29-05-2014

200 Shares split into shares of Rs.1/ each.These 2,000 shares sold on 03-03-2015.Copies of Share Allotment is given in Annexure 4 & 5.

The payment was made by cheque and receipt is attached as Annexure 6.

6.The shares have not been purchased from brokers therefore there are no contract notes.

7.No dividend has been received on these shares.Details of shares sold is given in point 5 above.

8.Family tree is given in Annexure 7.

9.Expenses :

Personal Expenses cash withdrawn	Rs.8,65,000/-
Children education	Rs.NIL
Club expenses	Rs. NIL
Marriage ceremonies etc.	Rs.NIL

Credit /debit card expenses incurred are on behalf of the company which are directly paid by the Company.

10. Personal expenses of Rs.8,65,000/- work out to Rs.72,000/- per month which are sufficient. Moreover the assessee has a join family as shown in the family tree and other members Also contribute.

(23)

11.

S No.	Complete name & address of the Company	No. of shares
1	Aadya Overseas Ltd, 2 <sup>nd</sup> Floor, 10, Zarmrudpur Community Centre, New delhi- 110048	1468400
2	Ascorp Global Ltd, 2 <sup>nd</sup> Floor, 10, Zarmrudpur Community Centre, New delhi- 110048	1
3	Aryaman Promoters Pvt Ltd, E-28, Geetanjali Enclave, New Delhi- 110017	10000
4	B.D.S.K Developers Pvt Ltd, E-28, Geetanjali Enclave, New Delhi- 110017	200
5	B.D.S.K Properties Pvt Ltd, E-28, Geetanjali Enclave, New Delhi- 110017	200
6	SRJ Mansion Pvt Ltd, E-28, Geetanjali Enclave, New Delhi- 110017	200000
7	V V Housing Pvt Ltd, E-28, Geetanjali Enclave, New Delhi- 110017	10000

12. The Assessee has only one bank account copy of which is enclosed as per point. No. 3

13. As mentioned in point no 1 the assessee does not maintain books of account.

14. The assessee has received the following amounts:

Pushpa Devi Jhunjunwala(Grandmother)	Rs.35,00,000/-
LIC of India	Rs. 60,000/-
Rishab Jhunjunwala(HUF)	Rs. 2,00,000/-
Sangeeta Devi Jhun jhunwala(Mother)	Rs. 2,00,000/-

15. The assessee has not received any gifts during the year.

16. Brokers sale contracts are enclosed as Annexure 8.

17. Copy of the order of Income Tax Appellate Tribunal "I" Bench Mumbai is enclosed as Annexure 9.

We trust you will find the above in order. We will be pleased to submit any further information Required by your good self.

Thanking you  
Yours truly

(Rishab Jhunjunwala)

10. After perusing the aforementioned details, the assessing officer further made the enquiries and completed the assessment proceedings under Section 143(3) of the Act vide order dated 21-12-2017.

11. The PCIT at para 8(ii) of his order has observed that the assessee has deposited the unexplained cash deposit of Rs 835000/- and manipulated the share transaction of penny stocks and the assessing officer has failed to enquire all his Demat accounts as there was every likelihood of assessee indulging in more such transactions. It was assessing officer duty to at least call for Demat Accounts, if any linked to its bank branch in HDFC Bank, Greater Kailash -II New Delhi.

12. Considering the facts of the case in totality, we are of the considered view that the assessing officer had made specific enquiries during the assessment proceedings to which specific reply was furnished by the assessee along with supporting documentary evidences and all such evidences were duly examine and considered by the assessing officer before completing the assessment proceedings under Section 143(3) of the Act.

13. The power of revision can be exercised where no enquiry, as required under the law is done. Admittedly the assessing officer asked the assessee to furnish the necessary details from time to time which were duly furnished by the assessee and after considering the same the assessing officer has completed the assessment.

14. The Hon'ble Bombay High Court in ITR 108 has held as under:

"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise? power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law upon mistaken view of law; or upon erroneous application of legal principles".

12. 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 visualize 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. Cases may be visualized where the income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on

the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the Interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We, therefore, hold that in order to exercise power under sub-section (1) of section 263 of the Act there must be material before the Commissioner to consider that the order passed by the Income- tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate

proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power.

It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority.

The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income tax Officer cannot be held to be erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income-tax Officer to re-examine the matter. That, in our opinion, is not permissible. Hence the provisions of section 263 of the Act were not applicable to the instant case and, therefore, the commissioner was not justified in setting aside the assessment order."

15. We find that the Hon'ble Delhi High Court in the case of CIT vs Sunbeam Auto reported in 332 ITR 167 has held that the Assessing officer in the assessment order is not required to give detailed reason

in respect of each and every item of deduction, etc. Whether there was application of mind before allowing the expenditure in question has to be seen. If there was any inquiry, even inadequate, that would not by itself give occasion to the CIT to pass orders u/s 263 of the Act, merely because he has different opinion in the matter.

16. The Hon'ble Delhi High Court in the case of Anil Kumar Sharma 335 ITR 83 has held that there is a distinction between "lack of enquiry and inadequate enquiry. If there was any enquiry, even inadequate, that would not by itself give occasion to the commissioner to pass orders u/s 263 of the Act.

17. Considering the facts of the case in hand, in the light of the judicial decision discussed above, we set aside the assessment order of the PCIT dated 30-03-2021 and restore the assessment order of the assessing officer dated 21-12-2017 framed u/s 143(3) of the Act

18. In the result the appeal of the assessee is allowed.

**Order pronounced in the open court on 20 /12/2024.**

**Sd/-**  
**(S. RIFAUZ RAHMAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1.Appellant

2.Respondent

3.CIT

4.CIT(Appeals) `

5.DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI