

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1653/Del/2023  
(Assessment Year : 2018-19)

<b>Uttam Chand Rakesh Kumar</b> 573, Katra Ishwar Bhawan, Khari Baoli, New Delhi – 110 006  <b>PAN : AACFU 3176 D</b>  (Appellant)	Vs.	<b>Pr. CIT</b> Central – 1, New Delhi          (Respondent)
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Assessee by	Shri Sachin Kumar, C.A.
Respondent by	Ms. Anu Krishna Agarwal, CIT-D.R.

Date of Hearing	18.12.2024
Date of Pronouncement	18.12.2024

**ORDER**

**PER VIMAL KUMAR, JM:**

1. The appeal filed by assessee is against order dated 30.03.2023 of Learned Commissioner of Income Tax (Appeals)-23, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of assessment order dated 28.03.2021 by the Dy. Commissioner of Income Tax, Central Circle – 2, Delhi (hereinafter referred as 'Ld. AO') under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2018-19.

2. As per the grounds of appeal, the assessee has challenged the assessment of jurisdiction by the Pr. Commissioner of Income Tax (Central), Delhi under section 263 of the Act.

3. When the matter was called for hearing, the learned Counsel for the assessee submitted at the outset that in the instant case a survey proceedings under section 133A of the Act was carried out on 18.01.2018 wherein the assessee surrendered a sum of Rs.5,00,00,000/- to cover excess stock of Rs.88,04,481/-; unaccounted cash sale of Rs.4,13,85,200/-. Thereafter, the assessee filed return of income on 31.10.2018 declaring total income at Rs.1,76,63,300/- for the A.Y. 2018-19 in question. The return filed by the assessee was subjected to scrutiny assessment wherein the Assessing Officer *inter alia* made an addition of Rs.3,75,00,000/- on account of discrepancy found in stock and cash receivable. The assessee accordingly challenged the aforesaid additions before the learned CIT(A) vide appeal memo dated 26.04.2021 from the page 21 of the CIT(A)'s order. The CIT(A) adjudicated the issue in favour of the assessee by passing First Appellate order dated 30.03.2023 under section 250 of the Act. The Pr. CIT however in the intervening period issued show-cause notice dated 13.02.2023 in exercise of powers conferred under section 263 of the Act to modify the action of the AO, on the ground that the Assessing Officer has incorrectly assessed the unaccounted income to the extent of Rs.3,75,00,000/- as original business income which is otherwise liable to be taxed under section 69 r.w.s 115BBE of the

Act. The Pr. CIT thus alleged that the assessment order suffers from error which is prejudicial to the interest of Revenue. The Pr. CIT also alleged that the Assessing Officer has failed to make an addition of Rs.1,25,00,000/- under section 69 r.w.s 115BBE of the Act. The Pr. CIT accordingly set aside the assessment order and remitted the matter back to the file of AO for fresh assessment in terms of the directions in the original order. As per the directions, the Assessing Officer was asked to include 1.25 cr. offered by the assessee in the return of income towards excess stock by invoking section 69 r.w.s 115BBE of the Act. Likewise, the Assessing Officer was also directed to tax the additions at Rs.3,75,00,000/- towards unexplained investment receivable under section 69 r.w.s 115BBE of the Act.

4. In this backdrop, the learned Counsel for the assessee contends that the directions by Pr. CIT under section 263 of the Act calling upon the Assessing Officer to invoke section 69 r.w.s 115BBE of the Act *qua* the additions made at Rs.3,75,00,000/- is outside the revisional jurisdiction. The learned Counsel pointed out that the impugned addition of Rs.3,75,00,000/- was subject matter of dispute before the CIT(A) who was seized of the dispute at the time of issuance of show-cause notice. The learned Counsel contended that the revisional jurisdiction under section 263 is ousted, as soon as the same issue of additions towards unexplained investment in receivable is pending before the CIT(A) for adjudication. Learned Counsel asserted that Explanation 1(c)

clearly restricts the jurisdiction of the Pr. CIT under section 263 on the issues which are under consideration of the CIT(A). The learned Counsel also referred to the judgment delivered by the Hon'ble Delhi High Court in the case of *Ansal Properties & Ind. (P.) Ltd. (2009) 315 ITR 0025*. The learned Counsel next submitted that the issue towards impugned additions of Rs.1.25 cr. has been later adjudicated by the CIT(A) in favour of the assessee vide order dated 30.03.2023 whereby the impugned addition of Rs.3,75,00,000/- itself stood deleted by the First Appellate Authority. The Learned Counsel thus contends that revisional directions *qua* the additions of Rs.3,75,00,000/- is outside the jurisdiction available to the Pr.CIT under section 263 of the Act. Adverting to the other directions namely to assess the income of Rs.1.25 cr. under section 69 r.w.s 115BBE of the Act, the learned Counsel reiterated that the aforesaid amount of Rs.1.25 cr. was included in the return of income and was offered as business income of the assessee which was assessed as such by the AO. In the facts and circumstances of the case, the learned Pr. CIT has sought to displace the assessment order in this regard whereby the impugned income already declared in the return of income was sought to be re-characterized as income from other sources by invoking section 69 r.w.s 115BBE of the Act. Learned Counsel submitted that the differential amount of Rs.1.25 cr. represents income arising from excess stock which is nothing but offshoot of business transactions and therefore, has been rightly assessed as business income by the Assessing Officer. The learned Counsel pointed out that in the similar facts, the Co-

ordinate Benches in plethora of cases have held that such income representing excess stock are in the nature of business income. A reference was made to the decision rendered by the Co-ordinate Bench in the case of *Hema Raman vs. PCIT in ITA No.1012/Del/2022* order dated 12.05.2023. The learned Counsel submitted that in view of the judgment of the Co-ordinate Benches, the view expressed by the AO is vindicated and this cannot be disturbed in section 263 proceedings in the absence of any error committed by the AO. The learned Counsel thus submitted that the pre-requisites for invoking provision of section 263 are not fulfilled in the instant case and therefore, the impugned order passed under section 263 of the Act need to be cancelled and set aside.

5. The learned CIT-DR on the other hand relied upon the revisional action under section 263 of the Act. The learned CIT-DR submitted that while the income has been assessed by the AO, he has erroneously held such income as business income whereas section 69 encompasses excess stock as well as unaccounted receivables found in the course of such survey. Section 69 does not distinguish between undisclosed income arising in the course of business or otherwise. The learned CIT-DR thus urged for non-interference with the revisional order.

6. We are carefully considered rival submissions and perused the material referred and relied upon in the course of hearing in terms of Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963.

7. As narrated on behalf of the assessee (supra) the revisional action under section 263 has been called in the question on two points; As regards the directions in relation to addition of Rs.3,75,00,000/- carried out by the AO at the first instance but however, at a normal rate of tax, it is the case of the assessee that the subject matter of dispute was sub-judice before the CIT(A) and relevant time of issuance of show-cause notice under section 263 of the Act. This being so, the revisional powers of the Pr. CIT under section 263 stood curtailed in terms of clause (c) to Explanation (1) to section 263 of the Act.

8. We find that the Explanation (1) is express in this regard. The issue which is sub-judice before the CIT(A) cannot be revised under section 263 of the Act. Thus, the revisional action *qua* the additions Rs.3,75,00,000/- is unsustainable in law and therefore, requires to be cancelled. Adverting to the other direction *qua* Rs.1.25 cr. towards unexplained excess stock etc. it is not the case of the Revenue that the aforesaid amount has not been offered for taxation. The aforesaid amount was included in the return of income as business income of the assessee and assessed as such by the AO. The limited dispute raised under section 263 of the Act is taxability of such income under the correct head of income along with necessary consequences by way imposition of tax liability under section 115BBE of the Act. The Co-ordinate Benches in long line of judgments have taken a view that the undisclosed income on account of excess stock kept in the course carrying out of the

business is an ordinary incident of business and therefore, susceptible to tax under the head business income instead of the residuary provision. In the light of reasons expressed by the Co-ordinate Benches in similar facts and situation, the assessment made by the AO on the issue is plausible. Such plausible view taken by the AO in tune with the decision of the Co-ordinate Benches, cannot be disturbed under section 263 of the Act as held in the case of *CIT vs. Max India Ltd.*(2007) 213 CTR (SC) 266. Hence, the revisional action *qua* the amount of Rs.1.25 cr. is also liable to be cancelled.

9. Hence, the revisional action fails on both counts.

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

**Order was dictated and pronounced in the open court on  
18<sup>th</sup> December, 2024**

**Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

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

Dated: 18.12.2024  
Priti Yadav, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI