

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

**BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER  
AND DR. S. SEETHALAKSHMI, HON'BLE JUDICIAL MEMBER**

**ITA No. 301/Jodh/2024  
Assessment Year 2013-14)**

<b>Parasmal Saremal Gogad, G-13-14, Industrial Area, II Phase, Pali – Marwar – 306401. PAN No. AEEPG3811P</b>	<b>Vs.</b>	<b>ITO, Pali-Marwar.</b>
<b>Assessee by</b>	<b>Shri Amit Kothari, C.A.</b>	
<b>Revenue by</b>	<b>Shri Sanjay Dhariwal, CIT- DR</b>	
<b>Date of Hearing</b>	<b>07.05.2025.</b>	
<b>Date of Pronouncement</b>	<b>28.05.2025.</b>	

**ORDER**

**DR. MITHA LAL MEENA, A.M.:**

This appeal by assessee is directed against the order of the Ld. Pr. Commissioner of Income Tax, Jodhpur-1 (In short "the PCIT") dated 07.03.2024 in respect of Assessment Year 2013-14.

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

1. The Ld. PCIT has erred in invoking section 263 against the order passed u/s 147 on certain issues which is bad in law and bad on facts. The order made u/s 147 cannot be said to be erroneous or prejudicial to interest of the revenue. Therefore, order u/s 263 to set aside the order passed u/s 147 is bad in law and against the principles of natural justice.



2. The order passed u/s 147 was made after duly examining the facts and issue relating to amount of investment made in plot and its disclosure in books of accounts and such order cannot be said to be erroneous or prejudicial to the interest of the revenue. The assessment order passed u/s 147 can not be erroneous when earlier order u/s 153A also completed on 15.12.2017 with thorough examination.

3 The Id. PCIT has erred in invoking section 263 against the order passed u/s 147 for the reasons which are not valid reasons for invoking section 263. The Id. PCIT has given reasons of insufficient time available with the AO to pass the assessment order. The assessment proceedings was carried on for more than 1 year which cannot be called as insufficient time to complete the assessment proceedings. Further the Id. AO had sought all the documentary evidences which were necessary to complete the assessment and the assessee had duly submitted all the documentary evidences. The Id. AO had passed the order after verifying all the documents and evidences. Therefore, the order of PCIT u/s 263 in relation to the above issues is bad in law and bad on facts and the assessment order cannot be said to be erroneous or prejudicial to interest of the revenue.

4 The appellant pray for suitable costs.

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

3. The assessee has challenged validity of the order passed by the Ld. PCIT in invoking section 263 against the order passed u/s 147 is bad in law and bad on



facts as the order made u/s 147 cannot be said to be erroneous or prejudicial to interest of the revenue.

4. Briefly the facts of the case as per record are that the assessee had furnished original return of income on 4.8.2013 declaring total income of Rs. 4,61,380/-. In pursuant to the search proceedings the notices u/s 153A was issued and assessment was completed u/s 143(3) r.w.s. 153A on 15.12.2017, and income was assessed at Rs. 4,61,380/-. Thereafter proceedings u/s 148 was initiated in the case of the assessee by issue of notice on 27.3.2021. The copy of reasons recorded for issue of notice was provided vide letter dated 26.6.2021.

4.1 From perusal of the reasons it would reveal that the proceedings were initiated based on search proceedings in the case of Mahendra Kankaria for some on money payment made for purchase of plot in relation to Plot No. 5 and 52 where investments of Rs. 21,60,000/- was made which was not shown by the assessee in his returns.

4.2 The assessee raised legal objections with regard to initiation of such proceedings u/s 148 which were rejected by the AO. However submissions were also made on merits of the case before the AO that the entire payment for purchase of the said plot from Sh. Mahendra Kankaria was made by the appellant in the financial year 2010-11 and possession of the land was also taken with support of the copy of the receipt and that no other investment was made

during the year. Mahendra Kankaria was only a power of attorney holder and was not the owner of the land and there are apparent contradiction in his statements. He had stated offered certain income in AY 2016-17 for the said plots being sold. The purchase consideration paid was duly verifiable from the stamp duty rates adopted for the said area and the investment made was fully verifiable from the regular books of the assessee.

4.3 A notice u/s 263 dated 09.01.2024 was issued by the Id. PCITin which it was stated that-

"Please refer to the assessment order in your case for AY 2013-14 u/s 143(3) r.w.s.147 dated 31.3.2022 of the Income Tax Act, under Faceless Assessment Scheme. On perusal of the records, following facts have been observed -

The assessee had filed his return of income for AY 2013-14 on 4.8.2013 declaring total income of Rs. 4,61,380/- which had been, later on revised on 1.8.2016 declaring income of Rs. 4,61,700/-. Subsequently, the case of the assessee was reopened u/s 147 of the Act and the assessment proceedings u/s 147 r.w.s. 144B had been completed on 31.3.2022 at the assessed income of Rs. 4,61,700/-d accepting the returned income.

Further, it is found that the assessee has invested in purchase of plots in Adeshwar Nagar Developed by Sh. Mahendra Kankaria. The details of



payment made by the assessee and name in which pattas were applied and issued are Plot No. 5 and 52, total area 4800 sq.fts. total amount of Rs. 21,60,000/- against which advance payment of Rs. 21,00,000/- has been given and the patta have been issued in the name of the assessee. Further, the information relating to registration of pattas was called from the Municipal Corporation, Pali for Khasra No. 1169, Chak-I, Pali. The Commissioner of Municipal Corporation, Pali vide letter no. 921 dated 27.2.2018 has provided the list of the assessee, who have applied for the patta with regard to land / plots purchased in Adeshwar Nagar. From the details provided by the Municipal Corporation, Pali, it is evident that Pattas of the above-mentioned plots have been issued in the name of assessee himself. However, the investment of Rs. 21,60,000/- made as detailed supra, is not reflected in the Return of Income filed by the assessee for the year under consideration.

From the facts available on record, it is seen that the assessee had made payment of Rs. as appearing from the document found in search. Further, it is also notices that the pattas have been allotted in the name of the assessee himself by Municipal Corporation, Pali on 28.12.2012 and 5.1.2013 during the FY 2012-13 relevant to AY 2013-14. The seller in his statement dated recorded u/s 132(4) in question no. 13,14 and 15 have



accepted that he has received on money on the sale made in the Adeshwar Nagar Scheme. The document as recovered from the seller shows that the assessee has paid on money in respect of purchase of the said plot/ land. However, no enquiry has been conducted by the AO on this issue.

4.4 Accordingly, the Ld. PCIT held the assessment order passed under section 147 r.w.s.143(3) of the Act by the Assessing Officer as erroneous in so far as it prejudicial to the interest of revenue under Explanation (2) to section 263 of the Act, as the said order has been passed by the Assessing Officer in a routine and perfunctory manner admittedly without conducting the required inquiries and verification.

5. The Ld. counsel submitted the Ld. PCIT has erred in invoking section 263 against the order passed u/s 147 on the issues of lack of enquiries and verification is bad in law and bad on facts to hold the said order as erroneous or prejudicial to interest of the revenue and that the order passed u/s 147 was made after duly examining the facts and issue relating to amount of investment made in plot and its disclosure in books of accounts and such order cannot be said to be erroneous or prejudicial to the interest of the revenue. The assessment order passed u/s 147 can not be erroneous when earlier order u/s 153A was also completed on 15.12.2017 with thorough examination on the



same issue. Accordingly, he argued that order passed u/s 263 to set aside the order passed u/s 147 is bad in law and against the principles of natural justice.

5.1 The Ld. AR further submitted that the Id. PCIT has erred in invoking section 263 against the order passed u/s 147 for invalid reasons by stating that there was insufficient time available with the AO to pass the assessment order. The AR argued that the assessment proceedings were carried on for more than 1 year which cannot be called as insufficient time to complete the assessment proceedings and further the AO had sought all the documentary evidences which were necessary to complete the assessment where the assessee had duly submitted all the documentary evidences. The AR argued that the Id. AO had passed the order after verifying all the documents and evidences. Therefore, the order of PCIT u/s 263 in relation to the issues of lack of enquiry is bad in law and bad on facts. In support of contention, he placed reliance on several judgements which were not appreciated by the Ld. PCIT. He pleaded that the impugned order may be quashed as illegal and bad in law.

6. The Ld. CIT (DR) on the other hand has placed reliance on the impugned order. However, he failed to controvert the contention of the Ld. counsel on the issue of submission and compliance made by the assessee on the notices of enquiries issued by the AO and verification thereof.



7. Heard both the sides, perused the material on record and case law cited before us. We find that after considering the entire issue and detailed examination of the matter, a possible view has been taken by the AO which cannot be said to be erroneous or prejudicial to the interest of revenue. Admittedly, it would be appreciated that two assessment orders for the same assessment year have been passed after detailed scrutiny of the case.
8. From the record, it is seen that first time when the proceedings u/s 153A was initiated, the case was examined in detailed in view of the search carried out at the premises of Mahendra Kankaria and the assessments were also made by the same Assessing Officer. Thereafter, proceedings were initiated on this very same issue u/s 148 and the reasons were thoroughly examined by the AO considering various documents duly submitted by the assessee during the assessment. After examination of the facts, if a particular view has been taken, the same cannot be said to be erroneous or prejudicial to the interest of revenue.
9. We appreciate the fact that this case was being examined under National Faceless Assessment Centre, and the facts are examined by Assessment Unit, Verification Unit, and Technical Unit, and thereafter the assessment has been framed, after application of mind by the three units of the assessment and therefore there should be no ground of any enquiry



or further examination of the case on the matter of any error in the system of making of the assessment. Our view this view gets support from the judgements of Tribunals and Higher Judicial Forums.

10 The Coordinate Bench in the case of Rajesh Daga Vs. ITO, Pali in ITA No. 572/Jodh/2018 in order dated 20.9.2023, has deleted the addition made on the basis of dairy for alleged on money receipts by observing as under:

*“5.2 From the reading of the statement of Shri Madan Mohan Gupta as extracted in the impugned assessment order, it is evident that there is nothing to suggest allottees of the plot have paid any on money on purchase of the plots. In fact, assessee has not purchased the plot from Shri Madan Mohan Gupta rather he was allotted the plots by RTSP and, thus, there is no privity of contract between the assessee and Shri Madan Mohan Gupta. Therefore, no question of payment of alleged on money by the assessee to Shri Madan Mohan Gupta arises in the present case. Further, opportunity to cross-examine Shri Madan Mohan Gupta was not provided to the assessee even when specifically asked for in the course of assessment itself. We also take note of the fact that this issue on similar set of facts has arisen in several cases which have reached before the coordinate benches of the ITAT and have been held in favour of the assessee by deleting such additions, as already stated above.”*



11. The Hon'ble Rajasthan High court in the case of in the case of PCIT vs. Hari Om Stones (2020) 423 ITR 198 (Raj) held that the proceedings u/s 148 are not justified.

The assessee was a firm. The Principal Commissioner was of the view that the assessment order passed by the Assessing Officer against the assessee under section 143(3) of the Income-tax Act, 1961 was prejudicial to the interests of the Revenue because the Assessing Officer had not made proper enquiries on various issues. He held that the source of money was relevant enquiry to ascertain the genuineness of the loan from the third party and the Assessing Officer failed to apply his mind to this issue. Regarding the genuineness of the capita/ introduced in the names of the partners the assessee submitted al/ the details and his contentions were rejected by the Commissioner. The Principal Commissioner passed an order under section 263. The Tribunal found that according to the partnership deed the share of each of the 17 partners was specified, that to whom and the limit of remunerations was specified, that such documents were submitted to the Assessing Officer during the scrutiny assessment, that the Assessing Officer made enquiries on the issues, that the assessee submitted all the details asked for and that the Assessing Officer did not complete the assessment without conducting necessary and proper enquiries. The Tribunal held that the order passed by the Assessing Officer was not erroneous and prejudicial to the interests of the Revenue and set aside the revision order of the Principal Commissioner. On appeal:  
Held, dismissing the appeal, that the nature of the assessment order did not bring the case of the Revenue within the purview of section 263 as the order was not prejudicial to the interests of the Revenue. The assessment order indicated that the Assessing Officer had made enquiries that pertained to the issues of the



remuneration of the partners and other expenses and receipts, and the assessee had submitted details therefor. He had enhanced the returned income of the assessee making additions out of various expenses. There was no infirmity in the order passed by the Tribunal reversing the revision order of the Principal Commissioner and restoring the assessment order passed by the Assessing Officer.

12. In another case, CIT vs. Sunil Sankhla (2019) 411 ITR 437 (Raj) the Hon'ble Rajasthan High court held that the proceedings u/s 148 are not justified by observing as under:

The assessee was in real estate business. During the assessment proceedings it was found that the assessee had sold two properties for a sum of Rs. 53 Lakhs out of his business stock of Rs. 57,51,720, that the properties were not shown in the stock-in-trade and capital account and that he also derived income from job work. The Assessing Officer assessed his income at Rs.27,93,750. The Principal Commissioner passed an order under section 263 of the Income-tax Act, 1961 on the ground that the Assessing Officer had passed the order without making inquiries or verification. The Commissioner (Appeals) found that the trading account furnished by the assessee for the year ended March 31, 2010 showed that the assessee had converted the land to stock on April 1, 2009 and had claimed short term capital gains, that however in his letter dated January 28, 2015, he had stated that he had purchased the land in the financial year 2006-07 during the course of his business activity and had held it as stock-in-trade, and that these were contradictory in nature, On further appeal, the Tribunal found that according to the financial statements the acquisition and conversion of the land was shown in the accounts as stock-in-trade and that the land was disclosed as



opening stock for the financial year 2009-10, relevant to the assessment year 2010-11, It held that thus in the previous year relevant to the assessment year 2011-12, the land was a business asset of the assessee, that the Assessing Officer after examining the details and the financial statements had accepted the business profit declared by the assessee and had adopted a view that the order passed by the Assessing Officer was not prejudicial to the interests of the Revenue and that the Principal Commissioner was not justified to replace the Assessing Officer's view. The Tribunal set aside the revision order.

On appeal:

Held, dismissing the appeal, that the order of the Tribunal setting aside the revision order of the Principal Commissioner under section 263 was to be affirmed.

**[The Supreme Court has dismissed the special leave petition filed by the Department against this judgment: see [2018] 407 1TR (St.)25—Ed]**

13. In the present case, it is evident that the issues, raised by the Ld. PCIT vide above referred notice u/s 263 were duly examined by the AO, as that was precisely the reason for initiating the notice u/s 148. Having already examined such issued in detail, there hardly remains any ground for initiating the proceedings u/s 263. Meaning thereby, the assessment order by no means can be regarded as erroneous or prejudicial to the interest of revenue.



14. In the above view, we hold that the impugned order passed by the PCIT is perverse to facts on record in holding assessment order erroneous and prejudice to the interest of revenue on account of lack of enquiry. Accordingly, the order passed by the PCIT -1, Jodhpur u/s 263 is as such quashed being bad in law.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28.05.2025

Sd

(DR. S.SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 28/05/2025

Sd

(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

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.