

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

BEFORE

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 644/Del/2021
Asstt. Year 2010-11

Shri Raj Kumar Karanwal, 194/A, Bhahmpuri, Muzaffarnagar-251001. PAN ADQPK8099N	Vs.	Pr. CIT Dehradun.
(Appellant)		(Respondent)

Assessee by:	Shri Sankalp Malik, Advocate Shri Sanjay Malik, Advocate
Department by:	Ms. Sapna Bhatia, CIT-DR
Date of Hearing:	10.08.2023
Date of pronouncement:	11.09.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax, Dehradun (**"PCIT"**) dated 18.03.2021 passed under section 263 of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year (**"AY"**) 2010-11.

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

- "1. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the reassessment order dated 28-12-2017 as erroneous as well as prejudicial to the interest of revenue and that too by recording incorrect facts and findings and in violation of principles of natural justice.*

2. *That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in setting aside the impugned reassessment order dated 28.12.2017 and directing the assessing officer to examine the issues involved afresh and that too by recording incorrect facts and findings and without observing the principles of natural justice and more particularly when all the details/information/evidences were available on the record at the time of assessment proceedings.*
3. *That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in passing the impugned order u/s 263 and that too without providing the opportunity of being heard and in violation of principles of natural justice and without appreciating/considering the various replies, submissions and evidences filed by the assessee.*
4. *That in any case and in any view of the matter, action of Ld. Pr.CIT in passing the impugned order u/s 263 is bad in law and against the facts and circumstances of the case and is in violation of principles of natural justice.*
5. *That having regard to the facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 which is bad in law inter alia for this reason that the reassessment order passed u/s 143(3)/147 dated 28.12.2017 which is sought to be revised u/s 263 itself was invalid inter alia on various grounds as mentioned below and thus proceedings initiated u/s 263 against the invalid reassessment order is clearly bad in law.*
 - a) *That assumption of jurisdiction u/s 147 is itself is bad in law as the reason recorded would not have led to the formation of belief, of escapement of income.*
 - b) *That no valid satisfaction/approval u/s 151 was obtained.*
 - c) *That no valid notice u/s 143(2) was issued/served during re-assessment proceedings and that too in accordance with law.*
 - d) *That impugned reassessment order was passed without complying with the mandatory conditions of section 147 to 151."*

3. The facts in brief are that the assessee individual is a wholesaler and distributor of medicines. He filed his return for AY 2010-11 on 09.12.2010 declaring income of Rs. 3,95,130/-. Thereafter, notice under section 148 of the Act was issued on 29.03.2014 on the basis of AIR information regarding cash deposit of Rs. 22,62,136/-, sale of immovable property of Rs. 1,35,00,000/- and purchase of immovable property of Rs. 70,00,000/- during the year. In response, it was submitted that return filed on 09.12.2010 may be treated as filed in compliance to notice under section 148 of the Act. Notice under section 143(2) dated 11.12.2017 was issued and served upon the assessee. A notice under section 142(1) along with

questionnaire dated 16.08.2017 was issued and served upon the assessee. Again a notice under section 142(1) dated 08.11.2017 was issued to the assessee. A show cause notice dated 01.12.2017 was also issued and duly served upon the assessee.

3.1 During the re-assessment proceedings, replies were furnished. The Ld. Assessing Officer (**“AO”**) required the assessee to produce books of account and copy of bank account to reconcile the cash deposit in savings bank account with reference to the cash book and bank account.

3.2 The Ld. AO issued notice under section 133(6) of the Act to HDFC Bank, Muzaffar Nagar on 22.03.2017 requiring the bank to submit statement of account of the assessee for the period from 01.04.2009 to 31.03.2010.

3.3 The assessee explained to the Ld. AO that he deposited cash of Rs. 22,62,136/- in current account of the firm M/s. R.S. Distributor, Navyug Market, Ghaziabad. The assessee had opening capital of Rs. 19,15,411.24 from the previous year; he added Rs. 15,00,000/- to the capital account during the year from saving bank account.

3.4 The Ld. AO observed that the cash deposit of Rs. 22,62,136/- in saving bank account has been verified and found in order.

4. As to the property transaction the assessee explained that he purchased a property of Rs. 70,00,000/- on 23.05.2009 having $\frac{1}{2}$ share in it. He jointly sold part of above property for Rs. 35,00,000/- on 31.07.2009. It was further explained that the assessee sold another property of Rs. 50,00,000/- on 21.08.2009 having $\frac{1}{2}$ share in it and earned capital gain of half of Rs. 50,220/- i.e. Rs. 25,110/- which he declared in his return.

5. The assessee also explained that the property sold on 21.08.2009 of Rs. 50,00,000/- is doubly reported. Therefore, AIR information regarding

sale of property of Rs. 1,35,00,000/- is incorrect. It should be Rs. 50,00,000/- & Rs. 35,00,000/- amounting in all to Rs. 85,00,000/-.

6. The explanation offered by the assessee was acceptable to the Ld. AO on both the issue of cash deposit and property transaction.

7. The Ld. AO, therefore completed the assessment on 28.12.2017 under section 143(3)/147 on total income of Rs. 4,52,900/- adding to the income returned at Rs. 3,95,126/-, disallowance of Rs. 1050/- out of claim of donation under section 80G and disallowance of Rs. 56,727/- being 20% out of expenses of Rs. 2,83,636/-.

8. The Ld. PCIT set aside the assessment vide his order dated 18.3.2021 under section 263 of the Act observing inter alia that during the assessment proceeding neither the Ld. AO asked for the nature and source of cash deposits nor any explanation has been furnished by the assessee; that source of investment towards purchase of property has not been correctly examined; that short term capital gain arising on sale of property has not been examined; that documentary evidence to examine the genuineness of bank charges & interest expenses of Rs. 11,12,778/- had not been called for and that enquiry has not been made in respect of fresh loans from three parties obtained by the assessee during the year.

9. The assessee replied to the show cause notice issued by the Ld. PCIT as under:-

“a) That the assessee filed his return of income at Rs 395126-00 which was completed u/s 143(3)/147 of the I. Tax Act, 1961 by the LTO ward 2(2) M. Nagar on an income of Rs 452900-00

b) That the Ld AO has issued show cause notice on the points mentioned in your honour's notice and all were replied with documentary evidences.

c) That the Ld. AO issued show cause notice on this point which was duly replied evidences by the assessee in para No 7 of reply dated 22-12-

2017 In support of his contention the books of accounts and bank statement was produced during the assessment proceedings which was vented by the AO

- d) That the assessee purchased a three story residential house for Rs 70,00,000/ the payment schedule is mentioned on page 23 of the purchase deed The assessee filed copy of purchase deed and copy of bank account in which the payments are clearly reflected. The copy of bank account is being attached for your kind consideration. Hence the Ld AO considered this point during the assessment proceedings*
- e) That the assessee sold a part of building and calculation of capital gain was sorted out and after examining the papers submitted during assessment proceedings assessed the same in the income of the assessee by the Ld AO .*
- f) That the assessee has shown expenses of Rs 11.12.778- under the head bank charges and interest and also filed the detailed fat of the same during the assessment proceedings which was got vented by the Ld AO, and considered Hence the AO examined the genuineness of these expenses with the documentary evidences*
- g) That as per the list of unsecured loan fed during the assessment proceedings. The assessee filed the confirmations of the concerned persons before the Ld. A.O. Hence proper enquiry was made by the AO during the assessment proceedings on this point and considering the evidences passed the order*
- h) That all the relevant evidences were fled in respect of the above point during the assessment proceeding and after considering them the assessment order is passed by the Ld AO and is not erroneous and prejudicial to the interest of revenue*

It is therefore requested to kindly consider the documents and evidences filed by the assessee during the assessment proceedings and also prayed not to set aside or cancel the assessment order passed by the A.O.

It is further prayed that in case of any other evidence or clarification on any point is required, please give some more time to the assessee for filing the same before your honour as due to lock down the assessee is unable to present or produce the relevant evidences, if required by your honour.”

10. The explanation given by the assessee was not acceptable to the Ld. PCIT who for the reasons recorded by him in para 4 of his order held that the assessment order is erroneous and also prejudicial to the interest of Revenue as the order has been passed without making enquiry and

verification which should have been made. He therefore set aside the assessment order with a direction to the Ld. AO to pass a fresh order after due verification.

11. Aggrieved, the assessee is before the Tribunal and all the five grounds relate thereto.

12. The Ld. AR submitted that five issues raised by the Ld. PCIT in the notice were duly examined by the Ld. AO after making necessary enquiries. Therefore, the basis that no enquiry was made is wholly illegal, unjust and highlights non-application of mind by the Ld. PCIT while assuming jurisdiction. In support of the proposition that 'no enquiry' is different from 'inadequate enquiry' and where the Ld. AO made enquiries as seems appropriate on the facts and in the circumstances of the case, assumption of jurisdiction under section 263 of the Act is not warranted, the Ld. AR relied on the decision of the Hon'ble Apex Court in Green World Corporation (2009) 181 Taxman 111(SC); CIT vs. Vodafone Essar South Ltd. (2012) 28 taxmann.com 273 (Del) and CIT vs. Anil Kumar Sharma (2010) 194 Taxman 504 (Delhi).

12.1 The Ld. AR further submitted that the Ld. PCIT has failed to point out what more enquiries the Ld. AO ought to have made. In cases where the allegation is of "proper enquiries", the burden is on the Ld. PCIT to conduct further enquiries by himself and he cannot simply set aside the order of the Ld. AO for further enquiries. For this proposition, he relied on the decision of Hon'ble Delhi High Court in CIT vs. D G Housing 343 ITR 239 (Del).

12.2 The Ld. AR further submitted that the Explanation 2 to section 263 also cannot help the Revenue as it came into effect w.e.f. 01.06.2015 whereas the case of the assessee pertains to AY 2010-11.

13. The Ld. CIT-DR supported the order of the Ld. PCIT and placed on record copy of fresh assessment order passed on 31.03.2022 under section 144 r.w. section 263 r.w. section 144B of the Act.

14. We have considered the rival submissions and perused the records. It is an admitted position that for AY 2010-11 the assessee who is a wholesaler and distributor of medicines, had filed his return on 09.12.2010 declaring income of Rs. 3,95,130/- and that his case was reopened on the basis of AIR information about cash deposit of Rs. 22,62,136/- and purchase of property for Rs. 70,00,000/- and sale of immovable property of Rs. 1,35,00,000/-. This is evident from the reasons recorded by the Ld. AO (copy of which is at page 20 of the Paper Book). During the course of the assessment proceedings in the questionnaire dated 16.08.2017 (copy at page 22-23 of Paper Book) specific query No. 17 to explain cash deposit of Rs. 22,62,136/- and specific query No. 24 to furnish computation of capital gain arising from sale of property and to explain source of investment towards purchase of property was made. The assessee filed reply which appears at pages 26-28 and 77-78 of the Paper Book. The Ld. AO recorded a finding that cash deposit of Rs. 22,62,136/- in saving bank account has been verified and found in order after examining the books of account of the assessee and reconciliation of cash deposit with reference to cash book and statement of account obtained from the bank by issue of notice under section 133(6) of the Act. We also observe from page 79 of Paper Book that the Ld. AO accepted the calculation of short-term capital gain declared by the assessee after due verification. We are, therefore, of the view that it is not a case of no enquiry. Rather there is lot of evidence on record to indicate that there was full application of mind by the Ld. AO on the twin issue of impugned cash deposit and purchase and sale transaction/capital gain declared by the assessee. The decisions (supra) relied upon by the assessee fully support the view canvassed by the assessee before us. In a recent decision in PCIT (Central) vs. Kanin (India) (2022) 141 taxmann.com 83 the Hon'ble Punjab and Haryana High Court has held that if the Ld. PCIT did not point out what enquiries or verification should have been made but had not been made by

the Ld. AO, the order passed by the Ld. PCIT under section 263 of the Act is not sustainable.

15. As regards expenses of Rs. 11,12,778/- claimed under the head bank charges and interest and loan from three parties, the assessee submitted before the Ld. PCIT (pages 113-117 of Paper Book) that detailed list of expenses was filed during reassessment proceedings which were verified by the Ld. AO from the ledger account and thereafter he allowed them. From certain other expenses, the Ld. AO disallowed 20% being unverifiable for the purposes of business. It was further submitted that list of unsecured loan was filed before the Ld. AO and confirmation of the parties were also filed in response to the query made by the Ld. AO. On the face of these facts on record, we are unable to subscribe to the view of the Ld. PCIT that genuineness of bank charges were not examined and that enquiry was not made in respect of loans obtained during the year from three parties.

16. It is now well established that where the Ld. AO has examined the issues on the basis of which the case is re-opened during re-assessment proceedings by issuing various notices under section 142(1) of the Act with questionnaire and claim of the assessee is accepted by the Ld. AO, the mere fact that he has not elaborated the issues in the reassessment order will not entitle the Ld. PCIT to exercise justification under section 263 of the Act. Decision of Hon'ble Delhi High Court in CIT vs. Vikas Polymers (2012) 341 ITR 537 (Del) and decision of Hon'ble Allahabad High Court in CIT vs. Krishna Capbox (P) Ltd. (2015) 372 ITR 310 (All.) may be referred to.

17. Placing on record by the Ld. CIT(DR) the fresh assessment order framed by the Ld. AO consequent to order under section 263 of the Act before us is of no value in so far as the present appeal is concerned.

18. On the facts and in the circumstances of the case and reasons set out above, we have reached the conclusion that the impugned order of the Ld.

PCIT passed under section 263 of the Act is not sustainable which we hereby quash.

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

Order pronounced in the open court on 11th September, 2023.

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 11/09/2023

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Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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