

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 279/RJT/2024

(Assessment Year: 2016-17)

(Hybrid Hearing)

Chunilal Mahadevbhai Sanja, C/o M/s. Nobel Cera Coat, At-Jambudia, Morbi-363642	Vs.	The PCIT-1 Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACNPP7711N		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

निर्धारितीकीओरसे/Assessee by

: Shri Vimal Desai, Ld. AR

राजस्वकीओरसे/Revenue by

: Shri Sanjay Punglia, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 26/08/2025

घोषणाकीतारीख/Date of Pronouncement

: 29/09/2025

आदेश/ORDER

Per, Dr. A. L. Saini, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 30.03.2024 passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2016-17. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:

"1. The order u/s. 263 of the Act is bad in law.

2.The learned Pr. CIT has erred in law as well as on facts in not considering the submissions of the assessee on the strength of which the re-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 assessee.

3.The learned Pr. CIT has erred in law as well as on facts in setting aside the re-assessment order passed by the ld. A.O. u/s. 147 r.w.s. 144B and directing de-novo assessment regarding alleged fictitious loan taken from Vasant K. Thakkar.”

2. Succinctly, the factual panorama of the case is that assessee before us is an Individual, and filed the return of income for assessment year 2016 –17, on 24.10. 2016, declaring total income of Rs.11,11,970/-. The assessment was completed under section 147, read with section 144B of the Act, on 30.03.2022, accepting the return of income filed by the assessee.

3. Later on, Learned Principal Commissioner of Income-tax (in short “Ld PCIT”), exercised his jurisdiction under section 263 of the Income-tax Act, 1961. The learned PCIT observed that the case of the assessee for the year under consideration was reopened on the basis of information that during the year under consideration, the assessee has carried out certain transactions of Rs.75,00,000/-, with Vasant K. Thakkar. During the course of assessment proceeding, the assessee denied having any transaction with Vasant K. Thakkar. However, the assessing officer did not make any efforts to find out correctness of the information from the Authority concerned who gave such information to the assessing officer. The assessing officer has simply accepted assessee`s submission without necessary verification and investigation. The assessing officer while completing the assessment u/s 147 r.w.s. 144B of the I.T. Act, 1961 has failed to treat aggregate transactions of Rs. 75,00,000/-, as unexplained, therefore, learned PCIT observed that order

passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.

4. Considering above facts, notice u/s 263 of the Income-tax Act, 1961, dated 07.02.2024, was issued by Id PCIT and which was duly served upon the assessee. The notice issued by Id.PCIT, is reproduced in the revision order on page No.2.

5. In response to the above notice of learned PCIT, the assessee submitted its reply, stating that he denied that he had not taken any loan from any Vasant kumar Thakar. In support of this denial, the assessee had provided a copy of bank statements and bank books wherein neither the name of any Vasant kumar Thakar was appearing nor any amount of Rs. 75,00,000/- was reflected. During the assessment proceedings, the assessing officer conducted sufficient enquiry about this issue, therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

6. However, Id.PCIT rejected the above contention of the assessee and noted that as per the information received, the assessee has taken the fictitious loan accommodation entry of Rs.75,00,000/- from Vasant kumar Keshavlal Thakkar, during the year under consideration. In the reply, the assessee has submitted that the Faceless assessing officer passed the assessment order accepting the returned income as he did not have any incriminating material on his records. During the assessment proceedings, the assessing officer did not make any efforts to find out correctness of the information from the

Authority concerned who gave such information to the assessing officer which clearly proves that assessing officer has passed the assessment order hurriedly which makes such order as erroneous and prejudicial to interest of revenue. The Id.PCIT held that in terms of Explanation 2(a) to section 263 the assessment order passed u/s 147 r.w.s. 144B of the Income Tax Act dated 30.03.2022 is erroneous in for as it is prejudicial to the interests of revenue. Accordingly, the impugned assessment order passed by the assessing officer under section 147, read with section 144B of the Income tax Act, dated 30.03.2022, was set aside by Id PCIT for fresh assessment and directed the assessing officer to frame the fresh assessment order, after making necessary enquiries.

7. Aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

6. Shri Vimal Desai, Learned Counsel for the assessee submitted that during the assessment proceedings, the assessee has submitted the relevant documents and evidences which are placed in the paper book. The Id. Counsel submitted that in this case, the reasons recorded by the A.O. were vague, therefore, re-assessment proceedings itself is not valid. For that the Id. Counsel, took us through the notice issued by the A.O. during the re-assessment proceedings and stated that reasons recorded by the A.O. were bad in law, therefore, reassessment proceedings itself, is not valid, hence consequential order of the Id. PCIT is going to be invalid. For that, the Id. Counsel took us through the paper book page no. 36, wherein the order sheet the A.O. has stated as follows:

“Notings/Remarks: Contd. Page 4. As, no specific documents regarding information is available with me and the jurisdictional assessing officer (JAO) has also not furnish relevant documents which was confronted with the assessee. As the case is time barring matter, this situation is compelled the FAO to accept the version of the assessee. Hence, on the basis of above and without having convincing documentary proof, no addition, if any, is sustainable in this case. Therefor income returned by the assessee is being accepted. Later on, at any stage of the case, anything adverse found in this matter, remedial necessary action under the current provisions of the I.T. Act, 1961 may be taken by the JAO /Authority concerned.”

7. Therefore, the Id. Counsel submitted that reasons recorded by the A.O. were not adequate reasons/valid reasons, therefore, the assessment proceedings should be quashed.

8.The Id. Counsel also submitted that during the assessment proceedings, the A.O. issued notice u/s. 142(1) of the Act, dated 4th January, 2022, wherein the A.O. sought information by way of raising questions which are reproduced, below:

“7 As the information available with the department that during the financial year under consideration, you have taken accommodation entries from Vasant Thakkar. In regard to this, you are requested to please furnish the contract notes in respect of trading done in scrip of Vasant Thakkar from which you have taken accommodation entries in the financial year 2015-16.”

9. In response to the notice u/s. 142(1) of the Act, the assessee submitted its reply, which is placed at page book page no. 15. The relevant part of the reply is reproduced:-

“5.As the information available with the department that during the financial year under consideration, that you have taken bogus accommodation entries amounting to Rs. 75,00,000/-. In regard to these entries, you are requested to please furnish the following details:

Reply: I have not taken bogus accommodation entries amounting Rs. 75,00,000/- during the financial year under consideration. In support to my submission, I hereby enclose copy of Bank Statements and Bank book for the financial year under consideration.”

10. The Id. Counsel further stated that A.O. issued again notice u/s. 142(1) of the Act, which is reproduced at paper book page no. 11, wherein pertinent questions were raised by the A.O. which were raised by the Id. PCIT, the questions raised by the assessing officer is reproduced below:

“Applicability of provisions of section 147/151 to the facts of the case. Considering all the details and materials available on records, I am satisfied that the assessee has understated the income in its return of income filed as per above details and therefore the income chargeable to tax to the tune of Rs. 7500000/- has escaped the assessment. I have reasons to believe that this is a fit case for reopening and there is escapement of income within the meaning of Explanation 2(b) to Section 147 of the Income Tax Act, 1961.”

11. In response to these notices, the assessee submitted reply which is placed in the paper book. Therefore, the Id. counsel contended that sufficient inquiry was conducted by the A.O. during the assessment proceedings.

12. The Id. Counsel also submitted that Id. PCIT has exercised the jurisdiction u/s. 263 of the Act, merely on the basis of the proposal of the assessing officer and Id. PCIT did not apply his mind, therefore, order passed by the Id. PCIT may be quashed.

13. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Ld. PCIT, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

14. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We note that case of the assessee was reopened on the allegation

that assessee had taken a fictitious loan of Rs. 75,00,000/- from Shri Vasant Thakar, during the year under consideration. We note that by issuing notice u/s 142(1) of the Act, dated 04.01.2022, the Faceless Assessing Officer (FAO) inquired about the alleged fictitious loan of Rs. 75,00,000/- taken from Shri Vasant Thakar, during the year under consideration. Before replying to the above notice, the assessee requested the Faceless Assessing Officer to first provide a copy of the reasons for reopening and a copy of the approval granted by the competent authority. The assessing officer provided a copy of the reasons and a copy of the approval on 25.03.2022. Thereafter, the assessee filed a submission before assessing officer dated 25.03.2022, wherein assessee clearly denied having entered into any loan transaction with Vasant kumar Thakar. In support of his denial, the assessee provided a copy of bank statements and bank-books wherein neither the name of any Vasant kumar Thakar, was appearing nor any amount of Rs. 75,00,000/-, was reflected.

15. Thereafter, a show cause notice was issued by the assessing officer, on 27.03.2022, wherein again the same allegation and the proposal for addition was put forward without bringing any cogent material on records. In response, the assessee reiterated his earlier reply of denial of having entered into any transaction with Vasant kumar Thakar. Further, the assessee also requested the FAO to provide him with a copy of the relevant incriminating material and a copy of the statement of said Shri Vasant kumar Keshavlal Thakar. The assessee also requested for a cross-examination. As per the ITBA order sheet, the FAO (Faceless Assessing officer) made efforts to gather the relevant material in support of the allegation but could not bring

any adverse material on records. The FAO also made correspondence with the Jurisdictional assessing officer (JAO) to get the adverse evidences against the assessee. However, the JAO did not have any evidence in his possession. After all the efforts taken by the FAO, the FAO could not find any specific evidences which were the base documents for the allegation of accommodation entry and the reopening. For ready reference, the relevant part of the order sheet of the ITBA portal is reproduced hereunder:

"The assessee further requested for providing the information available on record alongwith corroborative evidences for which a letter has been written to the JAO for providing the base documents. But, the documents uploaded by the JAO is the same which are available on insight portal. Since, specific documentary evidences have neither available on insight portal nor provided by the JAO. The assessee has requested Video conferencing for the examination of documents on the basis of which his case reopened. Since no specific documents not available with the FAU and also the FAO has no enough time to issue providing adequate time to assessee to respond."

16. Consequently, in the absence of any incriminating material, the FAO passed the assessment order without making any variation. This is evident from the ITBA order sheet wherein the FAO has mentioned as under:

"As, no specific documents regarding information is available with me and the JAO has also not furnish relevant documents which was confronted with the assessee. As the case is time barring matter, this situation is compelled the FAO to accept the version of the assessee. Hence, on the basis of above and without having convincing documentary proof, no addition, if any, is sustainable in this case. Therefore, income returned by the assessee is being accepted. Later on, at any stage of the case anything adverse found in this matter, remedial necessary action under the current provisions of the I.T. Act, 1961 may be taken by the JAO /Authority concerned."

17. Considering the above facts, we find that the FAO passed the assessment order in compliance with the principles of natural justice and fairness in as much as he did not make any variation since he was unable to provide any

incriminating material to the assessee. The provisions of section 263 of the Act, should be exercised in a *bona-fide* situation. We find that the assessee's case was reopened on the allegation of receiving a fictitious loan of Rs. 75,00,000/- from Shri Vasantkumar Thakkar. If the assessee had received such loan from Shri Vasantkumar Thakkar, the same must be appearing in his bank statement and bank book. The assessing officer had examined, during the assessment proceedings that there was no entry in the assessee's bank statement and bank book in the name of Shri Vasantkumar Thakkar or of the amount of Rs. 75,00,000/-. In fact, the contention of the Id. PCIT that the assessing officer should have made inquiries to the authority who passed on the information to the assessing officer, is half-hearted and not leading anywhere. Unless the PCIT brings on record some adverse evidence, the mere direction to make inquiries only amounts to roving and fishing inquiries which are not permissible under the law. In this regard, reference may be made to the Hon'ble Bombay High Court judgement in the case of Gabriel India Ltd. (203 ITR 108) wherein it was held as under:

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

18. While passing the revision order, the Id. PCIT, in para 4.3 contended that the assessee's case was not case of "inadequate enquiry" but a case of "no inquiry" at all. It is evident from the facts explained hereinabove that the FAO, while making the inquiries, went to the extent of issuing Show Cause Notice. The FAO also made correspondence with the JAO to get relevant material. However, after all these efforts taken by the FAO, the FAO could

not find any incriminating material against the assessee. Thus, there was no legal or justified option for the assessing officer, except for passing the assessment order without any variation. It is obvious that if the FAO does not have any incriminating material or any adverse evidence against the assessee, on records, he cannot make any addition. Hence, his order is not erroneous in any manner. Thus, FAO has made due inquiries to the assessee's case and JAO in the course of the assessment proceedings. From the copy of order sheet, it also appears that the Faceless assessing officer made correspondence with the Jurisdictional assessing officer to get the adverse evidences against assessee. However, the jurisdictional assessing officer did not have these evidences in his possession. After all the efforts taken by the Faceless assessing officer, he could not find any specific evidences which were the base documents for the allegation of accommodation entry and the reopening of assessment. In view of the facts of the case and judicial pronouncements relied upon, it is well established that the impugned order passed u/s. 147 r.w.s.144B of the Act dated 30.03.2022, was passed by assessing officer, after calling for relevant information and after detailed examination of the same. The Assessing Officer has passed the assessment order after calling for details on the issue and after considering the reply and documents and after verification of the same and after due application of mind passed the assessment order, so it cannot be termed as erroneous and prejudicial to the interest of the revenue. So, the Ld. PCIT's finding fault, with the order of the Assessing Officer is erroneous as well as prejudicial to the interest of revenue, on account of lack of inquiry, has to fail. Based on these facts and circumstances, we quash the order dated 30.03.2024 passed by the ld. PCIT under section 263 of the Act.

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

Order pronounced in the open court on 29-09-2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr.A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot

Dated: 29/09/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

By order/आदेश से,

Assistant Registrar
ITAT, Rajkot