

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.223/Ind/2024
Assessment Year: 2019-20

Nemichand Jain HUF Prop. M/s. Mahavir Jewellers. Near Bus Stand Berasia (Assessee/Appellant)	<u>बनाम/</u> Vs.	PCIT (Central), Bhopal (Revenue/Respondent)
PAN: AACHN1847E		
Assessee by	Shri Govind Rinwa, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	21.01.2025	
Date of Pronouncement	31.01.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 07.03.2024 passed by learned Pr. Commissioner of Income-Tax (Central), Bhopal ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 15.09.2021 passed by learned DCIT, Central Circle-2, Bhopal ["AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee-HUF is engaged in the business of trading of gold and silver ornaments/articles and money lending business. A survey u/s 133A was conducted upon business premises of assessee on 07.03.2019 during financial year 2018-19 relevant to AY 2019-20 wherein the assessee surrendered additional income of Rs. 65,66,144/- on account of excess stock of gold and silver items. Subsequently, the assessee filed return of AY 2019-20 on 23.07.2019 showing total income of Rs. 79,75,950/- including the surrendered income of Rs. 65,66,144/- offered during survey. The case of assessee was selected for scrutiny assessment. While completing assessment, the AO accepted returned income of assessee but, however, taxed the surrendered income of Rs. 65,66,144/- as per higher rate of tax u/s 115BBE.

3. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 05.02.2024 and finally passed revision-order dated 07.03.2024 setting aside AO's order. Aggrieved by such revision-order, the assessee has come in this appeal before us.

4. Ld. Representatives of both sides are *ad idem* to accept that the Ld. PCIT has invoked revisionary jurisdiction u/s 263 precisely for the reason that the AO, while passing assessment-order, has failed to initiate penalty

proceeding u/s 271AAC(1) qua the income of Rs. 65,66,144/- surrendered by assessee during survey. Therefore, according to Ld. PCIT, the non-initiation of penalty proceedings u/s 271AAC(1) has rendered the assessment-order as erroneous-cum-prejudicial to the interest of revenue.

5. Ld. Representatives further agree that an identical case having same facts has already been decided by ITAT, Indore in **Sriyans Kumar Jain HUF Vs. PCIT (Central), Bhopal, ITA No. 289/Ind/2024 order dated 08.10.2024** in assessee's favour. The relevant paras of ITAT's order are as under:

"4. On hearing learned Representatives of both sides and perusing the orders of lower-authority, we find that the Ld. PCIT has invoked revisionary jurisdiction u/s 263 precisely for the reason that the AO, while passing assessment-order, has failed to initiate penalty proceeding u/s 271AAC(1) qua the income of Rs. 33,86,608/- surrendered by assessee during survey. Therefore, according to Ld. PCIT, the non-initiation of penalty proceedings u/s 271AAC(1) has rendered the assessment-order as erroneous-cum-prejudicial to the interest of revenue.

5. However, the provision of section 271AAC(1) reads as under:

"Penalty in respect of certain income.

271AAC. (1) The Assessing Officer or the Commissioner (Appeals) may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section."

6. A careful reading of above section 271AAC clearly reflects that the imposition of penalty is not compulsory in every case, the use of words "may direct" shows discretion available to the AO. Therefore, the AO may or may not impose penalty as per his analysis. When it is so, it cannot be said that there is any error in the order of AO. We are mindful of the following view taken by Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. v. Commissioner of Income Tax, (2000) 243 ITR 83 (SC)**:

"The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income-tax Officer is unsustainable in law."

7. Therefore, in present case, the order passed by AO cannot be said to be erroneous for non-initiation of penalty proceeding when the imposition of penalty is not mandatory and one of the discretion of AO. In the circumstance, we are inclined to quash the revision order passed by PCIT wrongly holding that the AO's order is erroneous. We order accordingly to quash the revision-order and restore the AO's order. The assessee succeeds in this appeal."

6. As there is no change in facts, we adopt the view already taken by ITAT, Indore and accordingly quash the impugned revision-order passed by Ld. PCIT and restore the AO's order. The assessee succeeds in this appeal.

7. Resultantly, this appeal is allowed.

Order pronounced in open court / by putting up on notice board as per Rule 34 of ITAT Rules, 1963 on 31/01/2025
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Sd/-

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31/01/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore