

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ DB-B ‘ Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.243/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2019-20)

Shri Mohd. Riyazuddin Hyderabad PAN:AHUPM6145M	Vs.	Asstt. Commissioner of Income Tax, Central Circle 2(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by: Advocate Siddharth Toshnival		
राजस्व द्वारा / Revenue by: Shri LV Bhaskar Reddy, DR		
सुनवाई की तारीख / Date of hearing: 29/01/2025		
घोषणा की तारीख / Pronouncement: 07/04/2025		

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal by the assessee is directed against the revision order dated 18/01/2024 of the learned Pr. CIT (Central) Hyderabad the A.Y.2019-20.

2. The assessee has raised the following grounds of appeal:

- 1) That the learned Principal Commissioner of Income Tax has erred in law and facts in invoking the provision of Section 263 when the Order passed by the Assessing Officer u/s 143(3) is neither erroneous nor prejudicial to the interest of the Revenue.
 - 2) That the learned Principal Commissioner initiated the proceedings on the wrong assumption that Assessing Officer had failed to apply the provision of Section 115BBE to the income surrendered in search despite the fact that the provisions of Section 115BBE are not applicable to the Income declared and assessed as Business Income.
 - 3) That the learned Principal Commissioner ought to have appreciated the fact that the matter was thoroughly examined by the Assessing Officer in the course of Assessment proceedings and there was no error in law or facts in the Order passed u/s 143(3).
- Contd. 2
- 4) That the learned Principal Commissioner without giving any finding that correct rate of tax was not applied could not set aside the Order passed u/s 143(3) by the Assessing Officer and the approval accorded by the Additional Commissioner of Income Tax for the purpose of taxing Income surrendered in search.
 - 5) That without prejudice to above, the Order passed u/s 263 is bad in law as the same was passed without disposing the legal objection of Appellant that provision of section 263 cannot be invoked to revise an Order passed after obtaining approval u/s 153D of the Act.
 - 6) The Appellant craves leave to take any other Ground or to amend /alter/delete any of the Grounds of Appeal.



3. The assessee has also raised additional grounds reads as under:

**PETITION FILED UNDER RULE 11 OF INCOME-TAX (APPELLATE TRIBUNAL)
RULES, 1963**

1. The above mentioned Appeal has been filed against the Revision Order dated 18.01.2024 passed u/s 263 of the Income Tax Act, 1961 by the Learned Principal Commissioner of Income Tax (Central), Hyderabad, revising the Order passed u/s 143(3) r/w section 153B(1)(b) of the Income Tax Act, 1961 dated 17.09.2021. Without prejudice to the Grounds of Appeals raised in the Appeal Memorandum, the Appellant is filing the following Additional Grounds of Appeal:

ADDITIONAL GROUNDS OF APPEAL

1. That in the facts and circumstances of the case, the Order Passed u/s 263 of the Act is bad in law as the Assessment Order subjected to Revision is an Invalid Order in as much as the Approval Order given u/s 153D for passing the said Assessment Order does not bear a Document Identification Number (DIN) which is mandatory in terms of CBDT Circular No. 19/2019 and this renders the Approval and the Assessment Order passed consequent to such approval Invalid and an Invalid Order cannot be revisited for Revision u/s 263.
2. That without prejudice to above, in the facts and circumstances of the case, the Revision Order passed u/s 263 of the Act is bad in law as the Assessment Order subjected to Revision has been passed u/s 143(3) r/w section 153B(1)(b) of the Act after obtaining approval u/s 153D and an Order passed after obtaining approval u/s 153D cannot be subjected to Revision u/s 263;

Contd. 2

3. That without prejudice to above even otherwise there is no allegation in the Order passed u/s 263 that the approval given u/s 153D was without application of mind and further even in the case of such a claim the Assessment Order cannot be subjected to Revision u/s 263 as the Assessment Order passed on the basis of a mechanical Approval Order u/s 153D becomes Invalid and an Invalid Order cannot be a subjected to Revision u/s. 263.
2. The Appellant humbly prays Honorable Tribunal to admit the above mentioned three Additional Grounds of Appeal for adjudication on merits as they are legal grounds which go to the root of the matter and the relevant facts for which are emanating from the existing records, and pass such Order(s) as the Honorable Tribunal deems fit and proper in the interest of justice.



4. In the additional ground, the assessee has challenged the impugned order passed u/s 263 of the Act on the ground that

the assessment order passed by the Assessing Officer is invalid for want of a valid approval u/s 153D of the Act. The learned AR of the assessee has submitted that the approval granted u/s 153D is without any DIN and therefore, it is contrary to the CBDT Circular No.19/2019 whereby the Document Identification Number (DIN) is mandatory for any communication. Another contention of the learned DR challenging the assessment order is that, the approval granted u/s 153D is mechanical and without application of mind. The 3rd contention to challenge the impugned order passed u/s 263 as raised in the additional ground is that, once the assessment order is passed after taking approval u/s 153D, then the said order cannot be subject to revision u/s 263 of the I.T. Act, 1961. In support of his contention, the learned AR of the assessee has relied upon various decisions as under:

- i) Finesse International Design (P) Ltd vs. DCIT (2023) 204 ITD 594 (Delhi Trib.)
- ii) Bawa Float Glass Ltd vs. DCIT in ITA No.1437/Del/2023 dated 2/1/2024
- iii) Smt. Abha Bansal vs. Pr.CIT (2021) 132 Taxmann.com 231 (Delhi Trib.)
- iv) Gyan Infrabuild (P) Ltd vs. Pr.CIT in ITA No.175 to 178/PAT/2023 dated 13/05/2024
- v) Ramamoorthy Vasudevan vs. Pr.CIT (Central) in Ita No.967 & 968/PUN/2016, dated 29/11/2018.

4.1 He has also relied upon the decision in the case of ACIT v. Serajuddin & Co. reported in (2023) 454 ITR 312 and SLP filed by the Department has been dismissed by the Hon'ble Supreme Court reported in 463 ITR 698. Thus, the learned AR has submitted that when the assessment order itself is not valid, then the order passed by the Pr. CIT u/s 263 of the I.T. Act, 1961

would not survive. He has further contended that, even otherwise, the issue of applicability of provisions of section 68/69 r.w.s. 115BBE of the Act is a debatable issue and once the Assessing Officer has conducted an inquiry and accepted the claim of the assessee, then the Pr. CIT has no jurisdiction to invoke the provisions of section 263 on this debatable issue merely because he does not agree with the view of the Assessing Officer. In support of his contention, he has relied upon the decision of Delhi Benches of the Tribunal in the case of Balvinder Singh vs. Pr. CIT in ITA No.570/Del/2022. Thus, the Assessing Officer has taken a possible view while accepting the source of the cash found and seized during the course of search as business income of the assessee then the impugned order passed by the Pr. CIT is not sustainable in law. In support of his contention, he has relied upon the decision of the Delhi Benches of the Tribunal in case of Yogesh Kumar vs. Pr. CIT in ITA No.589/Del/2022, dated 30/08/2023. He has further contended that the impugned order has been passed without giving a finding, as to what is the correct rate of tax and therefore, the Pr.CIT has not conducted any inquiry before passing the impugned order and hence he was not sure about the correct rate of tax and again asked the Assessing Officer to redo the same. The Revisionary Authority is supposed to conduct a minimum inquiry before setting aside the order as erroneous and prejudicial to the interest of Revenue. In the absence of any inquiry conducted by the Pr.CIT, the order is not sustainable in law. In support of his contention, he has relied upon the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Delhi Airport Metro Express Pvt. Ltd reported in 398

ITR 8 and submitted that the Hon'ble High Court has held that, the Revisionary Authority could not have remitted the matter to the Assessing Officer without undertaking an inquiry by himself. Thus, the learned AR has submitted that the impugned order passed by the Pr. CIT is not sustainable in law and liable to be set aside.

5. On the other hand, the learned DR has submitted that, this is an appeal against the order passed u/s 263 of the Act and therefore, the validity of the assessment order cannot be challenged in these proceedings as raised by the assessee in the additional grounds of appeal. He has further contented that, even otherwise, the approval granted u/s 153D of the Act is not a communication or order issued to the assessee and therefore, it does not require a DIN as per CBDT Circular No.19/2019. The learned DR has further contented that it is a communication between one tax authority and another tax authority and therefore, it cannot be compared with the order issued u/s 144A of the Act on which the assessee has relied some case law. He has further contented that. when the Assessing Officer has not conducted any inquiry and applied his mind on this issue and accepted the claim of the assessee which is completely contrary to the explanation as given at the time of search & seizure action while recording a statement u/s 132(4) of the I.T. Act, 1961. The learned DR has pointed out that at the time of recording the statement u/s 132(4), the assessee has explained the cash found and seized to the tune of Rs.62.00 lakhs as to the extent of Rs.15.00 lakhs belongs to himself and his son and the balance

cash of Rs.45.00 lakhs belongs to his relatives. In the return of income, the assessee has offered the said amount of Rs.62.00 lakhs as business income but, without any supporting evidence. Thus, when the assessee has taken a contrary stand at the time of assessment, the Assessing Officer was supposed to conduct a proper inquiry before accepting the claim of the assessee. In the absence of conducting an inquiry on the part of the Assessing Officer, the order passed by the Assessing Officer is erroneous. so far as it is prejudicial to the interest of the Revenue and therefore, the Pr. CIT has rightly invoked the provisions of section 263 and set aside the order passed by the Assessing Officer for fresh adjudication after conducting a proper inquiry. The learned DR has further submitted that, the approval u/s 153 was done and communicated through the ITBA Portal and therefore, the authenticity of the same cannot be doubted. The very purpose of generating a DIN is to bring transparency in the communication of orders/notices and other communication to the assessee in relation to the proceedings of assessment/appeal etc. Thus, when the Assessing Officer has not conducted an inquiry on this issue, then the same is rightly held as erroneous and prejudicial to the interest of the Revenue. He has relied upon the impugned order of the Pr. CIT.

6. We have considered the rival submission as well as the relevant material available on record. So far as the additional grounds raised by the assessee are concerned, the assessee is challenging the validity of the assessment order for want of a valid approval u/s 153D of the I.T. Act, 1961. It is pertinent to note

that this appeal is not against the assessment order but challenging the order of the learned Pr. CIT passed u/s 263 of the I.T. Act, 1961. Though the assessee can challenge the revision order passed u/s 263 of the Act on the ground of validity of the assessment order itself, however, in order to challenge the validity of approval u/s 153D in the proceedings against the order passed u/s 263 of the Act, the assessee himself has to bring on record the very approval order passed u/s 153D to show the legal infirmity in the same. The assessee has not produced any record to show that the said approval was given by the Addl. CIT without application of mine or before passing the impugned order by the Assessing Officer u/s 153(3) of the Act. Once the impugned approval itself is not placed before us, the question of validity of the approval cannot be decided. Therefore, in the absence of any material and the impugned approval itself u/s 153D, we cannot analyze the relevant aspects of the approval and give a finding whether the same is valid or invalid. Hence, in the facts and circumstances of the case, the additional ground raised by the assessee are rejected and stand dismissed.

7. As regards the contention of the assessee that the Assessing Officer has taken a possible view while accepting the business income of the assessee to the tune of Rs.62.00 lakhs on account of the cash found and seized during the course of search & seizure action, it is pertinent to note that the Assessing Officer while passing the impugned order has simply accepted the contention of the assessee without deliberating or even discussing the crucial relevant facts about the cash of Rs.62.00 lakhs found

and seized during the course of search and seizure action. The Assessing Officer has accepted the claim of business income offered by the assessee of the said amount of Rs.62.00 lakhs in para 2 to 4 as under:

2. The assessee filed his return of income for the Assessment Year 2019-20 on 31.12.2019 admitting total income of Rs. 70,38,050/- and the same was processed u/s. 143(1) of the Act.

3. Thereafter, a notice u/s. 143(2) of the Act was issued to the assessee on 04.02.2021 and duly served upon the assessee. Notices u/s. 142(1) of the Act have also been issued on various dates calling for information.

4. In response to the said statutory notices so issued, the assessee uploaded the information. After verifying the details submitted by the assessee and material available on record, the assessment is completed as under:

(Amount in rupees)

Total Income returned	70,38,050
TOTAL INCOME ASSESSED	70,38,050

8. Though the Assessing Officer has mentioned that, the notices u/s 142(1) of the Act have been issued on various dates calling for information and in response, the assessee has uploaded the information which was verified by the Assessing Officer, but nothing has been either brought on record by the assessee or considered by the Assessing Officer in respect of the explanation of the assessee at the time of the assessment, which

is in complete departure from the stand taken by the assessee at the time of recording the statement u/s 132 (4) of the I.T. Act, 1961. The assessee has not disputed that, at the time of search & seizure action, the assessee has explained the cash of Rs.62.00 lakhs to the extent of Rs.15.00 lakhs belongs to himself and his son, and the balance of Rs.45.00 lakhs belongs to his relatives. The assessee has not produced any evidence, either in support of the explanation of the cash at the time of the search & seizure action. or at the time of assesment proceedings. The assessee in the return of income has offered the said income as income from real estate business, whereas the only declared business of the assessee was in the name and style of Maharaja Hotel. Thus, the claim of income from real estate business of the assessee in respect of cash of Rs.62.00 lakhs found during the search & seizure action is a new stand taken by the assessee in the return of income and that too, without any supporting evidence to substantiate this claim. Though the Assessing Officer has issued notices u/s 142(1), however, in reply to those notices, the assessee has not produced any record or material in support of this stand of doing the business of real estate and the cash of Rs.62.00 lakhs found during the search is generated from the business of real estate. Therefore, accepting the claim of the assessee while passing a non-speaking order which is rather sub-silentio on the very issue and subject matter of the assessment is definitely falls in the category of lack of inquiry on the part of the Assessing Officer. The order passed by the Assessing Officer without application of mind and contrary to the stand of the assessee taken at the time of search & seizure action is erroneous

due to non-application of mind as well as lack of inquiry and therefore, the learned Pr. CIT has rightly invoked the provisions of section 263 of the I.T. Act, 1961 by issuing the show cause notice u/s 263 of the Act, dated 11/12/2023 as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
PCIT (Central), Hyderabad

To, MOHD RIYAZUDDIN 12-2-717/1/72 , SAPTHAGIRI COLONY MEHDIPATNAM HYDERABAD 500028 , Andhra Pradesh India	
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PAN/TAN: AHUPM6145M	AY: 2019-20	DIN & Notice No : ITBA/REV/F/REV1/2023- 24/1058635294(1)	Dated: 11/12/2023
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NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2019-20.

In this regard, a hearing in the matter is fixed on 21/12/2023 at 11:00 AM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

Sub: Show cause notice u/s.263 of the IT Act, 1961 in your case – Asst. Year 2019-20 - Reg.

In your case, assessment for the A.Y.2019-20 was completed u/s. 143(3) of the Act on 17.09.2021 determining total income at Rs.70,38,050/- by accepting the income returned of Rs.70,38,050/-which includes cash seized of Rs.62,00,000/- on 17.10.2018 at his residential premises situated at Plot no.72,H.No:12-2-717/1/72, Sapthagiri Colony, Tolichowki, Hyderabad in connection to the State Assembly Election of Telangana.

2. On examination of the assessment record for A.Y 2019-20, it was found that the assessment was completed without making necessary enquiries about the sources of the assessee for the availability of cash amounting to Rs.62,00,000/- at the time of search. It was stated by you at the time of search that cash to the extent of Rs.15,00,000/- belongs to you and your son while the balance cash of Rs.45,00,000/- belongs to your relatives and no supporting evidences were furnished at the time of search to substantiate the above claim. Further, in the return of income filed for A.Y.2019-20, the above cash seized of Rs.62,00,000/- was credited to P&L account towards income from real estate business

without furnishing the details of gross income from real estate business, expenses incurred and other relevant particulars. While completing the scrutiny, the assessing officer neither called for the relevant particulars nor conducted necessary enquiries in respect of your claim of income from real estate business and accepted the income returned by you.

3. In view of the above mentioned facts noticed from the record, the assessment order passed by the assessing officer u/s 143(3) of the Act passed on 17.09.2021 for A.Y.2019-20 is erroneous in so far it is prejudicial to the interest of revenue as the AO had failed to apply the correct rate of tax u/s.115BBE i.e. 60% in respect of the above unexplained cash of Rs.62,00,000/-. The assessing officer's failure in not seeking the details of the cash seized nor examining the sources thereof and consequently in not applying the correct rate of tax u/s 115BBE of the Act and also absence of invoking of relevant penal consequences has rendered the assessment order erroneous in so far as it is prejudicial to the interest of the revenue. For the same reasons, the Order u/s.153D of the Act dt.07-09-2021 passed by the Additional Commissioner of Income Tax, Central Range-2, Hyderabad according approval to the above mentioned Assessment Order can be said to be erroneous and prejudicial to the interest of Revenue.

4. Hence, it is proposed to revise the assessment order dated 17.09.2021 for the A.Y.2019-20 by virtue of the powers vested u/s. 263 of the Act. Further, the Order u/s.153D of the Act dt.07-09-2021 passed by the Additional Commissioner of Income Tax, Central Range-2, Hyderabad according approval to the above mentioned Assessment Order is also proposed to be revised. You are therefore being provided this opportunity of being heard as per Section 263(1) of the Act and accordingly, you are requested to submit your objections, if any, against the proposed revision under section 263 of the I.T. Act, 1961. Your submissions should reach this office on or before 21.12.2023. You may submit your objections / replies to the email id: hyderabad.pcit.cen@incometax.gov.in.

5. If you want to be heard personally or through your Authorised Representative you may appear before the undersigned on 21.12.2023 at 11:00 AM. If you fail to avail this opportunity of submitting your objections or being heard, necessary order as deemed fit will be passed as per law, without giving any further opportunity.


TRUE COPY

YOGESH KUMAR VERMA
PCIT (Central), Hyderabad

9. The learned Pr.CIT has clearly recorded the relevant facts and also stated the correct rate of tax u/s 115BBE at 60% instead of the normal rate of tax applied by the Assessing Officer. After considering the reply of the assessee to the show cause notice, the learned Pr. CIT has given his findings in para 5 & 6 as under:

5. The contentions made by the assessee have been carefully examined and found to be not acceptable for the following reasons:

- a) It is undisputed fact on record that the assessment was completed without making necessary enquiries about the sources of the assessee for the availability of cash amounting to Rs.62,00,000/- at the time of search.
- b) The claim of the assessee that the cash seized represented income from real estate business during the previous year relevant to A.Y.2019-20 is not supported by any contemporaneous demonstrable evidence. The Assessing Officer merely accepted the claim of the assessee without calling for necessary details and without conducting necessary verification.
- c) The Assessing Officer neither called for details of income earned through real estate business viz., nature of real estate transactions and relevant sale deeds, income earned through AGPA, if any etc., nor the assessee provided those details.
- d) The assessee is found to be the owner of seized cash amounting to Rs.62,00,000/- for which assessee made a bald claim of it being income earned through real estate business. However, assessee failed to explain nature and sources of the above seized cash with contemporaneous demonstrable evidence and hence the Assessing Officer ought to have deemed the above amount as unexplained money u/s.69A of the Act.
- e) The assessee in his letter dt.30-12-2023 simply reiterated the claim made before Assessing Officer without adducing any evidence whatsoever in support of his claim. Further, the assessee did not maintain any books of account in respect of the impugned income.
- f) In his sworn deposition recorded u/s.132(4) of the Act on 17-10-2018, the assessee submitted that cash to the extent of Rs.15,00,000/- belongs to himself and his son, while the balance cash of Rs.45,00,000/- belongs to his relatives. However, no supporting evidences were furnished neither at the time of search nor during assessment proceedings to substantiate the above claim.
- g) In sheer contradiction to the above claim of assessee at point (f), the assessee admitted income from real estate business while filing ITR for A.Y.2019-20 filed on 31-12-2019. Also, assessee had not produced any details even with regard to his claim of income from real estate business as well.

6. In view of the foregoing, it is held that the objections raised by the assessee vide his letter dt.30.12.2023 in response to notice u/s.263 dated 11.12.2023, are not tenable in law as well as in facts. Considering the facts of the case as discussed in preceding paragraphs, it is hereby held that the Assessment Order passed by the A.O. u/s. 143(3) on 17-09-2021 for A.Y.2019-20 and the Order of approval u/s. 153D of the Act dated 07.09.2021 issued by the Addl. CIT, Central Range-2, Hyderabad are erroneous and prejudicial to the interest of revenue. Accordingly the same are set-aside to the file of the A.O. and the Addl. CIT for the limited purpose of taxing applying correct rate of tax in respect of unexplained cash of Rs.62,00,000/-, after

following due procedure and to take consequential action. Needless to say that the assessee should be afforded proper opportunity of being heard during the assessment proceedings taken up in consequence of this order. The assessee is at liberty to furnish necessary evidence, if any, during the proceedings being taken up in consequence to this order.

10. Thus, it is manifest from the record that neither the Assessing Officer has called for any details nor the assessee filed any supporting evidence to substantiate the claim as income from real estate business offered to tax in the return of income, as against the source of cash of Rs.62.00 lakhs explained by the assessee during the course of search & seizure proceedings as Rs.15.00 lakhs belongs to himself and his son and balance cash of Rs.45.00 lakhs belongs to his relatives. This fact itself renders the assessment order erroneous in so far as it is prejudicial to the interest of the Revenue. Accordingly, in the facts and circumstances of the case as discussed above, we do not find any error or illegality in the order of the learned Pr. CIT. The decisions relied upon by the learned AR of the assessee cannot be applied in the facts of the present case.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 7th April, 2025.

Sd/-

Sd/-

(MANJUNATHA, G) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated April, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Mohd. Riyazuddin, 12-2-717/1/72 Sapthagiri Colony, Mehdipatnam, Hyderabad 500028
2	Asstt. Commissioner of Income Tax, Central Circle 2(1) Opp: LB Stadium, Basheerbagh, Hyderabad - 500004
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order