



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
&
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 378, 380, 383 /RJT/2024
(निर्धारणवर्ष / Assessment Year: (2013-14 to 2015-16))

Takdir Traders 15/26, Vijay Plot Corner, Malaviya Wadi Street, Gondal Road, Rajkot - 360002	Vs.	The PCIT-1, Aayakar Bhavan, Race Course Ring Road, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFT8306Q		
(Appellant)		(Respondent)

Appellant by : Shri D. M. Rindani, Ld. AR
Respondent by : Shri Sanjay Punglia, Ld. CIT DR
सुनवाईकीतारीख/ **Date of Hearing** : **01/07/2025**
घोषणाकीतारीख/**Date of Pronouncement** : **01/10/2025**

आदेश / ORDER

PER Dr. DINESH MOHAN SINHA, JM:

Captioned three appeals filed by the same assessee are directed against the separate orders passed by the Principal Commissioner of Income Tax[(in short “Ld. Pr.CIT”)] u/s. 263 of the Act, vide orders dated 25.03.2024.

2. Grounds of appeal(ITA No. 378/Rjt/2024 for AY 2013-14) raised by the assessee are as follows:

“1. The learned Principal Commissioner of Income-tax - 1, Rajkot erred in holding that the assessment order dated 28-03-2022 passed u/s 147 r.w.s. 1448 of the Act was erroneous and prejudicial to the interest of revenue and thus erred in assuming jurisdiction u/s 263 of the Act, in the light of show cause notice and the order passed u/s 263 of the Act and hence the impugned order is bad in law.



2. *The learned Principal Commissioner of Income-tax - 1, Rajkot erred in setting aside the assessment order framed u/s 147 r.w.s. 144B of the Act by holding that the A.O. did not conduct any inquiries in respect of cash transactions of Rs. 2,86,050/- alleged to be carried out by the Appellant with M/s National Shroff.*

3. *The learned Principal Commissioner of Income-tax - 1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and replies thereto, while finalizing assessment proceedings u/s 147 r.w.s. 144B of the Act and hence there is no lack of inquiry thereon.*

4. *The learned Principal Commissioner of Income-tax - 1, Rajkot erred in improving upon the issue on which the Appellant was show- caused and further erred in passing order u/s 263 on issues not confronted to the appellant and hence on this ground also, the order u/s 263 is bad in law.*

5. *The learned Principal Commissioner of Income-tax - 1, Rajkot failed to appreciate the contention of the appellant raised before him that the underlying order u/s 147 itself was bad in law and therefore it was not amenable to revision u/s 263 of the Act.*

6. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”*

3. Grounds of appeal(ITA No. 380/Rjt/2024 for AY 2014-15) raised by the assessee are as follows:

1. *The learned Principal Commissioner of Income-tax - 1, Rajkot erred in holding that the assessment order dated 28-03-2022 passed u/s 147 r.w.s. 144B of the Act was erroneous and prejudicial to the interest of revenue and thus erred in assuming jurisdiction u/s 263 of the Act, in the light of show cause notice and the order passed u/s 263 of the Act and hence the impugned order is bad in law.*

2. *The learned Principal Commissioner of Income-tax – 1, Rajkot erred in setting aside the assessment order framed u/s 147 r.w.s. 144B of the Act by holding that the A.O. did not conduct any inquiries in respect of cash transactions of Rs. 10,34,500/- alleged to be carried out by the Appellant with M/s National Shroff.*

3. *The learned Principal Commissioner of Income-tax – 1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and replies thereto, while finalizing assessment proceedings u/s 147 r.w.s. 144B of the Act and hence there is no lack of inquiry thereon.*

4. *The learned Principal Commissioner of Income-tax – 1, Rajkot erred in improving upon the issue on which the Appellant was show- caused and further erred in passing order u/s 263 on issues not confronted to the appellant and hence on this ground also, the order u/s 263 is bad in law.*

5. *The learned Principal Commissioner of Income-tax – 1, Rajkot failed to appreciate the contention of the appellant raised before him that the underlying order u/s 147 itself was bad in law and therefore it was not amenable to revision u/s 263 of the Act.*

6. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”*



4. Grounds of appeal(ITA No. 383/Rjt/2024 for AY 2015-16) raised by the assessee are as follows

“1. The learned Principal Commissioner of Income-tax - 1, Rajkot erred in holding that the assessment order dated 28-03-2022 passed u/s 147 r.w.s. 144B of the Act was erroneous and prejudicial to the interest of revenue and thus erred in assuming jurisdiction u/s 263 of the Act, in the light of show cause notice and the order passed u/s 263 of the Act and hence the impugned order is bad in law.

2. The learned Principal Commissioner of Income-tax-1, Rajkot erred in setting aside the assessment order framed u/s 147 r.w.s. 1448 of the Act by holding that the A.O. did not conduct any inquiries in respect of cash transactions of Rs. 1,48,500/- alleged to be carried out by the Appellant with M/s National Shroff.

3. The learned Principal Commissioner of Income-tax - 1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and replies thereto, while finalizing assessment proceedings u/s 147 r.w.s. 144B of the Act and hence there is no lack of inquiry thereon.

4. The learned Principal Commissioner of Income-tax-1, Rajkot erred in improving upon the issue on which the Appellant was show- caused and further erred in passing order u/s 263 on issues not confronted to the appellant and hence on this ground also, the order u/s 263 is bad in law.

5. The learned Principal Commissioner of Income-tax - 1, Rajkot failed to appreciate the contention of the appellant raised before him that the underlying order u/s 147 itself was bad in law and therefore it was not amenable to revision u/s 263 of the Act.

6. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”

5. That since these three appeals filed by the same assessee are directed against the separate order passed Ld.PCIT, same issue are involved in the above appeals, therefore, all these appeals have been clubbed together and a consolidated order is being passed for the sake of convenience and brevity. First, we adjudicate the ITA No. 378/Rjt/2024.

ITA No. 378/Rjt/2024 for AY 2013-14;

6. Brief facts of the case that the assessee is a Firm having PAN AAFT8306Q. The assessee had filed the return of income declaring a sum of Rs. 769/- for the AY 2013-14 on 20/07/2013.



6.1. It was noticed that during the year under consideration, the assessee had failed to disclose income of Rs. 2,86,050/-. A proceedings under section 147 of the Income tax Act, 1961 were initiated after obtaining the approval of the Appropriate Authority. Accordingly notice under section 148 dated 31/03/2021 was issued to the assessee to file the return of income. Subsequently, notice under section 142(1) dated 31.03.2021 was issued to the assessee to furnish the details of the sources of deposits. In response to the notice the assessee has filed his return of income on 14.04.2021 vide acknowledgement no: 341229551140421 with the same income returned as shown in the original return filed earlier under section 139(1) of the Act. Further, the assessee has made his submissions in response to the notice issued. The details called for in connection with the above reasons were furnished by the assessee. The same has been examined and after examining the same, the submissions are found to be acceptable and as such the income returned by the assessee is accepted and assessment completed on total income of Rs.769 on 28.02.2022.

7. On verification of case records by Ld.PCIT, it was found that survey Action u/s 133A was carried out on 18 September 2014 at premises of Ellora & Co, National Shroff & Co. (Prop.-Shri Aniruddhsinh Jorsinh Solanki and Ranjitsinh M Waghela), 1st floor, Vaibhav Trade Centre, Dr. Yagnik Road, Nr. Malaviya College, Rajkot. Subsequently upon finding of unaccounted cash of Rs. 1,14,00,000/- (Rs. One Crore Fourteen Lacs) search action u/s. 132 was conducted on 19 September 2014. The search has resulted into seizure/impounding of incriminating documents. Further enquiries were made into source of the cash deposits and their destination. As a result, a number of beneficiaries were identified, who had received unaccounted payments through Sh. National Shroff& Co. and Others. The whole amounts received by each party remain as unaccounted cash credits. The data originally disseminated in case of cheque/DD contains the valid PAN in few cases covering 2-3 crores of



transaction. Subsequently, during the search assessment, the department was in receipt of credible information from O/o the Dy. CIT, Central Circle-1, Rajkot vide letter dated 08.02.2018 where the beneficiaries were identified in large numbers. On perusal of the information, it is seen that the said assessee/Aangadiyas were involved in various activity which includes issuance of cheque in lieu of cash, accommodating cash related to unaccounted transactions of other persons into their bank accounts and subsequently transferring it to the beneficiaries. It is seen that the assessee/person, M/s National Shroff, Rajkot, used to receive the cash from outstations on behalf of the beneficiaries of various parts of Rajkot and transfer the same cash to them and earn commission over the same. These transactions are operated through the bank accounts of Angadiyas. Shri Ranjitsinh Harisinh Vaghela & Shri Anirudhsinh Jorsinh Solanki have filed written submission before the DCIT, Central Circle-1, Rajkot on 05.02.2018 and gave the list of 362 parties with whom they have made transactions, and to whom they have given the benefit of bogus transaction on cash to cash or cash to cheque basis. That in this case of the assessee Takdir Traders is beneficiaries of Rs.286050/- in AY 2013-14.

7.1. During the course of assessment proceedings, the assessee denied having a transaction with National Shroff (angadiya). The assessment for AY 2013-14 was finalized u/s. 147 r.w.s. 144B of the Act on an amount of Rs. 796/- on 28.02.2022.

7.2. The Ld.PCIT issued notice dated 08.03.2024 considering that the AO failed to treat aggregate amount of Rs. 286050 given by the assessee to M/s. National Shroff during the year as unexplained money y/s. 69A of the Act. And not charge tax u/s. 115BBE of the Act. Hence notice u/s. 263 of the Act issued by Ld.PCIT with a view that assessment order has passed without making due enquiry/verification hence in terms of explanation 2 of sec. 263 of the Act such order is erroneous in so far as it is prejudicial to the interest of revenue.



8. The assessee replied that the observation made by the Ld.PCIT is not correct at all, because of the fact that the Faceless Unit in the course of reassessment proceeding issued Notice u/s 142(1) of the Income Tax Act 1961 dated 20.01.2022 wherein the FAO specifically raised the query in form of questionnaire at point no. 1 which read as under :

"1. Please furnish an elaborate write up on the nature of transactions carried out with M/s. National Shroff and details of income derived out of the transaction with M/s. National Shroff. Whether the income has been shown in the return of income filed."

9. This specific query in question was replied by the assessee vide submission letter dated 27.01.2022 which reads as under :

"We have not entered in to any transaction with M/s National Shroff for the period relevant to the AY 2013-14. Hence, information is Not Applicable, however, any details, any instances whatever you are in a possession kindly provide the same otherwise it will be considered as you have no material, only on presumption and wrong inference the proceedings are initiated. "

10. Thus the FAO fails to demonstrate any nexus between the material before him and the formation of belief, therefore, on the basis of the material available on records, the explanation of the assessee on the issue were accepted by the FAO. The allegation made by the Ld.PCIT that National Shroff has issued cheque/DD in lieu of cash, the said allegation was dis-proved by submitting detailed bank statement hold by the assessee during the year, wherein not a single cheque/DD have been issued from the said National Shroff as alleged therefore by producing documentary evidence in the form of bank statement the allegation was disproved, thus, there were no financial transaction entered into with National Shroff and the assessment was completed by the AO after making necessary enquiry during the course of reassessment proceeding,

11. The Ld.PCIT has consider the submission made by the assessee and observed that:



“It is the bounden duty of the Assessing Officer to collect and appreciate the facts collected and proper application of law is to be made while making the assessment. In the interest of justice and since the twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue, are satisfied, the assessment order passed u/s. 147 rws 144B needs to be set aside for the discussion made above.”

Keeping in view these facts, I am of the considered view that this is a fit case for invoking section 263 of I. T. Act as the twin conditions namely, (i) the order of the Assessing Officer sought to be revised is erroneous: and (ii) it is prejudicial to the interests of the revenue are satisfied. Accordingly, the impugned assessment order passed by the A.O. u/s 147 r.w.s. 1448 of the Income-tax Act, 1961 on 28.03.2022 is set aside for fresh assessment only the extent of the issues discussed supra and direct the Assessing Officer to pass a fresh assessment order after making necessary enquiries relating to cash transactions made by the assessee with M/s National Shroff and if not found satisfactorily, appropriate addition under appropriate section should be made and relevant penalty proceedings should be initiated.”

12. That the assessee has challenged the validity and legality of order dated 25.03.2024 by way of filing the appeal before this Tribunal.

13. During the course of hearing the Ld. AR of the assessee has submitted that the assessee do not have any dealing with national shroff (angadiya). The Ld. AR further relied on the following judgements;

- i. Amitkumar Chandulal Rajani Prop. Of S.R.Jewellers v. ITO (High Court of Gujarat) R/Special Civil Application No. 2930 of 2022
- ii. MD Mahimud SK v. ITO, ITA No. 2230 & 2229/Kol/2024 (Kolkata Trib.)
- iii. PCIT v. Nya International, in Special Leave Petition (Civil) Diary No.1845/2025 (Supreme Court of India)



14. On the contrary, Ld. DR for the revenue relied on the order of the Ld.PCIT.

15. We have heard the argument of both the parties and perused all the material available on record. During reassessment proceedings, specific notice on very point was raised by the A.O. and the same was duly replied by the assessee and the same is placed on record. (PB Page 29-31 & 32-45), the AO after examination accepted the reply of the assessee, hence the AO explicitly applied his mind (as apparent also from assessment order Para 4). Action of CIT u/s 263 of the Act is unwarranted; when the very issue was duly examined by the A.O., hence there cannot be said to be an error in the order u/s 143(3) of the Act. Besides, on the other hand section 69A is inapplicable anyways because assessee is not found to be the owner of money, hence on merits too, addition could not have survived. There is no lack of inquiry by A.O. as shown above. Inadequacy of inquiry alleged by Ld.PCIT is not a valid ground to assume jurisdiction u/s 263, as held in many cases.

16. In exercising the jurisdiction under sec. 263 of the Act the revisional authority two conditions are to be satisfied. firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification.

17. Reliance can be placed on the decision of Delhi High Court in the case of CIT v. Sunbeam Auto Ltd. [2009 SCC Online Del 4237], wherein, it was held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-



application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the Act on the Commissioner.

18. A similar view was taken in the case of CIT v. Anil Kumar Sharma [2010 SCC OnLine Del 838], wherein, it was held that once it is inferred from the record of assessment that AO has applied its mind, the proceedings under Section 263 of the Act would fall in the category of Commissioner having a different opinion. Paragraph 8 of the said decision reads as under:-

"8. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this court. That being the position, the present case would not be one of "lack of inquiry" and, even if the inquiry was termed inadequate, following the decision in Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi) (page 180): "that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration."

19. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy of enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act, particularly in light of the insertion of Explanation 2 to Section 263 of the Act by the Finance Act, 2015. The said amendment specifies various conditions to exercise the power vested in the Commissioner under Section 263 of the Act, leaving no ambiguity in the interpretation of the said provision.

i. PCIT v. Shreeji Prints P. Ltd. [2021] 130 taxmann.com 294 (SC) held that;

"dismissed against impugned order passed by High Court holding that where assessee-company had received unsecured loans from two different companies



and Assessing Officer had made inquires in detail and accepted genuineness of same, such view of Assessing Officer being a plausible view could not be considered erroneous or prejudicial to interest of revenue”

ii. PCIT v. Clix Finance India P. Ltd. [2024] 160 taxmann.com 357 (Delhi)

held that;

“Where Assessing Officer during assessment proceeding issued a questionnaire to assessee regarding deduction on account of provision for non-performing assets and loss on interest rate swap and same was replied by assessee, it was not a case where no enquiry whatsoever had been conducted by Assessing Officer with respect to claims under consideration and, thus, revision order passed under section 263 was not sustainable”

iii. PCIT v. Dipesh Lalchand Shah [2022] 143 taxmann.com 419 (Gujarat)

held that;

“natural justice, or there is bias or arbitrariness etc., then also the order of AO would be erroneous. When, we say that lack of inquiry. makes an AO's order erroneous, one has to keep in mind the difference between lack of inquiry and inadequate inquiry. Lack of inquiry makes the AO's order erroneous, but inadequate inquiry does not make the order of AO erroneous. Thus, in order to exercise the powers under section 263(1) of the Act, the Pr.CIT must be satisfied that the assessment order made by the AO was (a) erroneous; and (b) prejudicial to the interests of the Revenue.”

iv. Kutch District Co-op. Milk Producers' Union Ltd. v. PCIT [2024] 159

taxmann.com 347 (Rajkot – Trib.) held that;

“An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income tax, cannot make the order of the Assessing Officer erroneous. It is viewed that the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner by invoking revisionary powers under section 263 cannot impose his own understanding of the extent of inquiry. [Para 7]”

v. Bhikhabhai Rajabhai Dhameliya v. PCIT [2023] 151 taxmann.com 493

(Surat – Trib.)

“Where any inquiry, even inadequate, was made by Assessing Officer, that would not give occasion to invoke jurisdiction under section 263 merely because Commissioner has different opinion, unless view taken by Assessing Officer is unsustainable in law”



20. Since the assessee's case under consideration, belongs to Angadia business, and on the same facts and circumstances, in the case of Pareshkumar Narsibhai Siroy, vide ITA No. No.127/RJT/2022, for assessment year 2018-19, the Coordinate Bench of ITAT Rajkot upheld the revision proceedings under section 263 of the Act, observing as follows:

*“22. We find that in assessee's case under consideration, the order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue, as **the view taken by the Assessing Officer is unsustainable in law, as stated by us in above para of this order.** The Assessing Officer passed the order on incorrect assumption of fact, incorrect application of law and the order passed by the Assessing Officer is without application of mind and moreover the AO has not investigated the issue before him, with help of the documentary evidences. **Moreover, the assessee has not explained the source and nature of the cash and cheques deposited in the bank account. The assessee stated that the cash and cheques, so deposited in the bank account belonged to his customers, however, when the assessing officer, asked the assessee to submit the name and address of the customers, the assessee has failed to give name and address to the assessing officer, during the assessment proceedings. The assessee did not provide even a single name of his customer, whereas, there is huge cash deposit in the bank account of the assessee, to the tune of Rs. Rs.38,01,13,684/-, hence, there is loss to the revenue. Hence, order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.** Hence, the view taken by the assessing officer is not a plausible view and therefore order passed by the assessing officer is erroneous as well as prejudicial to the interest of the revenue, therefore, ld. PCIT has rightly exercised his jurisdiction under section 263 of the Act. The conclusions arrived at by the ld. PCIT are, therefore, correct and admit no interference by us. We, approve and confirm the order of the ld. PCIT and dismiss the appeal of the assessee.*

23. Before parting we would like to mention that the Co-ordinate Bench of ITAT Rajkot has remitted the issue back to the file of the assessing officer in Angadia cases vide ITA No. 381/382/RJT/2024, order dated 26.02.2025 and upheld the revision proceedings under section 263 of the Act, on identical facts.

24. In the result, the appeal filed by the assessee is dismissed”.

21. In the conclusion, we are of the view that the reasons set out by the ld. PCIT for invoking the jurisdiction u/s 263 of the Act are sustainable. The impugned order of ld. PCIT has to be upheld for the reason that order of the AO sought to be revised in the impugned order was erroneous as well as prejudicial to the interest of the revenue for the reason mentioned above. We accordingly upheld the order u/s 263 of the Act and dismiss the appeal of the assessee.



22. In the result, the appeal of the assessee in (*ITA No.378/RJT/2024 for AY 2013-14*) is dismissed.

ITA 383 & 380/Rjt/2024 for AY 2014-15 to 2015-16;

23. The above said (*ITA No. 380 & 383/Rjt/2024 for AY 2014-15 to 2015-16*) are having identical facts and have the same issue involved in both the cases, therefore both the appeals dismissed.

24. In the result, the three appeals filed by the assessee are dismissed.

Order pronounced in the open court on 01/10/2025.

Sd/-

(Dr. ARJUN LAL SAINI)
ACCOUNT MEMBER

Rajkot

दिनांक/ Date: 01/10/2025

Copy of the Order forwarded to

- 1.The Assessee
- 2.The Respondent
- 3.The CIT(A)
4. Pr. CIT
- 5.DR/AR, ITAT, Rajkot
- 6.Guard File

(True Copy)

Sd/-

(DINESH MOHAN SINHA)
JUDICAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot