


IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (Virtual) JODHPUR

BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND SHRI UDAYAN DAS GUPTA, HON'BLE JUDICIAL MEMBER


ITA No. 374/Jodh/2024
(Assessment Year 2018-19)

Pushp Raj Bohra M-09, Shivaji Nagar, Jalore – 343001 PAN No. AANPB4456C	Vs.	Pr. Commissioner of Income Tax-1, Jodhpur.
Assessee by	Shri Gautam Chand Baid, C.A. and Shri Mayank Taparia, Advocate.	
Revenue by	Shri Manoj Kumar Mahar (CIT- D.R.)	
Date of Hearing	20.02.2025.	
Date of Pronouncement	21.03.2025. 	

ORDER

DR. MITHA LAL MEENA, A.M.

This appeal by the assessee is directed against the revisionary order dated 13.03.2024, passed u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') by the Principal Commissioner of Income Tax-1, Jodhpur (hereinafter referred to as the "learned PCIT") for Assessment Year 2018-19 where the assessee has challenged validity of the revisionary order passed u/s. 263 of the Act by the Learned PCIT holding that the assessment order passed u/s. 143(3) read with section 143(3A) &



143(3B) of the Act by the National Faceless Assessment Centre dated 05-04-2021 as erroneous and prejudicial to the interest of the Revenue.

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

1. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in declaring the assessment order framed by the Ld. AO u/s 143(3) as erroneous in so far as it is prejudicial to the interest of revenue for invoking the provisions of section 263 of I.T. Act, 1961 without providing a fair opportunity of being heard to the assessee as in the show cause notice no specific deficiency in the enquiry made by Ld. AO has been identified and only vague allegation that claim of agricultural income of Rs.58,17,777/- has not been verified properly was made. Order so framed may kindly be declared as void ab initio as contrary to the statutory provision.
2. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in invoking the provisions of section 263 of Income Tax Act, 1961 without providing fair opportunity of being heard to appellant even though it was specifically submitted in response to show cause notice that "In case your good self has identified any specific mistake or deficiency in the efforts of Ld. AO, it is respectfully requested to communicate same so that specific submission on that point can be made. In absence of identified deficiency in the assessment order/ assessment proceeding, hearing opportunity is not to comply with the statutory provisions of section 263.". Order so framed may kindly be declared as void ab initio as contrary to the statutory provision.
3. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in holding the assessment order framed by the Ld. AO u/s 143(3) after detailed investigation and application of mind as erroneous in so far as it is prejudicial to the interest of revenue on the finding that the assessment



order has been passed by the Assessing Officer in a routine and perfunctory manner.

4. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in holding that "the Assessing Officer has not at all gone into the genuineness of agricultural activities". Such finding being contrary to the material on record cannot be basis to held the assessment order as erroneous in so far as it is prejudicial to the interest of revenue.

5. On the facts and in the circumstances of the case, Ld. Pr. CIT erred in ignoring the judicial pronouncements referred by the appellant on the finding that "Being distinguishable on facts, the case laws relied upon by Assessee are, therefore, not applicable to the facts of the case.", without identifying any such difference.

6. On the facts and in the circumstances of the case, if the judicial pronouncements referred by Ld. Pr. CIT applied with judicious approach the assessment order cannot be declared as erroneous in so far as it is prejudicial to the interest of revenue.

7. The appellant crave liberty to add, amend, alter, modify, or delete any of the ground of appeal on or before its hearing before your honour.

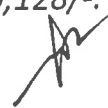
3. Briefly the facts of the case are that the assessee has e-filed its return of income for Assessment Year 2018-19 on 08.10.2018, declaring total income of Rs. 50,27,590/- and it was revised on the same day declaring same amount of total income except an agriculture income of Rs. 58,17,777/-. The case of assessee was selected for limited scrutiny assessment under the E-assessment Scheme, 2019 for the year under consideration where the issue for examination was identified as 'Agricultural Income' and notice u/s. 143(2) of the Act was issued on 22-09-2019.



3.1 Thereafter, the AO issued statutory notices u/s. 142(1) of the Act along with questionnaire on 31.12.2020, 10.03.2021, 13.03.2021, 18.03.2021 and 23.03.2021, show-cause and draft assessment order issued on 31.03.2021 during the course of assessment proceedings. The AO, before framing final assessment has proposed an addition of Rs. 14,98,869/- through Draft Assessment Order for variance and non-acceptance of three receipts which has been claimed as agricultural income. However, after considering submission of the assessee in response to the Draft Assessment Order, the proposed addition was not made. Thus, the AO passed the assessment u/s. 143(3) read with section 143(3A) and 143(3B) of the Act accepting the returned income.

4. The learned PCIT has picked up the assessment order for proceedings u/s. 263 of the Act and he issued a show cause notice stating thereto as under:-

"On perusal of the assessment record it was found that the claim of agricultural income of Rs.58,17,777/- has not been verified properly and remained unverified and the same should have been disallowed and added back to the total income as unexplained money u/s 69A of the IT Act & to be taxed at special rate u/s 115BBE of the IT Act, 1961. Which resulted in under charge of tax and interest having total tax effect of Rs.58,50,128/-."



4.1 The Id. PCIT-1, Jodhpur, having not satisfied with the assessee's reply has passed the impugned order u/s. 263 of the Act on holding that the assessment order passed u/s. 143(3) of the Act on 05.04.2021 was erroneous in so far as it is prejudicial to the interest of revenue as the said order was passed by the Assessing Officer in a routine and perfunctory manner.

5. The learned Counsel for the assessee vehemently objected to the impugned order on the facts, by way of his arguments with the support of paper book containing show cause notice u/s. 263 of the Act, submissions in response to show-cause notice u/s. 263 and various annexures which consisted of AO's query letter, the assessee's response thereto and various judicial precedents. The learned AR submitted that the AO made the detailed enquiries relating to the agricultural income shown in the returned income the case was selected for limited scrutiny on the said basis only. Thereafter, the AO, being satisfied, framed the assessment under section 143(3) of the Act and had taken a possible view. It was contended that the AO had passed the assessment order after considering all the relevant material on record and after making proper enquiry by considering various documents furnished by the assessee such as details of crops grown, lease land details, sale invoices, bank statement, expenses incurred etc. Therefore, the



assessment order passed by the AO could not be treated as erroneous and prejudicial to the interest of Revenue. In support, he placed reliance on the following case laws:-

- i. Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)
- ii. CIT vs. Ganpat Ram Bishnoi (2008) 296 ITR 292 (Raj)
- iii. CIT(Addl.) vs. UP. State Agro Industrial Corporation [1981] 121 ITR 97 (All)
- iv. CIT vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom)
- v. CIT vs. Parmanad , D. B. Income Tax Appeal No. 137/2014
- vi. CIT vs. M/s. Jain Construction, D. B. Income Tax Appeal No. 60/2012

6. On the other hand, the learned Departmental Representative supported the impugned order of learned CIT. He has submitted that that order under section 263 is a speaking order passed after providing proper opportunity to the assessee and the assessment order of the AO shows that he has not applied as the AO passed the order in a routine manner.

7. We heard both the sides, perused the material on record and written submission filed with case laws. The main issues disputed before us is whether there was lack of enquiry on the part of the AO while passing the assessment order u/s. 143(3) in considering detailed submissions and documentary evidence



in support of agricultural income shown at Rs. 58,17,777/-, warrant the Ld. PCIT to hold it erroneous in so far as it is prejudicial to the interest of revenue. In the present case, the learned CIT exercised his revisionary powers under section 263 of the Act. Let's refer to the said powers as under :

"(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interests of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it is only when an order is erroneous, that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice for the require mentor order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interest of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under the law.

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income, the CIT, while exercising his power under s. 263, is not permitted to substitute his estimate of income in place of the income estimated by the AO.



(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrives at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not feel satisfied with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263, must have material on record to arrive at satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allowed the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard."

8. from the impugned order, it is noted that the Id. PCIT-1, Jodhpur issued the initial show cause dated 31-01-2024 questioning as under:-

"On perusal of the assessment record it was found that the claim of agricultural income of Rs.58,17,777/- has not been verified properly and remained unverified and the same should have been disallowed and added back to the total income as unexplained money u/s 69A of the IT Act & to be taxed at special rate u/s 115BBE of the IT Act, 1961. Which resulted in under charge of tax and interest having total tax effect of Rs.58,50,128/-."

8.1 The Ld. AR contended that the assessee submitted detailed reply before the PCIT on the issue raised in show-cause notice dated 31-01-2024 wherein the



assessee referred the relevant replies filed before the AO's during the course of assessment proceedings with supporting documentary evidences, and stated that the assessment order dated 05-04-2021 was passed after detailed consideration of the same and it cannot be held as erroneous and prejudicial to the interest of revenue by any stretch of imagination. These documentary evidences have been placed on record before us in paper book from page nos. 3 to 455. The assessee's AR further argued that the Id. PCIT-1, Jodhpur while passing the order u/s. 263 of the Act 13.03.2024 expressed his apprehension regarding cost/expenses claimed by the assessee for earning agricultural income to the extent of Rs. 68.92 lacs and period of sale of Maize, however, the PCIT has not sought any explanation from the assessee on this point/aspect, which have been pointed out in the order u/s. 263 of the Act and hence, it is the violation of principle of natural justice. We find no mention in the impugned order that neither any specific query or explanation was sought during the course of proceedings u/s. 263 of the Act nor any specific show cause mentioning facts regarding cost/expenses claimed by the assessee for earning agricultural income to the extent of Rs. 68.92 lacs and period of sale of Maize were issued to the assessee.



8.2 In the instant case, as has rightly pointed out by the assessee that initial show cause was seeking the assessee's explanation regarding the claim of agricultural income of Rs.58,17,777/- by stating that this was not verified properly and remained unverified but no question regarding cost/expenses claimed by the assessee for earning agricultural income to the extent of Rs. 68.92 lacs and period of sale of Maize was ever raised and aksed by the PCIT. The Coordinate Bench of Delhi ITAT in the case of Genesis Colors (P) Ltd. vs. CIT [2014] 42 taxmann.com 552 (Delhi – Trib) held that where show-cause notice issued is on one ground and revisional order is passed on an entirely different ground, order cannot be sustained in law. In the case of Rampyari Khemka v. CIT [1966] 61 ITR 600(Cal.) it was held that the CIT could not give different reasons or cause in show cause notice and different reasons in his order. Similarly, in the case of CIT v. R.K. Metal Works [1978]112 ITR 445(P&H) it was held that the reasons given by the CIT in his show cause notice and in his order are different and his order under section 263 could not draw any oxygen from the show cause notice. The present assessee's case is no different from the case of Genesis Colors (P) Ltd. vs. CIT and other decisions referred here in above and accordingly, order passed u/s. 263 cannot be sustained in law.



8. From the record and more particularly assessee's Paper Book at pages 3 to 455 in reply to the show cause notices issued u/s.142[1] dated 31.03.2020, 10.03.2021, 13.03.2021, 18.03.2021 and 23.03.2021 & show cause notice/ draft assessment order dated 31.03.2021, we find that the assessee produced before the Assessing Officer copy of the land taken on lease, name of cultivators, sales bills etc. For ready reference, the AO's first query letter/statutory notice dated 31-12-2020 is reproduced as under:-

"1) Please furnish a note on the nature of business activities carried out during the year under consideration.

2) Furnish computation of income for the A.Y. 2018-19.

3) As per your return, it is seen that during the year you have shown gross agriculture income of Rs. 58.17.777/- and expenditure incurred on agriculture of Rs. NIL and claimed it as exempt as per schedule EI of ITR. With respect to the agriculture income during the year under consideration, the following further details are also required.

1. Nature and type of Agricultural income along with details of processes undertaken.

2. Measurement of Agricultural land in acre.

3. Whether Agricultural land is owned or held on lease?

Please furnish copies of supporting State Govt. records for holding of the land.

4. Whether Agricultural land is irrigated or rain fed.

5. Name of district along with PIN code in which Agricultural land is situated.
 6. Copy of Khatauni (crop records maintained by State Govt.).
 7. Documentary evidences regarding of sale of agricultural products/crops along with copy of contracts, if any.
 8. Documentary evidences with regard to following Expenses:
Seed, Fertilizer, Pesticides, Labour Charges, Water Bill, Electricity Bill, Processing cost, Depreciation on fixed assets, and Cess Other Taxes, Int. on working capital.
 9. In case of land held on lease, the amount and documentary evidence of lease rent paid.
 10. In case Agricultural income is declared first time then date & source of investment in land, if any
 11. Details of sale of immovable property during the year, if any.
 12. Nature & details of total income, if any.
 13. Details of Kisaan Credit Card with transactions statement
 14. Cash flow statement.
 15. Copy of bank statement to support the claim.
 16. Justify your claim of exemption of agricultural income with supporting evidences.
 17. Please furnish English translation of the documents submitted vide reply filed on 16/12/2020"
9. From the above, it is apparently clear that the AO asked the assessee to establish the genuineness of agricultural income shown by him by taking detailed

response of the assessee along with supporting documents. It is only after the examination of submission of the assessee in response to various Notices including show cause Notice issued by Ld. AO, the Ld. AO accepted the returned income. It is pertinent to mention that in the draft assessment order Ld. AO observed that amount of Rs. 14,98,869/- declared by assessee as agricultural income was not genuine but after considering the submission and explanation of assessee duly supported with documentary evidence, no addition on this account of agricultural income, was made. Thus, it is very much clear that after considering the assessee's explanation, evidences and other materials on record, the Assessing Officer satisfied itself with the agricultural activities claimed by the assessee and thus, the assessing officer accepted the income derived on the sale of Maize and Bajra to Osthwal Agro Firm, Bangalore of Rs. 68.92 lacs- from the agricultural land taken on lease.

9.1. We are of the considered view that the Assessing Officer while framing assessment order made proper enquiries and examined the evidences filed on record by the assessee regarding its claim of agricultural income. Meaning thereby that the A.O. has conducted necessary inquiry, verification before passing the assessment order and the same cannot be construed either as 'Lack of enquiry' or



as an 'Inadequate enquiry'. Under the given set of facts of the present case, thus the Id. PCIT cannot revise the assessment order merely because he held a different opinion or view to the AO as held during the assessment proceedings.

10. On a similar issue, the Hon'ble Supreme Court in the case of Max India Ltd. [2007] 395 ITR 282 (SC) held as under :

"The phrase 'prejudicial to the interests of the Revenue' in s. 263 of the IT Act, 1961, has to be read in conjunction with the expression 'erroneous' order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue. For example, when the AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."

11. We are further guided by the Gujarat High Court judgment in the case of CIT vs. Arvind Jewellers [2003] 259 ITR 502, wherein the Division Bench referring to the judgment of the Supreme Court in the case of Malabar Industrial Co. Ltd. has observed that the provisions of Section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. The Hon'ble Supreme Court judgment has also made it clear that



the phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue. It is further emphatically stated that 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 with, it cannot be treated as an erroneous order and prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.

12. In context of the present case, applying ratio of the above referred judgments, the scope of the Commissioner's power of revision u/s. 263 of the Act would be, when the Assessing Officer conducts 'no enquiry' or 'proper enquiries' or "does not apply his mind to the legal issues arising out of the material on record", the revisional powers would be available. Further, the Assessing Officer has conducted proper inquiries and come to legal conclusions which are plausible, the Ld. PCIT would not be justified in invoking Revisional jurisdiction directing further inquiries or taking a different view. Since, the Assessing Officer having carried out a detailed enquiries and being satisfied with the explanation offered



by the assessee, it is not open for the Ld. PCIT to thereafter Revise the assessment on mere apprehensions and surmises. We therefore hold that such an assessment order cannot be called erroneous and prejudicial within the meaning of Explanation 2 to Section 263 of the Act as due process was followed and all necessary verification and examination of documents in plausible and reasonable manner were done by the AO in the course of assessment proceedings.

13. Considering the factual matrix and legal position, we are of the considered view that the Assessing Officer had made detailed enquiries and having satisfied with the genuineness of the claim of agricultural income, after applying his mind, is one plausible view adopted by the Assessing Officer. Therefore, the Revisional proceeding initiated u/s. 263 is quashed as bad in law.

14. In the result, appeal filed by the Assessee is allowed.

Order pronounced on..21... / 03 / 2025 under Rule 34(4) of Income

Tax (Appellate Tribunal) Rules 1963.

IN ✓
Sd _____
(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd _____
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Dated : 21/03/2025

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder
Assistant Registrar,
Income Tax Appellate Tribunal,
Jodhpur Bench,
Jodhpur.