

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्रकुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकरअपील सं./ITA Nos. 815 & 818/JP/2024
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

Shree Shyam Buildstructure Private Limited, Sikar	बनाम Vs.	ITO, Ward-1, Sikar
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 7028 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. R. S. Poonia, CA &
Sh. Rakesh Bhoot, CA
राजस्व की ओरसे / Revenue by: Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 10/12/2024
उदघोषणा की तारीख / Date of Pronouncement: 20/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of present two appeals, the assessee challenges the two separate orders passed by the Learned Principal Commissioner of Income Tax, Jaipur-2 dated 31.03.2024 [in short "Id. PCIT"] for Assessment Year 2014-15 & 2016-17. Both these appeals have been heard together with the consent of the parties and are being disposed of with this common order.

2. Firstly, we take up ITA no. 815/JP/2024 wherein the assessee has raised the following grounds of appeals;

“1. That in the facts and in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax [PCIT], Jaipur-2 erred in initiating proceedings u/s. 263 of the Income Tax Act, 1961.

2. That in the facts and in the circumstances of the case and in law, the appellant prays that the order of the learned PCIT, Jaipur-2 passed u/s. 263 of the Income Tax Act, 1961 may be cancelled being void ab-initio and bad in law.

3. That in the facts and in the circumstances of the case and in law, learned Principal Commissioner of Income Tax, Jaipur-2 erred in holding that assessment order dated 23.03.2022 passed by the Assessing Officer u/s 147 of the Act was erroneous and prejudicial to the interest of the revenue and the issues raised having been duly considered by the learned Assessing Officer while framing the assessment u/s 147 of the Act.

4. That on the facts and in the circumstances of the case and in law, the learned PCIT, Jaipur-2 erred in not himself conducting necessary/ proper enquiry and verification of issues mentioned in the notice issued u/s. 263 of the Act and setting aside the assessment order for a de-novo adjudication on issues mentioned therein which is wrong and contrary to the provisions of the Act, and the Rules made thereunder.

5. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

3. Ld. PCIT, while exercising the power u/s. 263 of the Act, called for the assessment records for examining the same as regards assessment order u/s 147 read with section 144B of the Act was passed on 23.03.2022. Upon verifying the records of the assessment, Ld. PCIT noted that the reason for re-opening the assessee was deposit of cash to the extent of Rs. 3,82,21,000/- in the bank account of the assessee. Ld. PCIT noted agreement dated 13/12/2013 between M/s Shri Shyam Build Structure Pvt

Ltd and Shri Someshwar Gupta, vide which property was agreed to be sold to Shri Someshwar Gupta for Rs.72 crore. Shri Someshwar Kumar Gupta was to pay Rs.28.50 crore to Shri Sanjay Gupta & Shri Ram Chander Gupta to meet out the disputes, and rest of the amount was to be received by M/s Shri Shyam Build Structure Pvt Ltd.

At the time of execution of the agreement, Shri Someshwar Kumar Gupta paid Rs.1.5 crore at the time to M/s Shree Shyam Build Structure Pvt Ltd, out of which Rs.1.29 crore was paid by RTGS from HDFC bank Jaipur and Rs.21 lakhs in cash. As per the details given in ITR, amount shown under the head "other payables" in balance sheet was Rs.1.29 crore only. Further, the cash in hand was also shown at Rs.2,30,425/- only. This showed that cash of Rs.21 lakhs had not been accounted for by the assessee and no addition was made on this unaccounted money by the Id. AO while completing the assessment.

It was also noted that AO had raised query about deposit of cash Rs.117.21 crore in the bank, whereupon it was submitted that the assessee company had deposited cash into bank a sum of Rs. 117.21 lakhs out of the opening balance of Rs.119.95 lakhs available with the company. As per the DDIT(Inv)'s report, there was unaccounted cash deposits/credits of Rs.1,82,21,000/- in the bank account of the assessee company, which was

not verified & examined, and further that the Id. AO accepted the claim of the assessee without any proper enquiry. PCIT noted that FAO had not made any addition on account of unexplained cash deposits and other credits totaling to Rs.1,82,21,000/-.

Ld. PCIT also observed that there was a copy of receipt available on record which showed that transaction of Rs.50 lakh was done between Shri Sanjay Gupta and Shri Thakur Raghunath Singh on 26/11/2012 for sale of the property at total consideration of Rs.3,75,00,000/- and an advance of Rs.50,00,000/- was received by seller of property Shri Thakur Raghunath Singh from Shri Sanjay Gupta. It was also specified in the said receipt that Shri Sanjay Gupta had entered into an agreement with M/s Shri Shyam Build Structure Pvt Ltd vide agreement dated 30/05/2012 to meet out all the disputes and Shri Thakur Raghunath Singh is the same person who had stay order against sale of the same property and filed court case against the sale of property between Shri Narendra Singh and M/s Shree Shyam Build Structure Pvt Ltd. Therefore, PCIT observed that transaction of Rs.50 lakhs was also unaccounted transaction of M/s Shree Shyam Build Structure Pvt Ltd for AY 2013-14 whereas the AO had issued SCN on this issued in AY 2014-15. Accordingly, it was observed that FAO had completed the assessment on total income at Rs. Nil accepting the

returned income without making proper inquiry & investigation of the source & genuineness of the transactions and source of the cash deposits/ credits in the bank account(s) and no addition was made on account of unaccounted cash credits and unexplained transactions as discussed.

Ld. PCIT further noted that Id. AO had not at all verified and made proper inquiry of the source & genuineness of the transactions and unaccounted sum of Rs.1.5 crore paid at the time of agreement to M/s Shree Shyam Build Structure Pvt Ltd, out of which Rs.1.29 crore was paid by RTGS from HDFC bank Jaipur and Rs.21 lakhs in cash. Accordingly, it was observed that AO had not at all verified and examined the unexplained cash deposits/credits of Rs. 1,82,21,000/- in the bank account of the assessee company and the claim of cash in hand as the assessee had not carried out any business activities for generating any cash in hand and nominal cash in hand as declared in the original ITR.

Assessee company was incorporated only on 28/04/2011 and it had not carried out any business activities declaring any source of income & generating of any cash in hand. It was seen that the claim of large cash in hand and the genuineness, identity and creditworthiness of the transactions was left out to be examined in view of the disclosure of cash in hand in the eITRs. The assessee failed to furnish any evidence to explain the source of

cash deposit and credit transactions of Rs.3,82,21,000/- which could not be considered to be verifiable on the basis of manipulated cash statement & financial statement without having any disclosed source of income & source of generating cash in hands and genuineness, identity & creditworthiness of the transactions with cogent & credible evidences.

With above observations PCIT issued a show cause notice u/s 263 of the I.T. Act, 1961 on 12.02.2024 asking the assessee to explain as to why the assessment order passed by NeAC on 23/03/2022 be not revised u/s 263 and treated as erroneous and prejudicial to the interest of the revenue. In response to the show cause notice dated 12.02.2024, the assessee filed his reply on 06.03.2024. As requested, opportunity of personal hearing was granted on 11.03.2024 on 19.03.2024.

4. Ld. PCIT then invoked the provisions of section 263 of the Act and while doing observing as under:-

“1. Rs 1.29 crore have been received by the assessee company out of Rs1.5 crore as RTGS. The assessee company has shown the same amount as "other payables in its books. This is misleading, the advance received by the company of Rs. 1.29 crores is to be declared by the assessee company as 'advance received and not as "other payables". This grouping in the balance sheet of the company is misleading.

2. Further the assessee company received Rs. 21,00,000/- in cash, whereas this cash receipt of Rs. 21,00,000/- has not been shown by the assessee company anywhere in its balance sheet. Also, the assessee company has cash in hand of

Rs. 2,30,425/- only at the end of the financial year. Thus, clearly this cash receipt of Rs. 21 lacs was not included in cash in hand and neither was it declared by the assessee company in its balance sheet. Para regarding amounts in bank.

3. Further, the payee Shri Someshwar Gupta is a non-filer of ITR. Thus, the genuineness and credibility of this transaction of receipt of Rs. 1.5 crores of advance is not established.

4. The assessee company has simply submitted that it has no control over the other financial affairs of other person i.e. Someshwar Gupta, who is making the payment. But this agreement is mere eye-wash. The assessee company has the onus on itself to establish the genuineness of any financial transaction carried out by it. The assessee company also has the onus of declaring correct financial affairs. In this case, it is noticed that the credibility of Shri Someshwar Gupta to make payment of Rs. 1.5 crore is not established and on the other hand, the assessee company has also not declared this transaction correctly in its books. Thus, the entire transaction of Rs. 1.5 crores has not been properly verified. The cash receipt of Rs. 21,00,000/- was also not properly examined especially in view of the discussion at para 8(ii) above, the assessee company has shown Rs. 1.29 crore in its books as payable liability, when no such liability exists.

5. The deposit of cash in bank account of Rs.117.21 lacs, it was submitted that the assessee company had deposited cash into bank of Rs.117.21 lakhs out of the opening balance of Rs.119.95 lakhs available with the company. As per record, there was unaccounted cash deposits/credits of Rs.1,82,21,000/- in the bank account of the assessee company which were not verified & examined but the FAO accepted the claim of the assessee without any proper enquiry. The issue of cash balance has already been discussed in para 2.4.”

5. Vide impugned order, while exercising powers under section 263 of the Act, Ld. PCIT set aside the assessment order with direction to pass afresh in the light of the observations made in this order.

6. Feeling dissatisfied from the order of the Id. PCIT, assessee has preferred the present appeal as per grounds so raised and reiterated herein

above. Ld. AR of the assessee has filed a detailed written submission Same reads as under:

“Brief Facts & Arguments of the Case:

1. Simultaneously, the Ld. A.O. has reopened the case of appellant for 3 years on 31.03.2021, which is as follows:-
 - (i). A.Y. 2013-14
 - (ii). A.Y. 2014-15
 - (iii). A.Y. 2016-17
2. That the reasons for reopening the case of assessee-company u/s. 148 of the I.T. Act, 1961 on following accounts, which are as follows:-
 - (i). Unaccounted Receipt of Rs. 1,50,00,000/-.
 - (ii). Unaccounted investment of Rs. 50,00,000/-.
 - (iii). Unaccounted bank deposit of Rs. 1,82,21,000/-.Total amounting to Rs. 3,82,21,000/- as escaped income.
3. That the Ld. A.O. conducted detailed, proper & deep enquiry regarding all the above 3 issues vide following query letters:-
 - (i). Notice u/s. 142(1), dated 24.11.2021.
 - (ii). Notice u/s. 142(1), dated 03.03.2022.
 - (iii). Draft Assessment Order, dated 16.03.2022.
 - (iv). Show Cause Notice dated 19.03.2022.
4. That assessee-company submitted proper reply along with documentary evidences on different dates, which are as follows:-
 - (i). Detailed reply submitted on 19.03.2022.
 - (ii). Detailed reply submitted on 22.03.2022.
5. That the Ld. A.O. satisfied from the reply, explanation & evidences submitted by the assessee-company & passed a speaking & detailed assessment order on 23.03.2022 and assessed the case & all 3 issues were discussed.
6. That a SCN u/s. 263 of the I.T. Act, 1961 was issued by PCIT, Jaipur-2, on 12.02.2024 having 2 allegations (i.e. the allegations are same as on these ground of reopening u/s. 147), which are as follows:-
 - (i). The Ld. A.O. has not at all verified & made proper inquiry and not examined the sources & genuineness of transactions of Rs. 1,50,00,000/- received as advance, out of this Rs. 1,29,00,000/- was received in bank account on 13.12.2013 through joint account of Shri Someshwar Kumar Gupta & Shri Sanjay Gupta and Rs. 21,00,000/- in cash.

(ii). The Ld. A.O. has not at all verified & made proper inquiry and not examined the unexplained cash deposit amounting to Rs. 1,82,21,000/- .

Arguments:-

1. It is not a case of non inquiry or examination or no verification:-

(a). It is submitted that the Ld. A.O. conducted detailed enquiry & examined the issue in detail vide Notice u/s. 142(1) dated 24.11.2021, 03.03.2022, draft assessment order dated 16.03.2022 & SCN dated 19.03.2022.

(b). Further, in the assessment order the Ld. A.O. himself stated that he himself stated that proper & complete inquiry, examination & verification of documents in first Para of Page No. 3 of 3 of Assessment order & we are quoting the same for your reference:-

“After diligent verification of the facts and documents submitted by the assessee, the assessment is made at the returned loss of Rs. 42,309/-.”

Therefore, the claim of Ld. PCIT about ‘no proper inquiry, not verification, & not examined’ is incorrect and void-ab-initio.

So, the order passed by Ld. PCIT, Jaipur-2 is totally incorrect and unlawful in the eyes of Law. Kindly quash the proceeding.”

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particular	Page No.
1	Copy of Notice us. 148 of the I.T. Act, 1961, dated 31.03.2021.	1
2	Copy of Approval u/s. 151 and reasons for reopening u/s. 147 of the I.T. Act, 1961	2-5
3	Copy of Notice u/s. 142(1) of the I. T. Act, 1961 dated 28.06.2021.	6-7
4	Copy of Notice u/s. 142(1) of the I.T. Act, 1961 dated 24.11.2021.	8-9
5	Copy of Notice u/s. 142(1) of the Act, dated 03.03.2022.	10-11
6	Copy of reply along with documentary evidence dated 19.03.2022. (i). Reply. (ii). Audited Financials for F.Y. 2012-13. (iii).Assessment order for A.Y. 2013-14.	12-28
7	Copy of Draft Assessment order for A.Y. 2014-15, dated 16.03.2022.	29-32
8	Copy of Show Cause Notice dated 19.03.2022.	33-35
9	Copy of reply along with documentary evidence dated	36-53

	22.03.2022. (i). Reply. (ii). Agreement. (iii). Bank Account statement for the period from 01.04.2013 to 31.03.2014. (iv). Confirmation of M/s. Dreamax Infra Developers Pvt. Ltd. (v). ITR-V of M/s. Dreamax Infra Developers Pvt. Ltd.	
10	Copy of Assessment order dated 23.03.2022.	54-56
11	Copy of Show cause Notice for Revision Proceeding u/s. 263 of the I.T. Act, 1961, dated 12.02.2024.	57-59
12	Copy of SCN reply dated 07.03.2024.	60-67
14	Copy of 2 nd reply of SCN dated 20.03.2024.	68-70
15	Copy of Order u/s. 263 of the I.T. Act, 1961 dated 31.03.2024.	71-88

8. In addition to the above written submissions, Ld. AR has vehemently argued that the issue raised in the show cause notice issued by the Id. PCIT had already been raised by the Assessing Officer vide show cause notice dated 24.11.2021. Extract of said notice is reproduced for the sake of convenience:

- “1. Nature of business and all sources of income.
2. Please furnish copy of bank statement of all bank account maintained by you during the period under consideration.
3. You have received Rs. 1.50 crores and Rs.50,00,000/- during the year under consideration on account of sale of property. Furnish complete details of immovable property sold by you during the year alongwith details of capital gain arises thereon.
4. There is credit entries in the bank statement of Rs. 1,82,21,000/- during the year under consideration. Please explain source of credit/debit entries and cash deposits in your bank accounts.
5. Furnish complete details of immovable property purchased by you during the year alongwith source of investment, if any.”

The contention is that when the issue had already been verified and examined by Assessing Officer, Id. PCIT could not invoke the provisions of section 263 so as to make inquiry the way, she intended to do so, as it is the prerogative of the Assessing Officer to examine the issue raised in the assessment proceeding; that the notice itself demonstrates the issue was raised by the Id. PCIT was nothing but change of opinion, and as such directions issued to make inquiry afresh is not permissible as per provision of section 263 of the Act.

In support of these contentions, Ld. AR of the assessee has relied upon the decision of the Jet Airways (I) Ltd by Bombay High Court wherein findings by our own High Court in the case of CIT Vs. Shri Ram Singh were followed.

9. Per contra, Ld. DR has relied upon the detailed finding recorded in the order of the Id. PCIT and on the decision in the case of Jagdish Kumar Gulati vs. CIT [2004] 269 ITR 71 (All), Gee Vee Enterprise vs. ACIT [1975] 99 ITR 375 (Delhi) and the decision of CIT Vs. Amitabh Bachhan, CA No. 5009 of 2016 which was also decided by the Hon'ble Supreme Court. Ld. DR referred to para 24 of judgment in the case of Jagdish Kumar Gulati (supra), wherein Hon'ble Court held that when a case is picked up

for scrutiny surely the duty of the Assessing Officer is to do a thorough investigation, but he did not do so in this case, from which is indeed evident that the finding on the issue is missing.

While referring to the decision of Hon'ble Apex Court in the case of Amitabh Bachchan (supra), Ld. DR has pointed out that therein the Hon'ble court held that the different sets of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act; that so far as the Revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under Section 147 and/or to revise the assessment order under Section 263 of the Act, but the scope of the power/jurisdiction under the different provisions of the Act would naturally be different. It was also observed that power and jurisdiction of the Revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant sections noticed above. While doing so, it must also be borne in mind that the legislature had not vested in the Revenue any specific power to question an order of assessment by means of an appeal. Ld. DR has thus argued that though Id. AO issued a show cause notice, but did not give any finding on the submissions so

made, the findings of the Id. PCIT are correct for the reasons recorded therein.

10. We have heard the rival contentions and perused the material available on record. All the ground no. 1 to 4 raised by the assessee challenge the impugned order of Id. PCIT being common, we proceed to deal with all the grounds together.

In view of the observations and reasons recorded above, Ld. PCIT had reason to believe that FAO had completed the assessment on total income at Rs. Nil, while accepting the returned income, without making proper inquiry & investigation of the source & genuineness of the transactions and source of the cash deposits/ credits in the bank account(s) and no addition was made on account of unaccounted cash credits and unexplained transactions as discussed.

Accordingly, Ld. PCIT invoked provisions meant for revision and issued a show cause notice u/s 263 of the I.T. Act, 1961 on 12.02.2024

So far as the issue of total cash deposit and credit transactions of Rs.3,82,21,000/-are concerned, said amount can be bifurcated into Receipt of 1.50 through RTGS, Rs 50,00,000/- as investment and Rs. 1,82,21,000/- as bank deposit. All these issues were taken up by the AO by issuing show

cause notice dated 24.11.2021. Extract of the notice is reproduced for the sake of convenience.

- “1. Nature of business and all sources of income.
2. Please furnish copy of bank statement of all bank account maintained by you during the period under consideration.
3. You have received Rs. **1.50 crores and Rs.50,00,000/- during the year under consideration on account of sale of property. Furnish complete details of immovable property sold by you during the year alongwith details of capital gain arises thereon.**
4. There is **credit entries in the bank statement of Rs. 1,82,21,000/-** during the year under consideration. Please explain source of credit/debit entries and **cash deposits in your bank accounts.**
5. Furnish complete details of immovable property purchased by you during the year alongwith source of investment, if any.”

As is evident from the record, the assessing officer raised the issue and considered the explanation of the assessee. Finding of the Id. AO cannot be revised in a causal or routine manner without pinpointing any error on the part of the AO or in the facts placed on record by him.

Record reveals that while issuing the draft assessment order dated 16.03.2022 Id. AO had proposed addition for the whole amount of Rs. 3,82,21,000/-, but after considering a detailed reply explaining all the issues as per reply dated 22.03.2022, final order was passed on 23.03.2022 even though without recording reasons after discussion. Therefore, by making generalized statement that order could not be held to be erroneous or prejudicial. We do not find merit in the observation of the Id. PCIT that this issue had not been examined at all by the Id. AO.

As regards the decision cited and ratio relied upon by the revenue i.e. in the case of Jagdish Kumar case (Supra), we note that Id. AO proposed the addition for whole amount, but after having considered the reply of the assessee, the facts submitted by the assessee were accepted, and as such it cannot be said that the assessment order was erroneous or prejudicial to the interest of the revenue. Thus, the facts of the case on hand are different from the facts of the case relied on, and as such does not help the revenue.

As regards the invocation of powers u/s. 263 of the Act we note that even the Expl. 2(a)& (b) do not confer unlimited power on the PCIT, and it is held that despite there being an amendment, enlarging the scope of the revisionary power of the Id. PCIT u/s 263 to some extent, it cannot justify the invoking of the Expl. 2(a) and (b) in the facts of the present case.

Newly inserted Explanation 2(a) to Sec. 263 does not give unfettered powers to Commissioner to revise each order. Said power can be exercised if in his (subjective) opinion, the order has been passed without making enquiries or verification which should have been made. Herein, having regard to the totality of facts and circumstances, it cannot be said to be a case where the subject assessment order dt. 23.03.2022 should be alleged to be erroneous or prejudicial to the interests of the revenue. There is

neither any error of law or of facts nor a case of erroneous assumption by the AO as regards facts or of law, as alleged by the Id. PCIT.

In the light of these discussion ground no 1 to 4 raised by the assessee are allowed.

Ground no. 5 being general does not require our adjudication.

As a result of the discussion and findings, we find merit in the grounds of the assessee and while considering the binding force of judicial precedents cited above, the impugned order passed u/s 263 deserves to be quashed.

ITA No. 818/JP/2024

11. This second mentioned appeal has been filed by the assessee feeling aggrieved by the order passed on 31.03.2024 by PCIT, Jaipur-2.

While challenging the order, the assessee has raised the following grounds.

“1. That in the facts and in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax [PCIT], Jaipur-2 erred in initiating proceedings u/s. 263 of the Income Tax Act, 1961.

2. That in the facts and in the circumstances of the case and in law, the appellant prays that the order of the learned PCIT, Jaipur-2 passed u/s. 263 of the Income Tax Act, 1961 may be cancelled being void ab-initio and bad in law.

3. That in the facts and in the circumstances of the case and in law, learned Principal Commissioner of Income Tax, Jaipur-2 erred in holding that assessment

order dated 20.03.2022 passed by the Assessing Officer u/s 147 of the Act was erroneous and prejudicial to the interest of the revenue and the issues raised having been duly considered by the learned Assessing Officer while framing the assessment u/s 147 of the Act.

4. That on the facts and in the circumstances of the case and in law, the learned PCIT, Jaipur-2 erred in not himself conducting necessary/ proper enquiry and verification of issues mentioned in the notice issued u/s. 263 of the Act and setting aside the assessment order for a de-novo adjudication on issues mentioned therein which is wrong and contrary to the provisions of the Act, and the Rules made thereunder.

5. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

12. Succinctly, put the facts as culled out of the records is that the return of income in ITR-6 for the A.Y. 2016-17 was filed by the assessee on 30.03.2017 declaring total income of Rs. NIL. The same was processed u/s 143(1) of I. T. Act, 1961 at the returned income. Later on, information was received from the DDIT(Systems), New Delhi that the assessee had deposited cash amounting to Rs.55,15,000/- in his Bank Account during the F.Y. 2015-16 relevant to the assessment year 2016-17, but, the assessee failed to declare the same in the return of income. So, difference in income of the assessee to the extent of Rs. 55,15,000/- was found to have escaped assessment. In order to assess this escaped income, proceedings u/s 147 of I. T. Act, 1961 were initiated by issuing notice u/s 148 of I.T. Act, 1961 on 31.03.2021. In response to the notice, the assessee filed his return of

income on 06.08.2021. Then, notice u/s 143(2) of the I.T. Act, 1961 and a notice u/s 142(1) were issued requiring the assessee to file certain information.

On perusal of the data available with the department and from the bank statement supplied by the assessee in response to show cause notice, it was noticed by the AO that the assessee had made cash deposits amounting to Rs.15,000/- and other credit entries to the tune of Rs.55,00,000/- during the year under consideration, but, when asked to explain the sources of the deposits and furnish the documents for the same, the assessee failed to submit any satisfactory explanation. So, notice alongwith draft assessment was issued on 15.03.2022 asking the assessee to show cause on or before 19.03.2022 as to why addition, as proposed in draft assessment order, should not be made. The assessee filed reply on 19.03.2022.

After considering the reply, AO noted that the assessee had done no business. Hence, the amount credited in the bank account amounting to Rs. 55,00,000/- was added as income from other sources and treated as taxable income of the assessee. With those observations the assessment

was completed as against the loss of Rs. 36,480/- and the total income was determined at Rs. 54,63,520/-.

13. On culmination of the assessment proceeding, Id. PCIT called for and examined the assessment record and noted that FAO had failed to conduct due inquiry and verification on the issue of unexplained cash deposit of Rs. 15,000/-and on unaccounted cash of Rs. 1 Crore i.e. received as regards sale of property by way of advance from Shri Upendra.

Ld. PCIT noted that proper inquiries by AO would render the assessment order erroneous as well as prejudicial to the interest of revenue in view of following decisions:

- Jagdish Kumar Gulati vs. CIT [2004] 269 ITR 71 (All)
- Gee Vee Enterprise vs. ACIT [1975]99ITR375 (Delhi)
- K.A. Rama Swami Chettiar

Ld. PCIT held that the assessment order was passed by the Id. AO in a routine and casual manner without applying relevant provisions of the Act. As further observed, the Assessing Officer did not verify the details which were required to be verified under the scope of scrutiny. Therefore, the order of the Assessing Officer was considered to be fit to be revised as per

Explanation 2 of clause (b) of section 263 of the Act and accordingly, the same was set aside.

14. In support of the grounds raised in appeal, Ld. AR of the assessee has filed following written submission -

Brief Facts of the Case:

1. Simultaneously, the Ld. A.O. has reopened the case of appellant for 3 years on 31.03.2021, which is as follows:-
 - (i). A.Y. 2013-14
 - (ii). A.Y. 2014-15
 - (iii). A.Y. 2016-17
2. That the reason for reopening was on cash and other credit entries amounting to Rs. 55,15,000/-.
3. That the Ld. A.O. made conduct detailed, proper & deep enquiry regarding sources of deposit of Rs. 55,15,000/- in the following query letters:-
 - (i). Notice u/s. 142(1), dated 28.06.2021 (placed on paper Book Page No. 5 to 6).
 - (ii). Notice u/s. 142(1), dated 24.11.2021 (placed on Paper Book Page No. 7 to 8).
 - (iii). Notice u/s. 142(1), dated 03.03.2022 (placed on paper Book Page No. 9 to 10).
 - (iv). SCN dated 15.03.2022 (placed on Paper Book Page No. 11 to 12).
 - (v). Draft Assessment order, dated 15.03.2022 (placed on Paper Book Page No. 13 to 14).
4. That assessee-company submitted detailed reply along with documentary evidences on 19.03.2022.
5. That the Ld. A.O. passed an assessment order on 20.03.2022 and discussed the whole deposits in details in assessment order & made addition amounting to Rs. 55,00,000/- & satisfied about sources of cash deposit of Rs. 15,000/-.
6. That the Ld. PCIT, Jaipur-2 issued Show Cause Notice dated 04.03.2024 for Revision proceeding u/s. 263 of the I.T. Act, 1961 on the following 2 issues, which are as follows:-

- (i). The Ld. A.O. has not at all verified & made proper inquiry about Rs. 1.00 Crore as advance payment received by the appellant in Axis Bank from Shri Bhupendra Singh Yadav.
- (ii). The Ld. A.O. has not at all verified and examined the unexplained cash credit of Rs. 15,000/-.

Arguments & Our Submission:-

A. It is not a case of no enquiry or independent enquiry:-

1. That the so called advance of Rs. 1.00 Crore was received in 2 tranches Rs. 20,00,000/- through RTGS on 09.12.2015 and Rs. 80,00,000/- on 27.12.2015 through cheque No. 082911, but the cheque was neither lodged in bank nor encashed.
2. That Rs. 20,00,000/- falls in the year under consideration & the Ld. A.O. made addition of Rs. 20,00,000/- in the assessment order (i.e. included in addition of Rs. 55,00,000/-).
3. That regarding Rs. 80,00,000/-, appellant received this amount of Rs. 80,00,000/- as advance vide agreement dated 27.12.2015. But on request of advance giver Mr. Bhupendra Singh Yadav, the appellant did not deposit the said cheque of Rs. 80,00,000/-.
4. That Mr. Bhupendra Singh Yadav made advance payment of Rs. 80,00,000/- on 07.05.2016 vide RTGS of Kotak Mahindra Bank bearing UTR No. KKBKR52016050700615624 in lieu of the said cheque
5. That the Ld. A.O. examined the transaction of Rs. 80,00,000/- in the subsequent year and conducted enquiry in detail & gathered evidences. The same facts described in line & length in the Assessment order for A.Y. 2017-18, order dated 24.12.2019. (placed on Paper Book Page No. 52 to 53).
6. Hence, this is not a case of without enquiry
7. If the same enquiry has been conducted in the year even it is not prejudice order for the revenue as this was an advance.
8. That the PCIT, Jaipur-2 is of the opinion that the same can be treated as income in the year than it is a case of change of opinion.

B. Regarding Rs. 15,000/-:-

- (i). It is not a case of no enquiry or non-examination or non verification, as 3 notices u/s. 142(1) was issued for specific enquiry of this cash deposit Rs. 15,000/-, dated 28.06.2021, 24.11.2021, 03.03.2022, SCN dated 15.03.2022 & Draft assessment order dated 15.03.2022.

(ii). Ld. PCIT's claim about 'not verification & not examined at all' is incorrect.

Therefore, the order passed by Ld. PCIT, Jaipur-2 is totally incorrect and unlawful in the eyes of Law. Kindly quash the proceeding.

15. To support the contentions, reliance has been placed on the following record :

S. No.	Particular	Page No.
1	Copy of Notice us. 148 of the I.T. Act, 1961, dated 31.03.2021.	1
2	Copy of Approval u/s. 151 and reasons for reopening u/s. 147 of the I.T. Act, 1961	2-4
3	Copy of Notice u/s. 142(1) of the I. T. Act, 1961 dated 28.06.2021.	5-6
4	Copy of Notice u/s. 142(1) of the I.T. Act, 1961 dated 24.11.2021.	7-8
5	Copy of Notice u/s. 142(1) of the Act, dated 03.03.2022.	9-10
6	Copy of Show Cause Notice dated 15.03.2022.	11-12
7	Copy of Draft Assessment Order dated 15.03.2022.	13-14
8	Copy of reply along with documentary evidence dated 19.03.2022. (i). Reply. (ii). Bank Account statement for the period from 01.04.2015 to 31.03.2016. (iii). Copy of Cash Book for the period from 01.04.2015 to 31.03.2016.	15-26
9	Copy of Assessment order dated 20.03.2022.	27-34
10	Copy of Show cause Notice for Revision Proceeding u/s. 263 of the I.T. Act, 1961, dated 04.03.2024.	35-38
11	Copy of SCN reply along with documentary evidence dated 18.03.2024. (i). Reply (ii). Assessment Order for A.Y. 2017-18 & where finding of Rs. 80 Lakh was considered. (iii). Reply to ITO during scrutiny of A.Y. 2017-18. (iv). Mutual Agreement dated 27.12.2015. (v). Receipt of amount. (vi). List of election Roll. (vii). Mutual agreement dated 27.01.2020 and 13.09.2020.	39-68

	(viii). Consolidated statement of affairs.	
12	Copy of Order u/s. 263 of the I.T. Act, 1961 dated 31.03.2024.	69-84

16. Ld. AR of the assessee has submitted that the assessment in this case has been completed by making entire credit made in the bank account i.e. an amount of Rs. 55,00,000/- whereas out of said amount, a sum of Rs. 20,00,000/- formed part of amount already added by the AO, and the balance amount of Rs. 80,00,000/- received in the subsequent year, and as such, there is no error on the part of the Assessing Officer.

As regards the credit of Rs. 15,000/- deposited in the bank account it has been contended that when the whole credit was added, there was no question of making further inquiry by the AO into the matter.

The contention is that on both the issues order is not erroneous or prejudicial to the interest of the revenue.

17. Per contra, Ld. DR heavily relied upon the findings recorded in para 5 of PCIT order, and also relied upon the decisions cited by Id. PCIT, and also in the case of Jagdish Kumar Gulati vs. CIT [2004] 269 ITR 71 (All), Gee Vee Enterprise vs. ACIT [1975]99ITR375 (Delhi) and the decision of

CIT Vs. Amitabh Bachchan, CA No. 5009 of 2016 by Hon'ble Supreme Court.

DR referred to para 24 of judgment in the case of Jagdish Kumar Gulati (supra), wherein Hon'ble Court held that when a case is picked up for scrutiny surely the duty of the Assessing Officer is to do a thorough investigation, but he did not do so in this case, from which is indeed evident that the finding on the issue is missing.

While referring to the decision of Hon'ble Apex Court in the case of Amitabh Bachchan (supra), Ld. DR has pointed out that therein the Hon'ble court held that the different sets of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act; that so far as the Revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under Section 147 and/or to revise the assessment order under Section 263 of the Act, but the scope of the power/jurisdiction under the different provisions of the Act would naturally be different. It was also observed that power and jurisdiction of the Revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant sections noticed above. While

doing so, it must also be borne in mind that the legislature had not vested in the Revenue any specific power to question an order of assessment by means of an appeal. Ld. DR has thus argued that though Id. AO issued a show cause notice, but did not give any finding on the submissions so made, the findings of the Id. PCIT are correct for the reasons recorded therein.

18. We have heard the rival contention and perused the material available on record.

Assessee has raised 5 grounds of appeal.

Ground no. 5 being general in nature does not require our adjudication.

By way of Grounds no. 1 to 4, assessee has challenged the findings of the Id. CIT(A) on the various technical as well as factual grounds raised therein.

Admittedly, the assessee furnished ITR declaring total income of Rs. NIL. The same was processed u/s 143(1) of I. T. Act, 1961 at the returned income. Later on, information was received from the DDIT(Systems), New Delhi that the assessee had deposited cash amounting to Rs.55,15,000/- in his Bank Account during the F.Y. 2015-16, but, the assessee had failed to declare the same in the return of income. To assess escaped income of Rs.

55,15,000/- proceedings u/s 147 of I. T. Act, 1961 were initiated by issue of notice u/s 148 of I.T. Act, 1961 on 31.03.2021. In response to the notice the assessee filed his return of income on 06.08.2021. Thereupon, notice u/s 143(2) of the I.T. Act, 1961 and a notice u/s 142(1) was issued requiring the assessee to file certain information. On perusal of the data available with the department and from the bank statement supplied by the assessee in response to show cause notice, it was noticed that the assessee had made cash deposits amounting to Rs.15,000/- and other credit entries to the tune of Rs.55,00,000/- during the year under consideration but when asked to explain the sources of the deposits and furnish the documents for the same, the assessee failed to submit any satisfactory explanation. Therefore, a notice and draft assessment was issued on 15.03.2022 asking the assessee to show cause as to why addition as proposed in draft assessment order should not be made. The assessee filed a reply on 19.03.2022. After considering the reply AO noted that the assessee had done no business. Hence, the amount credited in the bank account amounting to Rs. 55,00,000/- was added as income from other sources and hence, treated as taxable income of the assessee. With said observations the assessment was completed as against the return loss of Rs. 36,480/- the total income determined at Rs. 54,63,520/-.

That assessment records were called for by the PCIT as to examine the same the power vested upon her by section 263 of the Act. While doing so she noted that FAO failed to conduct due inquiry and verification on the issue of unexplained cash deposit of Rs. 15,000/- on unaccounted cash of Rs. 1 Crore in lieu of sale property. The advance received by the assessee company from Shri Upendra for the transaction examined by the FAO from the point of view taxability in terms of forfeiture of advance and parting performance of contract. Therefore, the order of the Assessing Officer was considered liable to be revised as per Explanation 2 clause (b) & (a) of section 263 of the Act, and accordingly, set aside.

So far as the issue of total cash deposited of Rs. 15,000 and credit transactions of Rs.1,00,00,000/- we find that as per claim of the assessee amount stands bifurcated into Receipt of Rs.20 lacs received in the year under consideration and Rs 80,00,000/- in the subsequent year.

So far as the amount of total credit is concerned the same was added which include Rs. 20,00,000/- and since assessee's claim that the balance amount was not received in the year under consideration was considered by AO, the same cannot be considered to hold the order of the assessment as erroneous and prejudicial to the interest of the revenue.

Thus, the assessing officer had raised the issue and called for the detailed explanation of the assessee and considered the explanation of the assessee. In this situation, finding of the Id. AO without considering it be erroneous or prejudicial to the interest of the revenue, could not be revised in a causal or routine manner without pinpointing any error on the part of the AO in considering all the facts placed on record by him before accepting the explanation of the assessee.

In the light of the discussion so recorded and in the light of the fact that Id. AO while making the assessment whole credit is added there is no other item left to be considered. When the assessee claimed that the said balance amount of Rs. 80 Lac had not been received in the form of cheque and the same was deposited in the subsequent year, the order of the Id. AO cannot be said to be either erroneous or prejudicial to the interest of the revenue.

When all the aspects were considered, we do not find any merit in the observation of the Id. PCIT that this issue had not been examined at all by the Id. AO. Rather, this observation is general without pointing out any failure on the part of the Id. AO.

As regards the decision cited and ratio in the case of Jagdish Kumar case (Supra) therein the Revenue had cited observations made by Hon'ble

Allahabad High Court that “ITO who is not only an adjudicator but also an investigator cannot remain passive on the face of a return which is apparently in the order but calls for further enquiries; the decision in Gee Vee Enterprise deals with the issue that generally revenue does not scrutinize every case in detail, but, when a case is picked up for scrutiny, surely it is the duty of the Assessing Officer to conduct a thorough investigation.

We find that AO had proposed the addition for whole amount but after that he considered the reply of the assessee and accepted the version submitted by the assessee, and as such, it cannot be said that order passed by the AO is erroneous or prejudicial to the interest of the revenue. The facts of the case on hand, and the facts of the above cited case are different and as such do not help the revenue.

As regards the invocation of powers u/s. 263 of the Act we note that even the Expl. 2(a) & (b) do not confer unlimited power on the PCIT, and it is held that despite there being an amendment, enlarging the scope of the revisionary power of the Id. PCIT u/s 263 to some extent, it cannot justify the invoking of the Expl. 2(a) and (b) in the facts of the present case.

Newly inserted Explanation 2(a) to Sec. 263 does not give unfettered powers to Commissioner to revise each order. Said power can be exercised

if in his subjective opinion, the order has been passed without making enquiries or verification which should have been made. Herein, having regard to the totality of facts and circumstances, it cannot be said to be a case where the subject assessment order dt. 23.03.2022 should be alleged to be erroneous or prejudicial to the interests of the revenue. There is neither any error of law or of facts nor a case of erroneous assumption by the AO as regards facts or of law, as alleged by the Id. PCIT.

In the light of these discussion ground no 1 to 4 raised by the assessee are allowed.

Hence, in view of these legal and factual submissions, and the binding judicial precedents, the impugned order passed u/s 263 deserves to be quashed.

19. As a result, both these appeals are allowed.

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

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/12/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Shree Shyam Buildstructure Private Limited, Sikar
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Sikar

3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA Nos. 815 & 818/JP/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar