# IN THE INCOME TAX APPELLATE TRIBUNAL
# DIVISION BENCH, "A", CHANDIGARH

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &**
**SHRI R.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./**ITA No. 338/CHD/2020**
निर्धारणवर्ष / Assessment Year : 2015-16

| M/s Darshan Medicos,<br>Prem Garg & Associates,<br>SCO 2461, Sector 22C<br>Chandigarh | बनाम | The CIT-1,<br>CR Building, Himalaya Marg,<br>Sector 17E, Chandigarh |
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| स्थायीलेखासं./PAN NO: AAIFD7905M | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

**Hearing through video Conferencing**

निर्धारितीकीओरसे/Assessee by : Shri Nikhil Goyal, Advocates &
Sh. Ashok Goyal, CA
राजस्वकीओरसे/ Revenue by : Smt. C. Chandtrakanta, CIT

सुनवाईकीतारीख/Date of Hearing : 15.04.2021
उदघोषणाकीतारीख/Date of Pronouncement : 06.07.2021

## आदेश/Order

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

The assessee has filed the present appeal against the order dated 16.3.2020 passed by Commissioner of Income Tax -1, Chandigarh [for short 'the CIT'] u/s 263 of the Act, whereby the Ld. CIT(A) has set aside the assessment order passed by the AO u/s 143(3) of the Income Tax Act, 1961 [for short 'the Act'] for the assessment year 2015-16 and directed the AO to frame assessment order afresh.

2. Brief facts of the case are that the assessee firm engaged in retail business of pharmaceuticals, drugs and medicines in PGI Complex, filed

its return of income for the assessment year consideration declaring total income of Rs. 4,05,410/- which was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny and the AO issued notice u/s 143(2) and 142(1) of the Act. In response to the said notices, the authorized representative of the assessee attended the proceedings and filed the details called for and also discussed the case from time to time. The assessee had debited an amount of Rs. 31,94,193/- on account of rent paid to PGI. Since it was noticed that the assessee had paid the said amount in cash, the AO issued notice asking the assessee to show cause as to why the rent paid in cash in violation of provisions of section 40A (3) of the Act should not be disallowed and added to the taxable income. The assessee *inter alia* contended that it had not made cash payment to PGI but deposited the amount in the account of the PGI in order to avoid carrying the cash to sector 16 Branch of PNB for preparing draft. The AO rejected the contention of the assessee and made disallowance of the said amount. Further the assessee had claimed expenditure of Rs. 23,660/- as interest on late payment of rent paid to PGI. The AO making disallowance of the said amount added the income of the assessee. Accordingly, the AO determined the total income of the assessee at Rs. 36,23,263/- Subsequently, the Ld. CIT initiated proceedings u/s 263 of the Act on the ground that the AO has not taken any adverse view in respect of payment made to retired partner Sh. Shailesh Sanwaria at the rate of 65,100/- per month, who had not

rendered any service to the firm. The Ld. Pr. CIT rejecting the explanation/reply filed by the authorized representative of the assessee, cancelled the assessment order holding the order erroneous and prejudicial to the interest of the revenue and directed the AO to frame assessment order afresh after carrying out necessary enquiries on the points discussed in the order. The assessee is in appeal against the said order passed by the Ld. Pr. CIT.

3. The appellant/assessee has challenged the impugned order on the following grounds: -

1. *Whether on the facts and circumstances of the case and in law, the Learned CIT has exceeded legislative jurisdiction under Section 263 of the Act thus order passed is bad in law.*
2. *That the Ld. CIT has erred in passing order under Section 263 in the absence of any erroneous position prejudicial to the interest of revenue in the original Assessment order passed by Ld. ITO under Section 143(3) of the Act.*
3. *That the Ld. CIT has erred in substituting an alternative view as against the firm view adopted by the Ld. ITO at the time of original assessment under Section 143(3)*
4. *That the Ld. CIT has erred in concluding proceedings under Section 263 of the Act without proper perusal of the Assessment record.*

4. There is a delay of 196 days in filing the present appeal. The Ld. counsel first of all submitted that the assessee has filed an application for condonation of delay along with an affidavit. In the light of the said application the Ld. counsel submitted that the impugned order was passed on 16.03.2020, which was uploaded on Income Tax Portal, however, the assessee did not receive any intimation in this regard.

Thereafter, due to lockdown in the wake of COVID-19 pandemic the assessee could not discuss the issue with its tax consultant. In the month of November, the consultant downloaded the copy of order and after collecting the relevant documents, the appeal was filed on 27.11.2020. Sh. Pawan Kumar Garg, partner M/s. Darshan Medicos has submitted an affidavit in support of the said contention. The Ld. Counsel further submitted that since the delay is neither intentional nor due to inaction on the part of the assessee, the application may be allowed and the delay may be condoned.

5. The Ld. Departmental representative oppose the application on the ground that the reasons stated by the applicant/assessee are not sufficient to condone the delay.

6. We have considered the rival submissions made by the parties and perused the material on record. From the facts and the circumstances stated in the application, we are convinced that the assessee could not file the present appeal within limitation period due to countrywide lock down and restrictions imposed in the wake of COVID-19. Therefore, in our considered view, the reasons stated by the appellant/assessee are sufficient to condone the delay in filing the present appeal. Hence, we allowed the application filed by the assessee and condoned the delay. Accordingly, we allowed the Ld. Counsel to argue the appeal on merit.

7. The Ld. counsel submitted before us that in this case AO passed the

assessment order u/s 143(3) of the Act after making certain additions. The assessee challenged the assessment order before the Ld. CIT(A) and the Ld. CIT(A) after hearing the assessee deleted the additions made by the AO. Thereafter the assessee received notice u/s 263 of the Act from the Ld. CIT. The assessee filed detailed reply and contended that the AO has passed the assessment order after conducting proper enquiry with regard to the payment made to the retiring partner. However, the Ld. CIT rejecting the contention of the assessee passed the impugned order. The Ld. counsel contended that since the AO had examined the issue relating to salary/pension paid to Mr. Shailesh, the Ld. CIT has wrongly exercised the jurisdiction u/s 263 of the Act on the ground that the AO has not taken any adverse view in respect of the payment made to Mr. Shailesh. The Ld. counsel invited our attention to the copy of letter dated 03.08.2017 in which the AO has raised the query regarding payment made to Sh. Shailesh and asked to furnish the reasons and reconcile the same with supporting documents. The Ld. counsel invited our attention to the copy of reply furnished by the assessee in response to the said query, which is available in the paper book. The Ld. counsel further submitted that the said payment was made in terms of the partnership deed dated 10.12.2012. Therefore, this is neither a case of no enquiry nor a case of insufficient enquiry. Moreover, during the 263 proceedings these facts were brought to the notice of the Ld. CIT. Further, it was submitted before the Ld. CIT that during assessment

proceedings query in this regard was raised by the AO and the AO allowed the said expenses towards salary/remuneration of retiring partner after going through the reply and conducting verification of the documents submitted to justify the same. The Ld. counsel relying on the judgment of the Hon'ble Supreme Court in the case of Principal *CIT vs. Dhanna Ready & Company 2018 100 taxmann.com 358 (SC)*, judgment of the Hon'ble Bombay High Court in the case of *Nirav Modi vs. CIT 201971 taxmann.com272 (Bom)*, judgments of the Hon'ble Allahabad High Court in the case of *CIT vs. Krishna Capbox 2015 60 taxmann.com 243 (All)* and *Meerut Roller Flour Mills (P) Ltd 2019 71 taxmann.com 170 (All)*, judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Rajshyama Constructions (P) Ltd 2012 20 taxmann.com 251(Del)* and the decision of the coordinate Bench in the case of *CIT vs. Pawan Kumar 2015 ITAT (Chandigarh) 62. Taxmann.com 260,* submitted that since the impugned order is contrary to the ratio laid down in the above referred case, the same is liable to be quashed.

8. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. Pr. CIT, submitted that since the AO had wrongly allowed the claim of the assessee, the Ld. Pr. CIT has rightly exercised the jurisdiction u/s 263 of the Act.

9. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the Ld. Counsel.

The only grievance of the appellant/assessee is that the Ld. Pr. CIT has wrongly exercised the jurisdiction u/s 263 of the Act directed the AO to pass the assessment order afresh. As pointed out by the Ld. counsel, this is neither the case of no enquiry nor the case of insufficient enquiry. The Ld. counsel demonstrated before us that during the assessment proceedings AO raised the specific query regarding the payment to the retiring partner and the assessee filed detailed reply along with the supporting documents. The AO after going through the reply and due verification of the documents, allowed the said expenditure. Under section 263 of the Act, the CIT has jurisdiction to call for and examine the record of any proceeding under the Act and if he considers that any order passed by the AO is erroneous in so far as it is prejudicial to the interest of the revenue, to pass order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment after affording an opportunity of being heard to the assessee. So, as per the settled law, in order to exercise jurisdiction u/s 263 of the Act, the CIT has to be satisfied of twin conditions that the order sought to be revised is erroneous and that the order is prejudicial to the interest of the revenue. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Indo German Fabs IT Appeal No 248 of 2012 has *inter alia* held that under section 263 the CIT has power to examine an assessment order to ascertain as to whether it is erroneous and prejudicial to the interest of the revenue, but does not confer

jurisdiction to substitute his opinion for the opinion of the AO. Therefore, u/s 263 of the Act CIT has power to revised only those orders which are erroneous and prejudicial to the interest of the revenue. In the present case, the Ld. CIT has revised the assessment order on the ground that the AO has not taken any adverse view in respect of the payment made to the retiring partner, without pointing out as to how the assessment order is erroneous. It is apparent from the record that the AO has allowed the claim of the assessee after conducting proper enquiries. In the case of *Meerut Roller Flour Mills (P) Ltd. vs. CIT* (supra) the Hon'ble Allahabad High Court has held that where the assessment officer had already made detailed enquiries in respect of loan received by the assessee, revisional order under section 263 of the Act directing the AO to examine the matter relating to unsecured loans received by the assessee deserves to be set aside.

10. Further, in the case of *Nirav Modi vs. CIT* (supra), the Hon'ble Bombay High Court has held that where the AO after making proper and detailed enquiries, takes a possible view, interference u/s 263 of the Act is not permissible. In our considered view in the present case since the AO has taken a possible view after making proper enquiry, the Ld. CIT has wrongly exercised the jurisdiction u/s 262 of the Act. Similarly, in the case of *Principal CIT vs. Dhanna Ready & Co* (supra), the Hon'ble Supreme Court has held that where the AO has taken a plausible view after making enquiry, revisional order directing the AO to take another

possible view is not justified.

11. In the case of *CIT vs. Krishna Capbox (P) Ltd.*(supra) the Hon'ble Allahabad has held that where the assessing officer passes assessment order after raising queries from the assessee, mere non discussion or non-mention thereof in assessment order could not lead to the assumption that the AO did not apply his mind. Invoking of revisional jurisdictional on the said ground was held unjustified.

12. In the light of the facts of the case and the ratio laid down by the Hon'ble Supreme Court and the Hon'ble High Courts discussed above, we hold that the impugned order is not in consonance with the law laid down by the Hon'ble Courts discussed above. Since the AO had passed the assessment order after making proper enquiry, the Ld. CIT has wrongly exercised the jurisdiction u/s 263 of the Act in this case. We accordingly allow the appeal of the assessee and set aside the impugned order passed by the Ld. CIT.

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

Order pronounced on 6th July,2021.

| Sd/- | Sd/- |
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| **( N.K. SAINI)** | **(R.L.NEGI)** |
| **उपाध्यक्ष /Vice President** | **न्यायिकसदस्य/ Judicial Member** |

**Dated : 06.07.2021**
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant

2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar