

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'B', CHANDIGARH  
(Virtual Court)

BEFORE: SHRI N.K. SAINI, VICE PRESIDENT  
AND SHRI R.L. NEGI, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 463/Chd/2019

निर्धारण वर्ष/ Assessment Year : 2014-15

Taj Paul Bhardwaj, Mohalla Bhaika, College Road, Sunam.	बनाम	The Pr. C.I.T. Patiala.
स्थायी लेखा सं./PAN NO: AANPB 8544 M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, CA

राजस्व की ओर से/ Revenue by: Sh. Sandeep Dahiya CIT (DR)

सुनवाई की तारीख/Date of Hearing: 18.02.2021

उद्घोषणा की तारीख/Date of Pronouncement: 13.05.2021

**आदेश/Order**

**Per R.L. Negi, Judicial Member:**

The assessee has preferred the present appeal against the order dated 31/01/2019 passed by the Learned Principal Commissioner of Income Tax, Patiala, [in short the 'Ld. Pr.CIT] U/s 263(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), whereby the Ld. Pr. CIT has set aside the assessment order passed u/s 143(3) of the Act, holding that the said order is erroneous and prejudicial to the interest of the revenue

and directed the AO to pass the order afresh on the issues mentioned in the show cause notice.

2. The brief facts emanating from the record and the pleadings of the parties are that the assessee an individual filed his return of income for the assessment year under consideration declaring income of Rs. 2,28,130/- and agricultural income of Rs. 2,47,500/-. The case was selected for limited scrutiny for the reason that there was a substantial increase in the capital during the year relevant to the assessment year under consideration. Accordingly, the AO issued notices u/s 143(2) and 142(1) of the Act. In response thereof, the authorized representative (AR) of the assessee appeared before the AO and furnished the details called for by the AO. After hearing the ld. AR, AO accepted the return filed by the assessee.

3. Subsequently, the Ld. Pr. CIT issued notice to the assessee as to why the assessment order should not be revised u/s 263 of the Act for the reasons, (i) that the assessee filed his return of income for the assessment year under consideration on 25.05.2015 whereas the due date was 31.07.2015 and the assessee had not

deposited the capital gain in Capital Gain Deposit Account before the specific date. Therefore, the assessee was not entitled to claim exemption u/s 54 of the Act. Since the AO has failed to make any enquiry or verification, the assessment order is erroneous and prejudicial to the interest of the revenue; (ii) the assessee had shown opening balance of capital as on 01.04.2013 at Rs. 65,91,538, however, did not file his return for the A.Y. 2013-14. Since the genuineness of opening balance was doubtful and the AO failed to examine this issue, the assessment order is erroneous and prejudicial to the interest of the revenue and (iii) that since the AO has failed to bring on record any evidence with regard to agricultural income claimed by the assessee, the assessment order is erroneous and prejudicial to the interest of the revenue. The assessee filed reply to the said notice and contended that the assessment order is neither erroneous nor prejudicial to the interest of the revenue. However, the Ld. Pr. CIT rejecting the contention of the assessee passed the order u/s 263 of the Act and directed the AO to make assessment afresh on the issues mentioned in the notice. The assessee is in appeal against the said order passed by the Ld. Pr. CIT.

4. Initially, the assessee challenged the impugned order by raising the following grounds:

- "1. That the notice issued u/s 263 by the Principal Commissioner of Income Tax (hereinafter referred to as "Pr CIT") and the order passed u/s 263 is illegal, bad in law and against the facts of the case.*
- 2. That the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Income Tax Act on the ground that the assessment order passed by the Assessing Officer for AY 2014-15 is not only prejudicial to the interest of Revenue but is also erroneous on account of exemption claimed u/s 54, on account of opening balance of capital amounting to Rs. 65,91,538/- and on account of agriculture income amounting to Rs. 2,42,500/-.*
- 3. That the proceeding and the order passed by the Ld. Pr. CIT u/s 263 is perverse as it is based on general observation and not specific to the facts of the case.*
- 4. That the Ld. Pr. CIT has passed the order u/s 263 of the Act on surmises and conjectures and therefore is liable to be set aside.*
- 5. That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal."*

5. During pendency of the appeal, the Ld. Counsel for the assessee moved an application for permission to allow the revised ground of appeal which are as under:

- "1. That the Ld. Pr. CIT has erred in passing the order u/s 263 as he could not have passed the order u/s 263, being taken the case for limited scrutiny under CASS and, therefore, the Pr. CIT has exceeded his jurisdiction in issuing the notice u/s 263 and passing the order u/s 263(1).*

2. *That the order as passed by the Ld. Pr. CIT is against the principle laid down under the CBDT circular and having not raised the issue in the show cause notice with regard to issue in the "limited scrutiny case" and raising other issues in the show cause notice, is against the facts and circumstances of the case. Hence the order as passed by the Pr. CIT deserves to be quashed."*

6. Vide revised ground, the assessee has raised the legal issue that the impugned order is bad in law as the Ld. Pr. CIT could not have passed the impugned order being taken the case for limited scrutiny under CASS, therefore the Ld. Pr. CIT has exceeded jurisdiction in issuing notice u/s 263 Act and passing order u/s 263(1) of the Act. Since, the assessee has raised the legal issue in its revised grounds, which does not require any verification of enquiry, we allowed the application after hearing the Ld. Departmental representative (DR) and permitted the Ld. Counsel to argue on the legal ground raised by the assessee.

7. At the outset, the Ld. Counsel submitted that the legal issue raised in this case is covered in favour of the assessee by the decisions of the various Benches of the Tribunal. The Ld. Counsel further contended that since the has had passed the impugned order in accordance with the CBDT Instruction No. 20/2015 dated 29.12.2015, the Ld. Pr. CIT has wrongly exercised the

jurisdiction u/s 263 of the Act. The Ld. counsel relied on the following decision to substantiate his contention:

1. *Nayek Paper Converters vs. ACIT 93 ITD 144 Kol Trib.,*

2. *Gift Land Handicrafts vs. CIT 108 TTJ 312 Del Trib.,*

3. *Ajit Gupta vs. ITO 108 TTJ 301 Del. Trib.,*

4. *Su-Raj Diamond Dealers Pvt. Ltd. Vs. CIT ITA No 3098/ Mum,*

5. *R &H Property Developers vs. CIT ITA No 1906/ Mum/2019.,*

6. *Sonali Hemant Bhavsar vs. Pr. CIT ITA No. 742/ Mumbai/2019 and*

7. *Akash Ganga Promotors & Develpoers vs. Pr. CIT ITA No 164/CTK/2019*

8. The Ld. Counsel further submitted that since the impugned order is contrary to the ratio laid down by the various Benches of the Tribunal, referred above the same is liable to be quashed.

9. On the other hand, the Ld. DR supporting the order passed by the Ld. Pr. CIT submitted that since the AO had not examined the issues pointed out by the Ld. Pr. CIT, there is no infirmity in the order passed u/s 263 of the Act.

10. We have heard the rival submissions of the parties and gone through the material on record including the

cases relied upon by the parties. As pointed out by the Ld. Counsel, the Mumbai Bench of the Tribunal in the case of *M/s Su-Raj Diamond Dealers Pvt. Ltd.* (supra) has quashed the order passed u/s 263 of the Act in the case of limited scrutiny assessment, holding that the Ld. Pr. CIT under the garb of section 263 of the Act, cannot exceed his jurisdiction. The observations of the Bench are as under:

*“8. We shall now in the backdrop of our aforesaid observations deliberate on the validity of the order passed by the Pr. CIT under Sec. 263. As observed by us hereinabove, the Pr. CIT had held the order passed by the A.O under Sec. 143(3), dated 08.12.2016 as erroneous, in so far it was prejudicial to the interest of the revenue, for the reason, that he had failed to carry out proper investigation as regards the issue of valuation of the 'closing stock' as reflected in the audited accounts of the assessee. We are of a strong conviction that now when the case of the assessee was selected for limited scrutiny for the reasons viz. (i). Large other expenses claimed in the P&L A/c; and (ii). Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to the assessment framed by the A.O on the ground that he had failed to deal with other issues which though did not fall within the realm of the limited reasons for which the case was selected for scrutiny assessment. In other words, the Pr. CIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the A.O while framing the assessment. In sum and substance, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was vested with the A.O while framing the assessment. As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issues for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which did not form part of the reasons for which the case was selected for limited scrutiny under*

*CASS. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 08.12.2016 is erroneous, therefore, 'set aside' his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the Id. A.R on the merits of the case, which thus are left open."*

11. In the case of *R &H Property Developers vs. CIT ITA* (supra) the "D" Bench of the Tribunal has set aside the order passed by the Ld. Pr. CIT u/s 263 of the Act, in a limited scrutiny assessment case holding that the Ld. Pr. CIT has wrongly assumed the jurisdiction u/s 263 of the Act.

12. Similarly, the "G" Bench of the Mumbai Tribunal Bench in the case of *Sonali Hemant Bhavsar vs. Pr. CIT* (supra) has quashed the order passed by the Pr. CIT u/s 263 of the Act in a limited scrutiny assessment by following the decision of Kolkata Bench in the case of *Sanjeev Kr. Khemka vs. Pr. CIT in ITA No. 1361/Kol/2016 A.Y. 2011-12*. The relevant paras of the decision read as under:

*"6. After hearing both the parties and perusing the materials before us, we observe from the notice issued under section 143(2) of the Act for limited scrutiny dated 19.09.2016 and find merits in the contentions of the assessee that the said limited scrutiny cannot be expanded unless the AO converted it into complete scrutiny with the approval of Ld. Pr. CIT and if the A.O. after considering the submissions of the assessee does not come to the conclusion of potential escapement the Ld. Pr. CIT cannot hold the order to be erroneous on the ground that AO ought to have reached to such conclusion. The case of the assessee is squarely covered by the decision of Kolkata Bench in the case of *Sanjeev Kr. Khemka vs. Pr. CIT in ITA No. 1361/Kol/2016 A.Y. 2011-12* dated 02.06.2017 wherein the co-ordinate bench of the Tribunal has held as under:*

"4. We have heard the rival contentions of the parties and perused the materials on record. The primary issue in the case on hand revolves whether it is a case selected under CASS for limited scrutiny or regular scrutiny. It can be seen from the grounds of appeal that the assessee wants to contend that the very initiation of proceedings u/s 143(3) of the Act on the basis of regular scrutiny under the Act was bad in law. The proceedings under section 143(3) of the Act should have been limited to the extent of the information gathered through AIR. Accordingly, the proceedings u/s 263 of the Act cannot be expanded beyond the issue raised in AIR. Thus, the order u/s 143(3) of the Act beyond the points of AIR is invalid in law and so the same is with the order passed u/s 263 of the Act. It is the further contention of the assessee that in the items which are not subject matter of AIR cannot subject matter of scrutiny. Such matters include salary of the assessee, loans & interest on loans, payment of LIC, Commission & brokerage income etc. It is the case of the assessee that in the assessment order passed u/s 143(3) of the Act, the AO has travelled beyond the points of the AIR on the basis of which the case of scrutiny was selected under CASS module. It is the plea of the assessee that when no addition/disallowance can be made beyond the points mentioned in AIR in the assessment proceedings then same is the case with proceedings, initiated u/s 263 of the Act.

4.1 The first aspect which needs to be examined is as to whether the assessee is entitled to challenge the validity of initiation expanded in the proceedings u/s 143(3) of the Act in the present appeals in which he has challenged the validity of expanded order passed u/s 263 of the Act covering the points which are not part of the AIR. The Id. Counsel for the assessee submitted before us that it is open to an assessee in an appeal against the order u/s 263 of the Act which seeks to revise an order passed u/s 143(3) of the Act, to challenge the validity of the expansion of order passed u/s. 143(3) of the Act covering the points which are not part of the AIR. In this regard we find that Lucknow Bench of Hon'ble ITAT in the case of Inder Kumar Bachani (HUF) vs ITO 99 ITD 621 (Luck) and ITAT Mumbai 'G' Bench in the case of M/s. Westlife Development Ltd. Vs Principal C.I.T. in ITA NO.688/Mum/2016 have taken a view that when an Assessment order passed u/s 147 of the Act was illegal the Ld. CIT cannot invoke the jurisdiction u/s 263 of the Act against such void or non-est order. In the second decision cited the Hon'ble Mumbai bench of the Tribunal has specifically framed the following questions: -

"1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?

2. Whether the impugned assessment order passed u/s 143(3) dated 24-10-2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?

3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non-est assessment order?"

On question no. 1 and 3 which is relevant to the present case the Hon'ble Mumbai bench of the Tribunal has taken the view that when the original assessment proceedings are null and void in the eyes of law for want of proper assumption of jurisdiction then such validity can be challenged even in collateral proceedings. The Mumbai bench took the view that the proceedings u/s 147 of the Act are primary proceedings and proceedings u/s 263 of the Act are collateral proceedings and in such collateral proceedings, the validity of initiation of the original proceedings u/s 147 of the Act can be challenged. The Mumbai bench of the Tribunal in this regard has placed reliance on several decisions, the principal decision being that of the Hon'ble Supreme Court in the case of Kiran Singh & Ors. V. Chaman Paswan & Ors. [1955] 1 SCR 117(SC) wherein the Hon'ble Supreme Court observed as follows: -

*"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."*

Now coming to the facts of the instant case, we find that the instant case was selected on the basis of AIR Information as evident from the order of AO under section 143(3) of the Act. There is also no whisper in the order of the AO for expanding the scope of limited scrutiny after obtaining the permission from the Administrative CIT. The Id. DR has also failed to bring anything contrary to the argument of the Id. AR. Therefore, in our considered view the scrutiny should have been limited only to the information emanating from the AIR. Admittedly, the assessee has claimed to have filed an appeal before Ld. CIT(A) challenging the jurisdiction exceeded by the AO while framing the assessment order u/s 143(3) of the Act. We find that the impugned issue being legal in nature and goes to the root of the matter therefore we are inclined to proceed with this issue first by holding that, from the above submission and after examining of the records, we find that the Ld. CIT in his impugned order u/s 263 of the Act has exceeded his jurisdiction while holding the order of AO as erroneous in so far prejudicial to the interest of Revenue. In view of the above we hold that the Id. CIT has in his order u/s. 263 of the Act exceeded the jurisdiction by holding the order of AO as erroneous in so far as prejudicial to the interest of Revenue on those items which are not emanating from the AIR. Thus, we are inclined to adjudicate only those matters which are emanating from the AIR as discussed above.

4.2 The assessment was framed by AO for the A.Y. 2011-12 under section 143(3) of the Act vide order dated 29.03.2014 after making certain additions/ disallowances to the total income of assessee. Subsequently, Ld. CIT u/s 263 of the Act observed certain errors in the order of AO, therefore, he was of the view that the order passed by the AO is erroneous in so far as prejudicial to the interest of Revenue on

account of no proper-enquiry before completing assessment as discussed below: -

(i) The assessee has deposited in its bank account in HDFC bank Goa for Rs. 17.56 lakh and out of that there was a withdrawal only Rs. 1.50 lakh but the AO has made the addition only to the extent of Rs.4 lakh on account of unexplained cash credit. Therefore, certain unexplained cash credit of the assessee has been under assessed by the AO.

ii) There was another bank account of the assessee in HDFC bank in Goa where total deposits of Rs. 19,31,750/- was made by the assessee but the AO found credited amount of Rs. 5,76,056/- only. Thus, total deposits made in the bank were not brought to tax;

(iii) There was transactions of Rs.3 76,225/- through credit card which was not explained and thus the entire amount was liable to be added to the total income of assessee but the AO has added only a sum of Rs.2,98,225/- to the total income of assessee. Thus, there was under assessment of income by Rs.78,000/-;

(iv) The assessee during the year has sold property for Rs.36 lakh and exemption of Rs.19,74,763/- was claimed by assessee u/s. 10(38) of the Act. This fact was not verified by the AO at the time of assessment proceedings.

In view of above, the Ld. CIT found the order of AO is erroneous in so far as prejudicial to the interest of Revenue and therefore show-cause notice was issued u/s. 263 of the Act vide dated 13.10.2015 for the clarification of the above transactions.

In compliance thereto, the assessee submitted as under:

i) The deposit in HDFC bank account No. 03151930000609 was duly reflected in his IT return. Therefore, no cause has happened to the Revenue which is prejudicial to the interest of Revenue.

ii) The deposit of Rs.19,73,750/- was duly reflected in the IT return and therefore there was no error which is prejudicial to the interest of Revenue.

iii) Regarding the credit card payment, the addition on account of undisclosed cash deposit has already been added by the AO and therefore there is no error causing prejudice to the interest of Revenue.

iv) There was no sale of the property and therefore no exemption u/s10(38) of the Act was claimed.

However, the Ld. CIT after considering the submission of assessee has held the order of AO is error and prejudicial to the interest of Revenue by observing as under: -

"I have carefully considered the issues with specific reference to the relevant assessment records as well as written submission furnished by the A/R. The AO has not taken cognizance of the following issues, despite being apparent from record: -

(1) Addition of Rs. 4 lakh only was made against total cash deposit of Rs.17,56,000/- without taking any explanation from the assessee.

(2) The balance deposits in another account with HDFC, Porvorim, Goa was not considered in assessment.

(3) Interest income from all savings accounts and FDRs was not considered at the time of assessment.

(4) Submission of assessee regarding explanation of credit card payment of Rs.3,76,225/- was partly accepted in assessment without proper verification.

(5) Although a salaried person, the assessee's bank account reflects huge transactions/transfer entries, which required further investigation. (6) Long term capital gain of Rs.19,74,763/- was not properly verified. (7) Loan transactions and interest on loans required proper verification. (8) Salary was received in cash without TDS, which should have been viewed adversely.

(9) LIC premium was paid for a minor but assessee's capital account did not reflect the same.

(10) Lastly, the assessee declared income from commission/brokerage in the previous two AYs but no such income was shown in this year.

"An incorrect assumption of facts or an incorrect application of law will always make the order passed by the Assessing Officer erroneous. The Assessing Officer has not made proper enquiry before completing assessment regarding above issues. By not checking the above issues and by not making adequate enquiry the Assessing Officer has not assessed the proper income and the order has become erroneous and prejudicial to the interest of the revenue. In view of the above, the order dated 29/03/2014 passed by ACIT, Circle-43, Kolkata is found to be erroneous and prejudicial to the interest of revenue and hence it is set aside with the direction to pass fresh assessment order after examining the evidences and documents in respect of the above issues raised after giving opportunity to the assessee and in accordance with law."

Being aggrieved by this order of Ld. CIT assessee is in appeal before us on the following grounds: -

"(1) For that the L'd Pr. Commissioner of Income Tax erred in exercising the power of revision for the purpose of directing the AO to hold another investigation when the order passed by the AO was neither erroneous nor prejudicial to the interest of revenue.

(2) For that the L'd Pr. CIT erred and exceeded jurisdiction by giving direction in respect of the matters which are subject matters of appeal before the CIT(A), therefore order passed by Pr. CIT-15 is unlawful, beyond provision of law and therefore liable to be quashed.

(3) For that the L'd Pr. CIT had alleged arbitrarily irrelevant matters, factual and untrue position in the show cause notice u/s. 263 and therefore order passed by Pr. CIT-15 Kolkata u/s. 263 is nullity and liable to be quashed.

(4) For that L'd Pr. CIT has wrongly assumed the jurisdiction u/s. 263 by wrongly mentioning that deposits in HDFC Goa A/c & HDFC Porvorim Goa A/c were under-assessed by the AO despite these two

*a/cs were disclosed in the balance sheet and deposits were explained, therefore allegation so made is bad in law and void ab-initio.*

*(5) For that on the facts & in the circumstances of the case L'd Pr. CIT was not justified in initiating proceeding u/s. 263.*

*(6) For that your petitioner craves the right to put additional grounds and/or to alter/amend/modify the present grounds before or at the time of hearing."*

*The Id. AR before us filed two paper books which are running from pages 1 to 27 and 28 to 31. The Id. AR before us submitted that the necessary enquiries were made by the AO at the time of assessment. Thus the order of the AO cannot be held erroneous and prejudicial to the interest of Revenue on account of non-enquiry whereas the Id. DR vehemently supported the order of the Id. CIT.*

*5. We have heard the rival contentions & perused the materials available on record. From the foregoing discussion, we find that order of AO has been treated erroneous and prejudicial to the interest of revenue on the ground that proper enquiry was not made by the AO. Therefore, Ld. CIT held that the order of AO is erroneous and prejudicial to the interest of revenue. However, after examining the order of Authorities Below and other relevant records our observations are as follows: -*

*a) deposit of cash of Rs. 17.56 lakh in HDFC bank a/c No.03151930000609 From the order or AO, we find that the AO at the time of assessment proceedings has applied his mind while determining the undisclosed income from the said bank account for Rs. 4 lacs. Thus, the AO after considering the bank statements of the assessee has consciously made the addition of Rs. 4 lakh as unexplained cash credit against which assessee claimed to have filed appeal before Ld. CIT(A). Therefore, in our considered view, the allegation of Ld. CIT that proper enquiry was not made by the AO is not true.*

*b) Deposit of cash Rs. 19,31,750/- in HDFC bank A/c 0315100006743 From the order of AO we find that AO has already made the addition of the entire amount as unexplained cash credit. Therefore, the allegation of the Id. CIT-A that the order of AO is erroneous and prejudicial to the interest of Revenue is not true.*

*c) Credit card payment of Rs. 3,76,225/-*

*From the order of AO, we find that the AO has made the addition of Rs. 2,78,225/- out of total credit card payment of Rs. 3,76,225/-. Therefore, it is clear that AO has applied his mind while framing the assessment proceedings u/s. 143(3) of the Act. Thus, the allegation of the AO in the impugned order or Ld. CIT u/s. 263 of the Act that there was no proper enquiry conducted by AO at the time of assessment proceedings is not true.*

*d) Sale of property for consideration of Rs. 36 lakh.*

*On perusal of AIR information which is placed on page 1 of the paper book, we find that no immovable property has been sold by assessee in the year under consideration. Besides the above, there is*

also no whisper in the assessment order for any addition on account of capital gains. Therefore, we find that the allegation of Ld. CIT that AO has not conducted sufficient enquiry in relation to sale of immovable property is not true.

5.1 In view of the above we find that Ld. CIT has passed impugned order u/s. 263 of the Act by holding the order of AO as erroneous in so far as prejudicial to the interest of revenue on account of inadequate enquiry made by AO while passing order u/s. 143(3) of the Act. However, we find that proper and sufficient enquiries were conducted by the AO at the time of assessment as evident from the order of AO. Therefore, it cannot be concluded that no proper enquiry has been conducted by the AO at the time of assessment proceedings. The AO has taken conscious view after considering the facts and circumstances of the case and giving proper opportunity to the assessee. Thus, the view expressed by AO in the form in his assessment order cannot be replaced with the view of Ld. CIT u/s 263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. M/s. J.L. Morrison (India) Ltd. (ITA No 168 of 2011) in GA No 1541 of 2012 dated 15.05.2014, wherein it was held as under: -

"By sections 3 and 4, the Indian Income-tax Act, 1922, imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision."

We also rely on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Max India Limited reported in 295 ITR 282 wherein it was held as under :

"When the CIT passed the impugned order under s. 263, two views were inherently possible on the word "profits" occurring in the proviso to s.80HHC(3) and therefore, subsequent amendment of s. 80HHC made in the ITA No.1361/Kol/2016 A.Y. 2011-12 S.K. Khemka Vs. Pr. CIT-15 Kol. Page 12 year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under s. 263."

In view of the above proposition, and respectfully following principle laid down by the Hon'ble courts and keeping in view all these discussions, as also bearing in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly.

6. In the result, assessee's appeal stands allowed."

7. We have perused the letter dated 09.11.2016 addressed by the DDIT (Inv.), Mumbai to ITO-29(3)(4), Mumbai wherein the details of on money in the case of Runwal Green (shops) were given and we find that on money was determined by taking the rate @ Rs.26,000/- per sqr. ft. while agreements were for lower amounts. However, in the case of the assessee we observe that the agreement

*value was executed @ Rs.26,000/- per sqr. ft. Thus we find merits in the contention of the assessee that there is no question of on money as the agreement value was even higher than the maximum rate which was taken by the DDIT (Inv.), Mumbai to ascertain the amount of on money received by the builder. Moreover, the case of M/s. Runwal Homes Pvt. Ltd. vs. DCIT in ITA No.5621/M/2017 A.Y. 2015-16 the issue of on money has been decided in favour of the M/s. Runwal Homes Pvt. Ltd. by deleting the addition on account of on money. In view of the aforesaid facts, we are of the view that the revisionary order passed by the Ld. Pr. CIT(A) is without jurisdiction and has to be quashed on legal issue as well as on merit. Accordingly, we quash the revisionary order passed under section 263 of the Act by Ld. Pr. CIT.”*

13. In the case of *Nayek Paper Converters vs. ACIT* (supra) the Kolkata Bench of the Tribunal has held that where the case was selected for limited scrutiny under section 143(2)(i) of the Act, the AO cannot be expected to make an enquiry of the issues pointed out by the Ld. CIT in his order u/s 263 of the Act, and directing the AO to make enquiry of the said issues was beyond the powers of the AO u/s 143(2)(i) read with section 143(3)(i) or beyond the scope of limited scrutiny. Similarly, in the case of *Gift Land Handicrafts vs. CIT* (supra), the Kolkata Bench of the Tribunal has held that the Ld. CIT was not justified in invoking jurisdiction under section 263 on the issues other than those decided in limited scrutiny assessment under section 143(2)(i) of the Act. In the case of *Ajit Gupta vs. ITO* (supra), the “F” Bench of the Delhi Tribunal has held that since the claim of deduction under section 80HHG was not the subject matter of limited scrutiny made by the AO under section 143(2)(i), the same could not be gone into by the Ld. CIT by exercising jurisdiction under section 263 of the Act.

14. Admittedly, the case of the assessee was selected for limited scrutiny under CASS for the reason that there is substantial increase in the capital in the relevant year and the AO passed the assessment order and accepted the return filed by the assessee after examining the issue regarding increase in capital account as the assessee had credited his capital account with agricultural income of Rs. 2,47,500/- and the capital gain amounting to Rs. 54,56,000/- from sale of flat. The assessee has reflected that same in its capital account, copy of which is available at page 2 of the paper Book. Further in response to the letter dated 07.10.2016 issued by the AO during assessment proceedings, the assessee submitted his reply explaining the reason for increase in capital. The copy of reply is available at page 7 to 9 of the paper book filed by the assessee. However, the Ld. Pr. CIT exercising jurisdiction under section 263 of the Act, directed the AO to make fresh assessment on the issues which were not the subject matter of the limited scrutiny. Since, the issue raised by the assessee in this case has already been decided in favour of the assessee by the various Benches of the Tribunal discussed above, we find merit in the contention of the Ld. Counsel for the assessee that the Ld. Pr. CIT(A) has exceeded jurisdiction u/s 263 of the Act by directing the AO to make fresh assessment on the issues

which were not the subject matter of the assessment framed on the basis of limited scrutiny. Further, no contrary decision was brought to our notice by the Ld. DR. Hence, respectfully following the decisions of the Tribunal discussed in the foregoing paras, we allow the appeal of the assessee and set aside the impugned order passed by the Ld. Pr. CIT u/s 263 of the Act.

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

Order pronounced on 13.05.2021.

**Sd/-**  
**(N. K. SAINI)**  
**(VICE PRESIDENT)**

**Sd/-**  
**(R.L. NEGI)**  
**(JUDICIAL MEMBER)**

**Dated: 13<sup>th</sup> May, 2021**

**\*Ranjan**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar