

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI VIMAL KUMAR, JUDICIAL MEMBER AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No. 2627/DEL/2024 Assessment Year: 2013-14

ITA No.2628/DEL/2024 Assessment Year: 2014-15

Ashok Kumar Jain, Prop. Mange Lal Prakash Chand, 45-B Gupta Colony, T.P. Nagar, Meerut PIN: 250002 PAN: AEIPJ3089E	Vs.	Principal CIT, Ghaziabad (Uttar Pradesh)
(Appellant)		(Respondent)

Assessee by:	Shri Piyush Agarwal, CA
Department by:	Mr. Javed Akhtar, CIT (DR)
Date of Hearing:	20.03.2025
Date of Pronouncement:	06.06.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeals filed by the Appellant/assessee are against separate orders dated 27.03.2024 of Learned Principal Commissioner of Income-Tax(Appeals), Ghaziabad (hereinafter referred as 'Ld. PCIT') under Section 263 of the Income-Tax Act, 1961 (hereinafter referred as "the Act") arising out of separate assessment orders, both dated 29.03.2022 of National Faceless Appeal Centre(NFAC), Delhi (hereinafter referred as "Ld. AO") under Section 147 r.w.s. 144B of the Act for assessment years 2013-14 and 2014-15 respectively.

2. The appeals involve similar facts, grounds and issues, so, they have been heard together for the sake of convenience.

3. Brief facts of the case i.e. ITA No.2627/Del/2024, are that appellant/assessee filed original return of income on 28.09.2013 on a total Income of Rs.3,88,910/- for assessment year 2013-14. The assessment under Section 143(3) of the Act was completed on 30.01.2016 at income of Rs.5,19,550/-. On the basis of information, the assessee made high value cash withdrawals, and hence provisions of Section 40-A (3) of the Act was attracted. The Jurisdictional Assessing Officer, after analyzing the information and after going through the records, had reasons to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of Act. Ld. AO issued a notice under Section 148 to the assessee on 30.03.2021 after obtaining necessary approval from competent authority. In response to notice under Section 148 of the Act, assessee filed his return of income on 29.04.2021 admitting at a total income of Rs.3,88,910. Notice under Section 143(2) of the Act dated 22.06.2021 was issued. Ld. AO issued reasons recorded for notice under Section 148 and approval under Section 151 for issue of notice u/s 148, to the assessee on 25.06.2021. The case was migrated to the "National Faceless Assessment Scheme" as per the Government of India Notifications. Ld. AO on 11.11.2021 completed further assessment proceedings. Notice under Section 142(1) dated 28.01.2022 and 13.02.2022 calling certain details were issued to the assessee. In response to the notice, the assessee filed a reply seeking an adjournment. Accordingly, a reminder letter dated 22.02.2022 was issued to the assessee. Reply in this regard was uploaded by the assessee on 24.02.2022

raising objections. The objections were not acceptable. A reply to the assessee was furnished on 09.03.2022 rejecting the objections. On completion of proceedings, total income was assessed at Rs.5,19,550/- vide order dated 29.03.2022.

4. Similarly, in ITA No.2628/Del/2028, the Ld. AO vide order dated 29.03.2022 assessed the income as Rs.6,32,612/- against returned income of Rs.5,59,390/- for the assessment year 2014-15.

5. Ld. PCIT on perusal of assessment record observed that Ld. AO belatedly ignored frequent withdrawals from the bank. An amount of Rs.4,47,41,609/- was used in cash payment to parties for purchases. Show-cause-notice dated 24.11.2023 was issued to assessee. Assessee submitted purchase ledger. Ld. PCIT vide order dated 27.03.2024 set aside the assessment orders of Ld. AO with the directions to make proper verification/examination with regard to applicability of section 40A(3) of the Act and to pass assessment order considering the issues raised in notice under Section 263 of the Act.

6. Being aggrieved, appellant/assessee preferred present appeals.

7. Grounds of appeal in ITA No.2627/Del/2024 for assessment year 2013-14 are as under:

“1. That the notice issued, proceedings and order passed u/s 263 of Income Tax Act, 1961 is void-ab-initio, illegal, unjustifiable, bad in law and liable to be quashed.

2. The learned Pr. CIT has erred in law as well as on facts in not considering the submissions of the appellant on the strength of which the assessment order was neither erroneous nor prejudicial to the interest of revenue and therefore, the provisions of Section 263 of the Act were not applicable to the case of the appellant.

3. Ld. AO has disposed the objection raised by the appellant on 24.2.2022 by a non speaking order dated 09.03.2022 also AO has not disposed all the objections raised by the appellant, so the reassessment order is void ab initio and revision u/s 263 of a void assessment order cannot be sustained

4. Ld. AO passed reassessment order on 29.03.2022 within 4 weeks of disposing of objections on 09.03.2022, which is in violation of law as per the decision of various higher courts, so as per law the reassessment order is void ab initio and revision u/s 263 of a void assessment order cannot be sustained.

5. The appellant craves leave to add, alter, amend, delete or withdraw one or more grounds of appeal.”

8. Grounds of appeal in ITA No.2628/Del/2024 for assessment year 2014-15 are as under:

“1. That the notice issued, proceedings and order passed u/s 263 of Income Tax Act, 1961 is void-ab- initio, illegal, unjustifiable, bad in law and liable to be quashed.

2. The learned Pr. CIT has erred in law as well as on facts in not considering the submissions of the appellant on the strength of which the assessment order was neither erroneous nor prejudicial to the interest of revenue and therefore, the provisions of Section 263 of the Act were not applicable to the case of the appellant.

3. Ld. AO has disposed the objection raised by the appellant on 23.02.2022 by a non speaking order dated 08.03.2022 also AO has not disposed all the objections raised by the appellant, so the reassessment order is void ab initio and revision u/s 263 of a void assessment order cannot be sustained.

4. Ld. AO passed reassessment order on 29.03.2022 within 4 weeks of disposing of objections on 08.03.2022, which is in violation of law as per the decision of various higher courts, so as per law the reassessment order is void ab initio and revision u/s 263 of a void assessment order cannot be sustained.

5. The appellant craves leave to add, alter, amend, delete or withdraw one or more grounds of appeal.”

9. Learned Authorised Representative for appellant/assessee regarding ground of appeal no.2 of ITA No.2627/Del/2024 submitted that Ld. PCIT passed a order by invoking Explanation 2(a) of sub section 1 of Section 263 and set aside the reassessment order to Ld. AO with the direction to make proper verification with regard to applicability of provisions of section 40A(3) of the Act. Order dated 27.03.2024 passed by the Ld. PCIT is not sustainable under Section 263 of the Act. During assessment proceedings, Ld. AO raised specific query for cash purchase/payment under Section 40A(3) in point number 11 in 142(1) dated 28.02.2022 and 13.02.2022. In response to it, the assessee submitted detailed reply on 24.02.2022 along with all relevant documents i.e. ITR, audited balance sheet and profit and loss account, VAT order, G.P.& N.P. comparison, order under Section 143(3) etc. Ld. AO passed reassessment order after proper verification. Learned AO at the time of passing reassessment order considered the following Facts:-

1. Assessment u/s 143(3) was already done, all books of accounts and vouchers are checked as per assessment order and addition was made earlier also.

2. Purchase sales and trading results are accepted by VAT Department
3. Investigation wing report is on suspicious basis that payment was made for more than 20,000.
4. Even in case of violation of 40A(3) only profit element can be added to the income, relied on various case laws provided during reassessment proceedings.
5. Immediately previous AY 2012-13 was also under scrutiny assessment u/s 143(3) and trading results are near to Immediately previous scrutiny assessment u/s 143(3), relied on various case laws provided during reassessment proceedings for law of consistency.

9.1 From the above it is clear that Ld. AO made proper inquiries and Appellant has made all the reply and Reassessment order was passed after due verification so Explanation 2(a) of sub section 1 of Section 263 cannot be invoked.

9.2 Ld. PCIT has not mentioned in the show cause notice issued u/s 263 that he is going to invoke the explanation 2 of 263 order u/s 263 is not sustainable in law as per Apex Court in the case of PCIT, SURAT-2 vs. Shree Ji Prints P Ltd [2021]130 taxmann.com 294(SC) on 27.08.2021. Reliance has been placed on the following Judgments:

- a). PCIT vs Trojan Developers [2024] 158 taxmann.com 3225 (DELHI) on 11.12.2023 by Hon'ble Delhi High Court;
- b). Arun Kumar Garg vs. PCIT ITA No 3391/EL/2018 pronounced on 08.01.2019 by ITAT Delhi

10. Learned Authorised Representative for appellant in respect of ground no.4, submitted that Ld. AO passed reassessment order on 29.03.2022 within 4 weeks of disposing of objections on 09.03.2022, which is in violation of law as per the decision of various higher courts, so as per law the reassessment order is void ab initio and revision u/s 263 of a void assessment order cannot be sustained. Ld. AO without waiting for the period of four weeks had passed the assessment order only after 20 days (Less than 3weeks) from disposing off objections on reasons recorded which makes the assessment order invalid in the light of Judgments of higher courts, so liable to be quashed. Reliance was placed on following judgments:-

1. Pradyot K Mishra vs ACIT where JURISDICTIONAL HC [2023 157 taxmann.com 253 pronounced on 20.09.2023 by DELHI HC
2. Smt. Kamlesh Goel V. I.T.O vide ITA No. 5730/DEL/2017, pronounced on 30.08.2018 by ITAT, DELHI
3. FGR Logistics Pvt Ltd vs ACIT vide ITA no.4560/Del/2019 pronounced on 01.01.2021 by ITAT DELHI.

Therefore, the Order u/s 148 was null and void, the same could not be subject matter of revision under 263 of the act.

10.1 Ld. AO has disposed the objection raised by the appellant on 24.2.2022 by a non speaking order dated 09.03.2022 also AO has not disposed all the objections raised by the appellant, so the reassessment order is void ab initio and revision u/s 263 of a void assessment order cannot be sustained.

- That the assessee by exercising his right, raised objection to the proceeding on 22.02.2022 (as page no 58 to 72) as laid down by the Judgment of Honorable SUPREME COURT in the case of GKN Driveshaft vs ITO.

- That a total of 6 objection were filed by the assessee which covered the six distinguish Points which are briefly reproduced below:

S. No.	Objection Raised	Disposed of by Non-speaking order
1.	Borrowed satisfaction	Yes
2.	Change of opinion	Yes
3.	Approval u/s 151 in Mechanical Manner	Yes
4.	Non Supply of CTR Report	No
5.	Reassessment based on Wrong facts	Yes
6.	Non Supply of Investigation Wing Report	No

- That the AO without passing a speaking order disposed only 4 objection out of 6 objection which were raised by the assessee. (AO's Reply dt 09.03.2022 attached as annexure 55 to 57)
- From the above reply it is evident that the Ld. AO disposed off part objections in a non speaking order covering only 4 objections, the Ld. AO failed to address and dispose off all the objection raised by the appellant during assessment proceedings.

Reliance was placed on the following judgements:

- GKN DRIVESHAFTS India Ltd vs ITO [2002] 125 taxmann.com 963 pronounced on 25.11.2002 by SUPREME COURT OF INDIA,
- PCIT vs TUPPERWARE INDIA PVT. Ltd. [2016] 65 taxmann.com 17 (DELHI) pronounced on 10.08.2015 by High Court of DELHI.

11. Learned Authorised Representative for the for the Revenue submitted that assessee had made payment in cash by withdrawals which were not properly inquired into by the Ld. AO.

12. From examination of record in the aforesaid rival submissions, it is crystal clear that Ld. AO had raised specific query for cash purchase/payment under Section 40A(3) of the Act in notices dated 28.01.2022 and 13.02.2022 ast pages nos. 79, 81 and 82 and 84 of the paper books. Appellant/assessee submitted detailed reply on 24.02.2022 along with relevant documents i.e. ITR, audited balance sheet and profit and loss accounts, VAT Order, GP & NP Comparison order under Section 143(3) of the Act. Ld. AO on considering material on record passed order dated 29.03.2022.

13. As per ratio of judgment in the case of PCIT, Surat-2 vs. Shree Ji Prints P Ltd. [2021] 130 taxmann.com 294 (SC) on 27.08.2021 by Apex Court, it is well settled that show-cause-notice dated 24.11.2023 under Section 263 of the Act does not mention that the Explanation 2 to S. 263 is going to be invoked. So, invocation of the Explanation in order without confronting the assessee is

not appropriate and sustainable in Law. Therefore, the impugned order passed by Ld. PCIT is not sustainable and is set aside. Ground of appeal no.1 is allowed.

14. In view of ground of appeal no.1 having been allowed, the other grounds have become infructuous and are not adjudicated.

15. Learned Authorized Representative for the appellant/assessee submitted that the facts of the case in both the appeals (ITA Nos.2627 & 2628/Del/2024) for assessment years 2013-14 and 2014-15 under consideration are identical. Therefore, following our order for assessment year 2013-14 mutatis mutandis, we set aside the orders of Ld. PCIT dated 27.03.2024 and Ld. AO dated 29.03.2022.

16. In the result, both the appeals filed by appellant/assessee are allowed.

Order pronounced in the open court on 06/06/2025.

Sd/-

**(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 06/06/2025

Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi