

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.321/Nag./2024
(Assessment Year : 2014-15)

Sanjay Umarshi Dand
A-5, KDO Society
Near Govind Nagar, Malkapur
Dist: Buldhana 443 101
PAN – ABDPD6281C

..... Appellant

v/s

Principal Commissioner of Income Tax
Nagpur-1, Nagpur

..... Respondent

Assessee by : Shri Kapil Hirani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 21/01/2024

Date of Order – 10/02/2025

ORDER

PER K.M. ROY, A.M.

This appeal by the assessee is emanating from the impugned order dated 23/03/2024, passed by the learned Principal Commissioner of Income Tax, Nagpur-1, Nagpur, [*learned PCIT*], for the assessment year 2014-15.

2. Following grounds have been raised by the assessee:-

"1. On the basis of the facts and circumstances of the case, the Pr. Commissioner of Income-tax is not justified in invoking the provisions of section 263 of the Act.

2. On the basis of the facts and circumstances of the case, the Pr. Commissioner of Income-tax is not justified in invoking the provisions of section 263 of the Act by considering the assessment order passed u/s. 144 r.w.s. 144B by the Assessing Officer as erroneous & prejudicial to interest of the revenue when the impugned assessment order was passed by AO with the approval of National Faceless Assessment Centre (NFAC) as per guidelines

issued by Board in view of provisions of section 144B(1)(xvi) (a) of the Act and more particularly when the Pr. CIT has not pointed out any error in the approval granted NFAC.

3. On the basis of facts and as per law, the Pr. CIT is not justified in exercising the jurisdiction u/s. 263 in respect of the assessment order which itself is invalid because the notice u/s. 143(2) was not issued by the AO.

4. The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal."

3. Initially, the assessee did not file its return of income. The Assessing Officer received information from the Asstt. Director of Income Tax (Inv.), Akola, that the assessee, during the year under consideration, had entered into high value transaction in his bank account available with ICICI Bank to the tune of ₹ 2,16,86,186. Hence, the assessee's case was re-opened under section 147 of the Income Tax Act, 1961 ("the Act") by issuing notice under section 148 of the Act. Notices were also issued under section 142(1) of the Act which were served upon the assessee. The assessee, in response to the notice under section 148 of the Act, filed his return of income on 28/12/2021, which was treated as invalid by the Assessing Officer. The assessee submitted that the nature of business of the assessee is agro based industries. As stated by the Assessing Officer, the assessee was provided enough opportunities. However, the Assessing Officer held that the assessee failed to provide the details called for and hence the Assessing Officer was constrained to invoke the provisions of section 144 of the Act and estimating the income of the Appellant @2% of the credits in the assessee's bank account and treated the same as business income which worked out to ₹ 4,33,724 (2% of ₹ 2,16,86,186).

4. Meanwhile, the learned PCIT invoked his jurisdiction under section 263 of the Act keeping in view the assessment order passed by the Assessing Officer which, according to the learned PCIT, was erroneous and prejudicial to the interests of Revenue. The learned PCIT set aside the impugned assessment order dated 30/03/2022, passed by the National Faceless Appeal Centre, passed under section 147 r/w section 144B of the Act, and restored the entire matter to the file of the Assessing Officer to make the assessment restricted and limited to the issue of credits in the bank account of the assessee as discussed herein below:-

"5.3 It is seen that the Assessee while pointing out an error in the bank account no. has not denied the deposits. Thus, the fact remains that the total deposits in the bank account of the assessee is at Rs 2,16,86,186/-. He merely has denied that Rs.3,50,000/- deposited in Bank A/c no. 145305500006 does not pertain to him, without any clarification.

5.4 Further, it is evident from the details filed in the ROI reproduced above that the assessee was not maintaining books of accounts for the year under consideration, i.e. AY 2014-15 [as the above details were filed in Col. 53 -No Account Case]. However, the income disclosed by the assessee in the return of income was less than 8% of Gross receipts which is compulsorily required to be declared as per the provisions of Sec. 44AD of the Act in No accounts case. This 8% on the Gross receipts of Rs. 66,34,931/- would be Rs 5,30,794/- and not Rs 1,69,015/-, as declared by the assessee.

Even this aspect was also not examined by the FAO. This in itself is erroneous in so far as it is prejudicial to the interest of revenue as per Sec 263. Further, the assessee has not attempted to furnish any asset liability statement, balance sheet, profit and loss account or books of accounts maintained by him to demonstrate that the deposits in the banks of Rs 2,16,86,186/- were explained. Merely enclosing sale deeds and Annexure titled as "Details of amount credited into the bank accounts during the FY 2013-14" does not explain and justify the sources of cash deposits.

5.5 In the light of the examination of the records in this case, and the factual matrix as described in the paras above, after giving the assessee an opportunity of being heard, I am of the considered view that the assessment order u/s 147 read with section 144B of the Income-tax Act, 1961 dated 30.03.2022 passed by the National Faceless Assessment Centre is erroneous in so far as it is prejudicial to the interest of revenue as per the provisions of Section 263 and explanation 2 (a) and 2 (b) to Section 263 of the Income-tax Act, 1961, as these issues were neither examined by the AO nor were these substantiated during the proceedings u/s 263 of the Act.

6. Accordingly, I hereby set aside the assessment u/s 147 read with section 144B of the Income Tax Act, 1961 dated 30.03.2022 passed by the National Faceless Assessment Centre, to the AO, to make the assessment restricted and limited to the issue of credits in the bank accounts of the assessee as discussed above, by conducting inquiries and verification of the claim of the assessee, after giving an opportunity of being heard."

The assessee being aggrieved, is in appeal before the Tribunal.

5. The learned Departmental Representative supported the order of the PCIT and stressed that no enquiry was made regarding estimation of income which makes the assessment order passed by the Assessing Officer as erroneous and judicial to the interests of the Revenue and warranting interference of the learned PCIT under section 263 of the Act and which has rightly been invoked by the learned PCIT.

6. The learned Counsel for the assessee reiterated on the submissions made before the learned PCIT and submitted that the assessment order need not be disturbed. The learned counsel for the assessee during the course of arguments firstly invited attention to the copy of the notice issued under section 263 dated 02/01/2024 placed at Page-134-136 of the paper book which is the first notice wherein the learned PCIT has sought to invoke the powers conferred under section 263 of the Act.

7. The learned counsel for the Assessee invited our attention to Para-3 of the said notice wherein the learned PCIT has held that the order passed under section 144 read with section 147 of the Act dated 30/03/2022 is erroneous and prejudicial to the interests of the Revenue within the meaning of explanation 2(a) of section 263 of the Act and it is, therefore, propose to invoked the provisions of section 263 to revise the assessment order dated

30/03/2022 passed under section 144 r/w section 147 r/w section 144B of the Act. The learned counsel for the assessee emphasised that the learned PCIT has considered the impugned case to be a case covered under explanation 2(a) of section 263 of the Act. Explanation 2(a) of section 263 refers to the orders passed without making enquiries on verification which should have been made. The learned counsel for the assessee then invited our attention to the notice dated 05/03/2024 placed at Page-17-19 of the Paper Book issued on account of change of incumbent, wherein interestingly at Para-6.1 it is mentioned that the order passed under section 147 r/w section 144B of the Act dated 30/03/2022 is erroneous insofar as it is prejudicial to the interests of the Revenue within the meaning of Explanation 2(a) and 2(b) of section 263 of the Act. The learned counsel for the assessee stressed that originally the impugned case was held to be covered within the meaning of Explanation 2(a) of section 263 of the Act and which was suddenly enlarged so as to cover Explanation 2(a) and 2(b) of section 263 of the Act which is impermissible under law. Explanation 2(b) of section 263 of the Act covers cases where the order was passed allowing any relief without inquiring into the claim. The learned counsel for the assessee emphasised that even the learned PCIT was not sure as to under what clause the impugned powers under section 263 are being exercised which in itself vitiates the entire proceedings under section 263 of the Act and further that the scope of proceedings under section 263 cannot be subsequently enlarged as has been done in the present case. The learned counsel for the assessee further invited our attention to the reply filed in response to the notice issued under section 263 placed at Page-20-128 of the Paper Book wherein an

elaborate reply has been filed by the assessee clarifying the credits in the bank account as well as furnishing detailed explanation of each and every deposit in the bank account of the assessee. The explanation to each and every deposit in the bank account was furnished by the assessee before the the learned PCIT, vide reply in response to notice under section 263 and which is placed at Page-27-29 of the Paper Book. The assessee invited our attention to Page-81 of the Paper Book wherein the extract of return of income of the assessee has been placed which shows that the gross receipts from business of the assessee is only ₹ 66,34,931 and the balance credits being from other avenues which do not constitute income of the assessee including amount received from relatives as well as loans taken apart from certain contra entries. The assessee further invited are attention to copy of Form-26AS placed at Page-86-89 of the Paper Book which shows business income of the assessee at ₹ 66,34,931, which supports the figure of receipts from business declared by the assessee in his return of income. The learned counsel for the assessee further invited our attention to Page-11 of the learned PCIT's order passed under section 263 of the Act wherein the learned PCIT has referred to the reply filed by the assessee and has summarised the same and has also referred to the figures reported by the assessee in his return of income dated 28/12/2021 and wherein even as per the order of the learned PCIT, the gross receipts have been mentioned at ₹ 66,34,931. The learned counsel for the assessee invited our attention to Para-5.4 of the order of the learned PCIT wherein the learned PCIT has held that the income disclosed by the assessee in the return of income was less than 8% of gross receipts which is compulsorily required to be declared as per the provisions of

section 44AD of the Act in no accounts case and that this 8% of gross receipts of ₹ 66,34,931 would be ₹ 5,30,794 and not ₹ 1,69,015 as declared by the assessee. The learned counsel for the assessee submitted that this observation supports that the receipts from business of the assessee were ₹ 66,34,931 and considering the assessed income of ₹ 6,18,304, it is more than the figure of ₹ 5,30,794 stated by the learned PCIT herself and as such no prejudice has been caused to the Revenue warranting initiation of proceedings under section 263 of the Act. The learned counsel for the assessee further submitted that considering the business receipts of ₹ 66,34,931 and the assessed income by the Assessing Officer at ₹ 6,18,304, which the Assessing Officer has arrived at after considering the figure of returned income as well, the income assessed on the business receipts comes to 9.32% and in the opinion of the counsel for the Assessee it cannot be said that the income has been assessed only at 2% considering the facts and circumstance of the case as held by the learned PCIT making it the basis of initiating proceedings under section 263 of the Act. It is further the case of the assessee that the powers under section 263 cannot be invoked to enhance the percentage estimated by the Assessing Officer especially when the Assessing Officer has exercised powers under section 144 of the Act. The learned counsel for the Assessee submitted that section 144 empowers the Assessing Officer to complete the assessment to the best of his judgement and determine the sum payable by the assessee on the basis of such assessment. The learned counsel for the assessee emphasised on the words "to the best of his judgement" enshrined in section 144 of the Act and submitted that the assessment been completed under section 144 is to the

best judgement of the Assessing Officer and when the judgement has been exercised in the best possible manner by the Assessing Officer such judgement having already been exercised in the best possible manner the same cannot be subject to proceedings under section 263 so as to better a view which already amounts to the best possible view taken by the Assessing Officer. The learned counsel for the Assessee submitted that the present case is a case of assessment having been completed under section 144 of the Act and as such the grounds for initiating proceedings under section 263 of the Act that the assessment order was passed ex-parte without documents being furnished by the Assessee, therefore, the estimation made by the FAO @ 2% of the credits amounting to ₹ 4,33,724 as business income of the assessee, was without any verification and without making any enquiries is not tenable as in a case where assessment has been completed under section 144 such cases presupposes every enquiry made by the Assessing Officer and only when there is non-compliance or inadequate compliance by the assessee then powers have been given to the Assessing Officer to proceed and complete the assessment under section 144 to the best of his judgement. As such, in a case of assessment having been completed under section 144, the same cannot be faulted for inadequate enquiries by the Assessing Officer as proposed by the learned PCIT in the present case. The learned counsel for the assessee further submitted that the Assessing Officer having taken one of the possible views and estimated the income of the Assessee, the same cannot be amenable to the provisions of section 263 of the Act. The learned counsel for the assessee in light of the above facts and submissions prayed that the order passed under section 263 should be set aside and quashed considering the

same does not adhere to the provisions and judicial precedents governing the provisions of section 263 of the Act.

8. The learned Departmental Representative also filed just of submission supporting the order of the learned PCIT and emphasising that the appeal of the assessee be dismissed and the order passed by DCIT under section 263 be confirmed.

9. We have gone through the details furnished by the parties as well as the arguments put forth by the parties and on a careful consideration of the facts and circumstances of the case and the arguments of the parties, we are inclined to agree with the submissions made by the learned counsel for the assessee. We find force in the argument of the assessee that this is a case where the assessment has been completed under section 144 of the Act which empowers the Assessing Officer to complete the assessment to the best of his judgement. The assessment having been completed by the Assessing Officer to the best of his judgement cannot be faulted with as best possible judgement exercised by the Assessing Officer cannot be bettered by the learned PCIT as that would amount to interfering and disturbing the best judgement exercised by the Assessing Officer. A judgement/view having exercised by the Assessing Officer which under law is deemed to be best possible judgement can by no stretch of imagination be held to be erroneous as the Assessing Officer vide vested right granted to him under section 144 of the Act has exercised his best possible judgement and which led him to estimate the income of the assessee in the best possible manner and best possible mode and manner having already been exercised by the Assessing

Officer vide the powers conferred to him under section 144 of the Act, the said mode, manner and view of the Assessing Officer cannot be deemed to be erroneous merely because the learned PCIT is of the view that the Assessing Officer ought to have estimated the profit at a different rate. This would amount to tinkering with the rights given by the statute under section 144 to the Assessing Officer which cannot be permitted under law. If this is permitted then each and every case where income is estimated by the Assessing Officer exercising the powers under section 144 of the Act would be amenable to the provisions of section 263 of the Act and which would make the powers conferred under section 144 of the Act to the Assessing Officer dependent and take away independence of the AO to exercise his best possible judgement in section 144 of the Act.

10. We further find force in the arguments of the learned counsel for the Assessee that when a power has have been exercised under section 144 of the Act, this cannot be held to be a case of lack of enquiry as held by the learned PCIT so as to invoke the powers conferred under section 263 of the Act as the Assessing Officer was compelled to exercise his powers under section 144 of the Act considering that there was inadequate reply by the assessee to the queries raised by him during the course of assessment proceedings and which compelled the Assessing Officer to complete the assessment under section 144 of the Act. There being inadequate compliance by the assessee leading to the Assessing Officer exercising power under section 144 of the Act cannot now be held to be a case where the Assessing Officer has done inadequate enquiries before completing the assessment as

held by the learned PCIT justifying invocation of the provision of section 263 of the Act. Once an order is passed under section 144 of the Act it is after taking into account all relevant material which the Assessing Officer has gathered and after considering the entire case records in totality, the law grants power to the Assessing Officer under section 144 of the Act to complete the assessment to the best of his judgement and to determine the sum payable by the Assessee on the basis of such assessment. We find that such power granted under section 144 is absolute for the Assessing Officer. The Assessing Officer having exercised his best possible judgement under section 144 of the Act, his best possible judgement cannot under any means be held to be erroneous which is one of the conditions for invoking the powers under section 263 of the Act. We further find force in the argument of the learned counsel for the Assessee that considering the assessed income of ₹ 6,18,304, is substantially higher than ₹ 5,30,794, as referred to by the learned PCIT in the order passed under section 263 of the Act and consequently no prejudice caused to the Revenue which again is one of the conditions for invoking powers under section 263 of the Act. On a conspectus of the above facts, the twin conditions prescribed under section 263 of the Act are non-existent in as much as the order of the Assessing Officer neither can be held to be erroneous nor prejudicial to the interests of the Revenue so as to warrant invoking powers under section 263 of the Act and the learned PCIT fell into an error in revising the order. Consequently, considering the facts and circumstance of the case, we hold that the present case is not a fit case for invoking the provisions of section 263 of the Act and consequently the

impugned order passed by the learned PCIT under section 263 of the Act is hereby quashed.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 10/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 10/02/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur