

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 786 /JPR/2024/ A.Y. 2019-20

Shri Sheikh Naseem,
Flat No. S-II, Park Paradise,
Plot No. 57, Mahadev Nagar,
Gandhi Path, Vaishali Nagar,
Jaipur- 302 021.

PAN No.: AHRPM 4934 B

..... Appellant

Vs.

The DCIT, Circle-4,
NCRB Revenue Building,
Statue Circle, Jaipur – 302 001.

..... Respondent

Appellant by : Shri Amit Mundra, CA, Ld. AR
Respondent by : Mrs. Alka Gautam, Ld. CIT-DR
Date of hearing : 05/12/2024
Date of pronouncement : 06/12/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal is directed against the order of the Ld. Pr. CIT, Jaipur -2, dated 31-03-2024 passed u/s. 263 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal.

"1. On the facts and in the circumstances of the case, the Ld. PCIT, Jaipur -2 has erred in law in invoking the provision of Section 263 of the Income Tax Act, 1961 without appreciating the fact that the points relating to unsecured loans, sundry creditors and other liabilities has already been examined by the assessing

officer during the course of assessment proceedings. The Id. PCIT has acted against the law and principles of natural justice in invoking the provisions of Section 263.

2. on the facts and in the circumstances of the case, the Id. PCIT, Jaipur-02 has erred in law in setting aside the assessment order u/s. 143(3) of the Act passed by the assessing officer. The Ld. PCIT has not considered the facts and circumstances of the case and ignored the fact that the unsecured loans and other liabilities has already been examined in detail by the assessing officer during the course of assessment proceedings. The Ld. PCIT has acted against the law and principles of natural justice in setting aside the assessment order passed u/s. 143(3) of the Act.

3. The appellant prays that order passed by the Ld. PCIT, Jaipur-2 be quashed and craves to leave to add, amend, alter, vary and withdraw any or all the above grounds of appeal.”

2. The brief facts of the case are that the assessee individual filed his return of income on 28-10-2019 declaring total income at Rs. 40,10,000/-. The case of the assessee was selected under CASS for complete scrutiny on the following issues:

- A. High Creditors/ Liabilities;
- B. Refund Claim and
- C. Unsecured Loans.

The case of the assessee was assessed at returned income after considering the replies/submissions of the assessee vide order dated: 28-09-2021. Thereafter, a notice was issued by the office of the Ld. PCIT, Jaipur-2 u/s. 263 of the Act vide dated: 07.03.2024 and the same was complied with by the assessee vide his reply dated: 14.03.2024. Then again a notice was issued by the office of the Ld. PCIT, Jaipur-2 vide dated: 15.03.2024 and the same was replied by the assessee vide letter dated: 26.03.2024. Ultimately, an order u/s. 263 of the Act was passed by the Ld. PCIT, Jaipur-2 vide dated: 31.03.2024 directing the AO as per Para 7 of the order as under:

“Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of the Income Tax Act 1961, I hold that the order under Section 143(3) of the IT Act dated 28.09.2021 for AY 2019-20 passed by the Assessing Officer is erroneous in so far as it prejudicial to the interest of revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue of unsecured loans and sundry creditors. The order of the Assessing Officer is therefore liable to revision under the clause (a), (b) & (c) of Explanation (2) to section 263 of the Income Tax Act. Hence, the assessment order is set aside as discussed above on the issue of unsecured loans and sundry creditors. The AO is directed to examine the issue and pass suitable order after according opportunity of being heard to the assessee.”

3. To further elaborate the issue involved, we need to discuss the names of the parties and transactions with them as discussed by the Ld. PCIT, Jaipur-2 in her order vide Para 2 reproduced as under:

S.N.	Name and address of the creditor of the firm	PAN	Opening Balance	Loan received	Repaid during the year	Closing Balance	Interest Paid
1	Meena Gupta	ACNPG5306J	10,00,000	-	10,00,000	0	-
2	Ashish Jindal	ABIPJ3973G	12,00,000	-	12,00,000	0	-
3	Lalit Dhandia	ACWPD4892R	9,00,000	-	9,00,000	0	-
4	Meena Tank	AOFPT1771A	-	7,00,000	-	7,00,000	-
5	Manoj Gangwal	AERPG1470P	5,00,000	-	5,00,000	0	-
6	Nirmala Goyal	ADGPG7237G	15,00,000	-	15,00,000	0	1,62,000
7	Ashok Kumar Agarwal	AAYPE6014G	-	6,00,000	6,00,000	0	61,200
8	Arun Jindal	ABBPJ3940N	13,00,000	-	13,00,000	0	-
9	Deepak Bangard	ABAPB0070A	15,00,000	-	15,00,000	0	2,19,600
10	Abhishek Manda	AGYPM2600C	10,00,000	-	10,00,000	0	1,08,000
Total				13,00,000	95,00,000		6,45,640

Considering the table above discussed by the Ld. PCIT, Jaipur-2, we observed that there is no harmony in the directions of the Ld. PCIT, Jaipur-2, what she directed vide Para 7 of her order reproduced (supra) vis-à-vis the table she considered for proceeding also reproduced (supra). This observation is further fortified with her finding in her order, where she observed and discussed as under:

“Therefore, the amount of Rs. 1, 14, 45,640/- (unsecured loan received Rs. 13, 00,000/- + squared up of unsecured loan during the year amount Rs. 95, 00,000/- + Interest amount 6, 45,640/-) remained unverified during the course of the assessment. Unverified and unconfirmed amount in respect of unsecured loan of Rs. 1,14,45,640/- should have been added back in the total income of the assessee firm u/s. 68 of the Act by the assessing officer, but, the AO failed to consider/apply his mind on this issue.

The reply as furnished by the assessee has been considered and placed on record and it is seen that, the assessee has not provided any documentary evidences/confirmations/Income Tax Returns/Bank statements related to unsecured loan creditors of Rs. 1,14,45,640/- (unsecured loan received Rs. 13,00,000/- + squared up of unsecured loan during the year amount Rs. 95,00,000/- + Interest amount 6,45,640/-).”

4. As we considered the table reproduced (supra) as well as the remarks/observations of the Ld. PCIT, Jaipur-2 also reproduced (supra), it can be safely concluded that the whole premise on which the Ld. PCIT, Jaipur-2 proceeded with is at fault, i.e. verification of opening balance (Rs. 95 Lacs) and interest thereon (Rs. 6, 45,640/-) except two petty transactions of loan taken during the year under consideration amounting to Rs. 13 Lacs.

5. As far as loans taken during the year are concerned, the Ld. PCIT, Jaipur-2 looks to be satisfied and nowhere concerned about the same throughout the order, where as opening balance of loans and interest thereon are concerned, same can't be a subject matter of verification neither in scrutiny assessment u/s. 143(3) of the Act nor under the revision proceedings u/s. 263 of the Act. As the

principle applies that each year is separate year and to be discussed separately. In view of the above, we found the order of the Ld. PCIT, Jaipur-2 is legally not tenable as the same is beyond the scope of powers as enshrined in section 143(3) of the Act/ section 263 of the Act. **Accordingly, grounds raised by the assessee are allowed.**

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 6th Day of December 2024.

Sd/-

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Jaipur, दिनांक/Dated: 06/12/2024

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	06.12.2024		Sr.PS/PS
2	Draft Placed before author	06.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

