

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.896/Ind/2018

Assessment Year: 2014-15

Shri Sameer Gupta, E-5/95, Arera Colony, Bhopal	Vs.	Pr.CIT (Central) Bhopal
(Appellant)		(Revenue)
PAN No.AAYPG5997L		

Appellant by	S/Shri Asish Goyal & N.D. Patwa, ARs
Revenue by	Shri S.S. Mantri, CIT
Date of Hearing	05.03.2020
Date of Pronouncement	01.06.2020

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2014-15 is directed against the order u/s 263 of the Act framed by Ld. Pr. Commissioner of Income Tax (Central) (in short 'Ld.PCIT'], Bhopal dated 28.09.2018.

2. Assessee has raised following grounds of appeal;

On the facts and in the circumstances of the case: -

- 1.The notice issued under section 263 by the Principal Commissioner of Income Tax (Central) (hereinafter referred to as "Pr CIT") and the order passed under section 263 are illegal, bad in law and without jurisdiction.*
- 2.That having regard to the facts and circumstances of the case, Pr. CIT has erred in law and on facts in assuming jurisdiction in passing the order u/s 263, more so when the assessment order passed under section 143(3) is neither erroneous nor prejudicial to the interest of Revenue.*
- 3.That the Id Pr. CIT (Central) erred in facts and circumstances of the case, that the Id AO did not verified the cash deposits amounting to Rs. 29,40,000/-in the bank account during the year under consideration and framed the assessment u/s 143(3) of the Income Tax Act, 1961.*
- 4.That Pr.CIT has erred on fact and in law in not appreciating that the details of bank accounts held by appellant along with ledger accounts showing narration of each entry was on record during the assessment proceeding, hence the assessment is neither erroneous nor prejudicial to the interest of Revenue.*

The appellant carves leave to add, amend or modify any of the grounds of appeal.

3. Brief facts of the case as culled out from the records are that the assessee is an individual having income from business and other sources. He is partner in various firms namely M/s Fortune Associates, M/s Fortune Builders, M/s Fortune Soumya Housing and M/s Fortune Realty. Return of income declaring income of Rs. 6,45,210/- for the Assessment Year 2014-15 was filed on 26.03.2015. Case selected for scrutiny through CASS followed by serving of valid notices u/s 143(2) & 142(1) of the Act. The assessment was completed u/s 143(3) of the Act at Rs.6,45,210/- However Ld. Pr. CIT on verification of records observed that the

assessee had made cash deposits amounting to Rs.29,40,000/- but the assessing officer has not examined this issue and thus held that the assessment order is erroneous and prejudicial and he thus set aside the assessment order vide order u/s 263 of the Act dated 28.09.2018 for examining the issue of unexplained cash deposit.

4. Now the assessee is in appeal before the Tribunal against the order issued by Ld. Pr. CIT u/s 263 of the Act holding that the order of the assessing officer dated 08.11.2016 is erroneous and prejudicial to the interest of revenue and is liable to be set aside and thus erred by giving direction to the assessing officer to reframe the assessment after examining the issues of non-verification of source of cash deposit of Rs.29,40,000/- made during financial year 2013-14. Ld. Counsel for the assessee referring to the synopsis and paper book filed on 01.01.2020 as well as 07.02.2020 submitted that the assessing officer has called for specific details about the cash deposit. Necessary replies were furnished during the assessment proceedings along with details including copies of capital accounts of the partnership firm wherein the assessee is partner, cash book showing the availability of cash in various dates.

All these details have been examined by the assessing officer and after being satisfied with the explanation given by the assessee have framed the assessment. The Ld. Counsel for the assessee placed reliance on following decisions:

1. CIT vs. Mehrotra Brothers 270 ITR 157(MP, High Court)
2. Krishna Capbox (P.) Ltd. (2015) 372 ITR 310 (Allahabad)

5. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. Pr. CIT contending that the assessing officer has not carried out any enquiry about the source of cash deposited during the year.

6. We have heard rival contentions and perused the records placed before us. Though, the assessee has raised four grounds of appeal, but sole issue is challenging the jurisdiction of Ld. Pr. CIT(central) invoking the provisions of section 263 of the Act and wrongly setting aside the order of the assessing officer dated 08.11.2016 holding it to be erroneous and prejudicial to the interest of revenue.

Ld. Pr. CIT during the verification of assessment records observed that the assessee had made cash deposits in Bank amounting to Rs.29,40,000/- during the year and that the explanation regarding

such huge cash deposits was neither furnished by the assessee nor called for by the assessing officer during the course of assessment proceedings. Accordingly, show cause notice dated 02.08.2018 was issued and served upon the assessee calling for the details of source of cash deposit of Rs.29,40,000/- alleging that the assessing officer failed to conduct enquiry about these cash deposits during the assessment proceedings.

7. Ld. Counsel for the assessee gave detailed reply submitting that the assessee had earned exempt income including share of profit from partnership firm. Total exempt income earned for A.Y. 2014-15 is Rs.3,14,93,363/- and the other taxable income is Rs.6,45,210/-. It was also submitted that detailed enquiry was conducted and all details were filed on various dates which also included the cash book and capital account of partnership firms to support the fact that the regular transactions of cash deposits and withdrawal took place during the year cash amount was regularly received from partnership firms and the source of deposit of cash in bank is from the cash available in the regular cash book maintained by the assessee. However, these details were not

sufficient enough to satisfy the Ld. Pr. CIT.

8. During the course of hearing before us, on examination of details, we found that during the course of assessment proceeding notice u/s 142(1) of the Act dated 13.04.2016 was issued by the assessing officer. In this notice 15 types of details were called out of which one related to source of cash deposit of more than Rs.20,000/- in the bank. First reply to this notice was filed on 13.04.2016 and thereafter another reply was filed on 28.04.2016 in which the complete details of bank account were filed by the assessee. Copies of partner's capital account in books of partnership firm were also filed. Narration of each entry was mentioned in the cash book submitted before assessing officer running from pages 25 to 29. There are regular transactions of cash receipts and cash payments. There is no negative balance at any particular date. Source of cash deposit of Rs.29,40,000/- is generally from the cash received from partnership firms wherein the assessee is a partner and out of the accumulated balance available on various dates. Ld. Assessing Officer after considering these details accepted the submission and was satisfied with the source

of cash deposits. Thus the case before us is not the case where no enquiry has been conducted by the assessing officer.

9. The Ld. assessing officer has conducted detailed enquiry and was satisfied with the source of cash deposit of Rs.29,40,000/- in the bank account during the year. During the course of assessment proceedings before the Ld. Pr. CIT complete details of the source of deposits were again filed and summary of source of cash deposits on six instances which total to Rs.29,40,000/- is reproduced below:

<i>Date</i>	<i>Amount of cash deposit</i>	<i>Source of deposit</i>
<i>03.10.2013</i>	<i>5,00,000</i>	<i>Out of cash balance lying in the cash book</i>
<i>04.10.2013</i>	<i>2,80,000</i>	<i>Out of cash balance lying in the cash book</i>
<i>20.11.2013</i>	<i>6,10,000</i>	<i>Out of cash balance lying in the cash book particularly by withdrawing Rs.6,50,000/- from the bank on 12.11.2013</i>
<i>03.01.2014</i>	<i>2,00,000</i>	<i>Out of cash balance lying in the cash book particularly by withdrawing Rs.4,50,000/- from the bank on 01.01.2014</i>
<i>24.03.2014</i>	<i>4,50,000</i>	<i>Out of cash balance lying in the cash book particularly by withdrawing Rs.5,00,000/- from the bank on 26.02.2014</i>
<i>29.03.2014</i>	<i>9,00,000</i>	<i>Out of cash balance lying in the cash book particularly by</i>

		<i>withdrawing money on different dated from the same bank.</i>
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10. In view of above discussion and the facts placed before us, we find that as far as the issues of source of cash deposit of Rs.29,40,000/-, is concerned specific query was raised during the assessment proceedings to which detailed reply was filed along with documentary evidences which are sufficient enough to explain the source of cash deposits. The exercise has been rightly carried by the assessing officer before framing assessment.

11. Now in this situation whether Ld. Pr. CIT was justified invoking provisions of section 263 of the Act? We observe that Hon'ble Jurisdictional High Court in the case of *CIT vs. Mehrotra Brothers* 270 ITR 157(MP) has held that "*if the assessing officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given explanation by a letter in writing and the assessing officer allows the claim on being satisfied with the explanation of the assessee, the decision of the assessing officer cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.*"

12. Further in the case of *Krishna Capbox(P) Ltd. (2015) 372 ITR 310(Allahabad)* held that “*where assessing officer passed assessment order after certain queries from assessee mere non-discussion or non-mention thereof in assessment order could not lead to assumption that assessing officer did not apply his mind; invoking of revision proceeding under section 263 on said ground was unjustified.*”

13. We also find that recently Coordinate bench, Kolkata in the case of *Satya Prakash Sharma vs. Pr. CIT vide ITANo.2574 to 2576/Kol/2018* order dated 22.11.2019 adjudicating similar issue laid down the proposition that “*wherein enquiry was conducted by the assessing officer, even if inadequate, that would not by itself give occasion to the ld. Pr. CIT to interdict and interfere by exercising his revisional jurisdiction merely because he is of the opinion that some more enquiries should have been conducted in the matter.* Similarly, Coordinate Bench, Vishakhapatnam in the case of *Shrinivasa Hair Industries vs. ACIT vide ITANo.194/VIZ/2018* order dated 03.01.2019 observed that “*since the issue raised by the Ld. Pr. CIT for revision u/s 263 of the Act were examined by the Assessing*

Officer at the time of making assessment in detail and was satisfied regarding the correctness and since there is no evidence to show that the AO has not conducted the enquiry at the time of assessment on any of the issues, the suspicion of the Ld. Pr. CIT cannot be a case for revision u/s 263 of the Act.”

14. Examining the facts of the instant case, in the light of the above decisions, we find that the assessee is having a taxable income of Rs.6,45,210/- and exempted income of Rs.3,14,93,363/- during the year which majorly comprise of profit from partnership firm totalling to Rs.2,96,41,668/- and had sufficient cash in hand on various dates during the year out of which the amounts were deposited in the bank account. The major source of cash deposited in the amount received from the partnership firm. All these details of cash received from partnership firm and the amount deposited in the bank account were placed before assessing officer and after examination of these details assessment was completed.

15. However, the assessing officer in the body of the assessment order did not record any observation regarding the transaction of cash deposits in the bank but the questionnaire issued during the

course of assessment proceedings and various replies filed by the assessee shows that during the course of assessment proceeding specific query is raised regarding cash deposits in bank, calling of bank statements and other statement. To this specific query there is a specific reply given by the assessee which demonstrates that after receiving the information the assessing officer had applied his mind on these transactions. More over the ld. CIT(A) has given a swiping statement that transaction between the assessee and the partnership firm (wherein assessee is partner) was exclusively through banking channel without rebutting the entries made in the cash book by the assessee duly supported by other independent evidence. Here, we would like to refer the judgment of Hon'ble Delhi High Court in the case of *CIT vs. Anil Kumar Sharma (2011) 335 ITR 83* wherein it has been held dismissing the appeal *“that the present case would not be one of, “lack of inquiry” even if the inquiry was termed inadequate. The Tribunal found that complete details were filed before the Assessing Officer and that he applied his mind to the relevant material and fact, although such application of mind is not discernable from the assessment order. The Tribunal held that, the Commissioner in proceedings under [Section 263](#) also had all these*

details and material available before him, but not been able to point out defects conclusively in the material, for arriving at a conclusion that particular income had escaped assessment on account of non-application of mind by the Assessing Officer. The Tribunal was right and the order of revision was not valid”.

16. The above judgment squarely applies on the facts of instant case and therefore, we are of the considered view that since sufficient enquiry has been conducted by the Ld. AO during assessment proceedings with regard to the issues raised by the Ld. Pr. CIT in the show cause notice issued u/s 263 of the Act and thus hold that Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act and inferring that the assessing officer has not conducted enquiry. We, further hold that the assessment order passed by the assessing officer dated 08.11.2016 is neither erroneous nor prejudicial to the interest of revenue. Accordingly, the order passed by the Ld. Pr. CIT u/s 263 of the Act is quashed and assessment order u/s 143(3) of the Act dated 08.11.2016 is restored.

17. In the result appeal of the assessee is allowed.

The order pronounced in the open Court on 01.06.2020.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

नांक /Dated : 1st June, 2020

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore