

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.371/Bang/2022
Assessment year : 2017-18

Asha Devi, No.26, Risaldar Street, Seshadripuram, Bangalore – 560 020. PAN: AFLPD 3602B	Vs.	The Principal Commissioner of Income Tax, Bengaluru-2, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri Deva Rathna Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.08.2022
Date of Pronouncement	:	18.08.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal by the assessee is against the order of the Principal Commissioner of Income-tax, Bengaluru-2 (PCIT) passed u/s.263 of the Income Tax Act 1961 (the Act) dated 16.3.2022 for the assessment year 2017-18.

2. The assessee has raised the following grounds:-
 1. The learned Principal Commissioner of Income-tax, Bangalore — 2 has erred in assuming jurisdiction u/s. 263 of the Act and in passing the impugned order dated 16.03.2022. The impugned order as passed is bad in law, void-ab- initio and is required to be quashed.
 2. The learned Principal Commissioner of Income-tax has erred while passing the order by remanding the matter back to Assessing Officer for passing fresh order without giving any special finding of any error in the original order passed by the Assessing Officer. Such an order of Principal Commissioner of Income-tax is not in accordance with law. Hence the impugned order is liable to be quashed.
 3. In any case, there being no error in the original assessment order passed which may cause prejudice to the interest of revenue, the very assumption of jurisdiction by Principal Commissioner of Income tax is bad in law and therefore also the impugned order is bad in law and liable to be quashed.
 4. In any case the Principal Commissioner of Income-tax has passed the order on the issues which were duly considered by Assessing officer in the original assessment order and therefore the impugned order passed by the Principal Commissioner of Income-tax is an order on change of opinion which is not permissible u/s. 263 of the Act and therefore also the impugned order is bad in law and liable to be quashed.
 5. In any case, the learned Principal Commissioner of Income-tax has erred in holding that Assessing Officer had not made proper enquires at the time of passing the original assessment order. The assessing officer had passed the original order after due and proper enquiries and therefore the conclusions drawn by Principal Commissioner of Income-tax are bad in law and therefore are to be totally disregarded.
 6. In any case and without prejudice, the learned Principal Commissioner of Income-tax has erred in holding that

the cash deposits in bank account are not fully explained. The entire cash deposits in bank account having been fully explained, there is no unexplained deposits at all and therefore the conclusion of the Principal Commissioner of Income-tax that the appellant had not explained cash deposits is erroneous and therefore the order passed u/s. 263 setting aside the original assessment order passed is bad in law and the directions issued are therefore to be quashed.

7. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the impugned order passed by Principal Commissioner of Income-tax be quashed or atleast the directions issued by Principal Commissioner of Income-tax in the order be held to be wrong and erroneous and be quashed.”

3. The assessee is the proprietor of M/s. M.D. Jewellers [MDJ] and filed return of income declaring an income of Rs.9,35,850. The case was selected for limited scrutiny under CASS for verification of cash deposits during the year. Assessment was completed u/s. 143(3) of the Act on 6.12.2019 accepting the income shown in the return.

4. The PCIT noticed that the assessee has made cash deposit of Rs.88,16,000 in her bank account the source of which was submitted before the AO by the assessee as from opening cash in hand, cash sales, amount received from Debtors, amount transferred from personal books and cash withdrawals. The PCIT also noticed from the cash book of the assessee that the assessee had deposited money in the form of cash of Rs.5,00,000 on 05.08.2016, Rs.10,00,000 on 29.9.2016 from an account termed as “safe custody account” and transferred the said amount to the business account of MDJ. The PCIT was of the view that the case was selected for limited scrutiny specifically for examining the cash deposits during the year and therefore it was necessary for the AO to examine the

source of cash deposits and carry out necessary investigation. According to the PCIT, the AO failed to conduct necessary enquiries with regard to cash deposited and that the assessee has not given satisfactory explanation regarding source of cash deposits. To this extent, the PCIT considered the order of assessment to be erroneous and prejudicial to the interests of the revenue. PCIT issued a show cause notice on 9.2.2022 giving the assessee an opportunity for filing her submissions. The assessee made similar submission before the PCIT stating the deposit of cash is out of accumulated balance. The PCIT did not accept the explanation provided by the assessee and proceeded to set aside the order of the AO u/s. 263 by holding as under:-

“5. In response to the show cause notice dated 09/02/2022, the assessee has filed submissions stating that the sum of Rs. 15,00,000/- was her own money carried forward from the previous year. In Para 2 of the reply, the assessee has claimed the said amount to have declared as loans and advances in the balance sheet of F.Y. 2015-16 relevant to A.Y. 2016-17 and also furnished an audited copy of Balance Sheet for the A.Y. 2016-17. Further, in Para 7 of the reply, the assessee has claimed the said amount as her own money carried forward from the A.Y. 2016-17. Thus, it is seen that the assessee has taken two different stands in the same submissions. The claims have been examined with the Income Tax Return filed for A.Y. 2016-17 and copy of audited Balance Sheet furnished for A.Y. 2016-17. On perusal of the Income Tax Return for A.Y. 2016-17, it is observed that the assessee has declared Cash in Hand at Rs. 43,04,090/- (Refer to S.No. 3(a)(iii)(A) of Part-A-BS of the Income Tax Return) and cash at Bank at Rs. 10,44,533/-. However, it is seen from the audited Balance Sheet furnished that the assessee has declared cash in hand at Rs. 33,60,652/- and cash at bank at Rs. 1,43,416/-. Thus, it is seen that there are inconsistencies in the cash in hand declared in the Income Tax Return for the A.Y. 2016-17 and audited Balance Sheet furnished for A.Y. 2016-17. On examination of the submissions filed, it is observed that the assessee has not furnished any reliable evidence on record to substantiate the source of cash deposits of Rs. 15,00,000/- during

A.Y. 2017-18. When the case has been selected for scrutiny specifically for examining the cash deposited in the bank, it was incumbent on the Assessing Officer to conduct necessary enquiries and examine whether the source of the cash deposited is explained, or not. The assessee should have filed a detailed, explanation giving details of the source of cash deposited in the bank accounts. The Assessing Officer should have conducted necessary enquiries to examine whether the assessee's claim regarding the cash deposits being out of Safe Deposit account is factually correct. The Assessing Officer has passed the assessment order without making enquiries or verification of cash deposits by the assessee.”

5. Aggrieved by the order of the PCIT, the assessee is in appeal before the Tribunal.

6. The Id. AR submitted that the assessee had accumulated cash balance which was held under safe custody account and the assessee had transferred the said amount to cash book from where it was transferred to the proprietary account of MDJ. In this regard, the Id. AR drew our attention to page 92 of the PB, where the cash book of the assessee reflecting these entries is accounted. The Id. AR submitted that the AO called for various details from time to time by issuing notices u/s. 143(2), 142(1) and also a show cause notice dated 8.11.2019 calling for details of the financials, cash book, cash sales and copy of VAT return. It was also submitted that the AO had called for the break-up of the cash deposits for three years from AYs 2016-17 to 2018-19. The Id. AR submitted that the observation of the PCIT that safe custody account is not mentioned anywhere in the books of account and balance sheet of the assessee is not correct and in this regard, our attention was drawn to the financials of the assessee [pg. 77 to 80 of PB], where under the details of “interest received and loan debtors”, “safe custody account” is reflected in the balance sheet of the assessee.

7. The Id. DR relied on the order of the PCIT and also submitted that the, cash deposit of Rs.88.16 lakhs is much more than the income declared by the assessee in the return of income at Rs.9.35 lakhs and this fact has not been properly verified by the AO. The Id. DR also submitted that from the details of three years cash deposit it is noticed that there was no cash deposit during the earlier assessment years, whereas during the year under consideration there are huge cash deposits of Rs.88,16,000. This discrepancy in the cash deposits should have been verified by the AO, which the AO failed to do so and the order therefore is erroneous and prejudicial to the interests of the revenue.

8. We have considered the rival submissions and perused the material on record. The case of the assessee was selected for limited scrutiny for the purpose of verification of cash deposits during the year. It is also noticed that the assessee has submitted the details as called for by the AO from time to time. However, in the assessment order, the AO has not brought out any details of verification of cash deposits carried out by him during the course of assessment and he has passed a non-speaking order accepting the explanation given by the assessee. The source of cash deposits from "safe custody account" was not questioned by the AO by calling for ledger accounts etc., nor has the assessee submitted any details in this regard during the assessment proceedings.

9. We notice that the Delhi High Court in the case of *Gee Vee Enterprises v .ACIT [1975] 99 ITR 375 (Del)* has held as under:-

“In *Tara Devi Aggarwal v. Commissioner of Income-tax [1973] 88 ITR 323 (SC)* also the Income-tax Officer, Howrah, while remarking that the source of income of the assessee was income from speculation and interest on investments stated that neither the assessee was able to produce the details and vouchers of the speculative transactions made during the accounting year nor was there evidence regarding the interest received by the assessee

from different parties on her investments. Notwithstanding these defects the Income-tax Officer did not investigate into the various sources but assessed the assessee on a total income of Rs. 9,037. The inquiries made by the Commissioner revealed that the assessee did not reside or carry on business at the address given in the return. The Commissioner was also of the view that the Income-tax Officer was not justified in accepting the initial capital, the sale of ornaments, the income from business, the investments, etc., without any inquiry or evidence whatsoever and that the order of assessment was erroneous and prejudicial to the interests of the revenue. The High Court held that there were materials to justify the Commissioner's finding that the order of assessment was erroneous in so far as it was prejudicial to the interests of the revenue. Shri Sharma tried to distinguish this decision on the ground that the address of the assessee in that case was given incorrectly. The decision of the High Court and that of the Supreme Court were not, however, based on that ground at all. On the contrary, the Supreme Court followed their previous decision in Rampyari Devi's case (supra), and upheld the decision of the High Court precisely on the same grounds. These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.

The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the

Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.

The company and the partnership in this case were formed in the same year with many members common in both. The fact that the company purchased the land but handed over construction work to the partnership even though the object of the company was to make such construction should naturally provoke a query as to why this was done. The partnership was required to be in existence as a genuine firm in the previous year before it could be registered under section 185 of the Act. Such registration gives a substantial advantage to it for the purpose of taxation. In the very first assessment of the company and the firm, the advantage of the registration was given to the firm. The question would naturally arise whether the firm was formed merely for the purpose of getting a tax advantage. Shri Sharma argued that there is nothing wrong if a legitimate advantage is sought by these means. But it was precisely for that reason that the Income-tax Officer had to be satisfied that the firm had existed in the previous year genuinely. It cannot be said that the Commissioner could not be reasonably of the opinion that the order of the Income-tax Officer was erroneous because previous inquiries were not made by the Income-tax Officer. Nor can it be said that it was necessary for the Commissioner himself to make such inquiry before cancelling the order of assessment. In view of the decisions of the Supreme Court in Rampyari Devi's case (supra) and Tara Devi Agawam's case (supra), the challenge of the petitioners to the jurisdiction of the Commissioner exercised under section 263 fails and the writ petitions do not qualify for admission on the ground of the impugned orders being without jurisdiction."

10. In the present case, limited scrutiny was to be done for verification of cash deposits and the source of cash deposits from the safe custody

account is not examined by the AO by calling for relevant details from the assessee. The AO ought to have examined the same to go into the root of these deposits whereas in the instant case, the AO has not questioned the information supplied by the assessee with regard to the source of cash deposits into the safe custody account and has simply accepted those details without further enquiry. In such circumstances, it cannot be said that the AO has made any enquiry or taken a particular view by application of mind on the issue.

11. In view of the above discussion and relying on the ratio laid down by the Hon'ble Delhi High Court in the case of *Gee Vee Enterprises (supra)*, we hold that there is no infirmity in the impugned order passed by the PCIT u/s. 263 of the Act.

12. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 18th day of August, 2022..

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 18th August, 2022.
/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.