

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “C” BENCH, BENGALURU**

**Before Shri N.V. Vasudevan, Vice President
and
Ms. Padmavathy S., Accountant Member**

ITA No. 522/Bang/2022 (Assessment Year: 2017-18)		
Shri Pavan Kandkur CTS No. 3046, Hirepeth Nagar Near Akkikonda Hubballi 580020 PAN – ANIPK4256B	vs	Principle Commissioner of Income Tax Aayakar Bhavan Navanagar Hubballi 580025
(Appellant)		(Respondent)

Assessee by:	Shri Balram R. Rao, Adv.
Revenue by:	Ms. Neera Malmotra, CIT-DR
Date of hearing:	15/11/2022
Date of pronouncement:	17/11/2022

ORDER

Per: Padmavathy, A.M.

This is an appeal filed by the assessee against the order of the learned CIT, Hubali passed under Section 263 of the Income Tax Act, 1961 (the Act) dated 23.03.2022 for AY 2017-18.

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

1. On the facts and in the circumstances of the case, the conditions precedent being absent the proceedings-initiated U/s.263 of the Act was opposed to law and the order passed U/s.263 is liable to be cancelled.
2. On the facts there being no error much less an error prejudicial to the interest of revenue, the learned Commissioner of Income-tax ought to have refrained from invoking the provisions of Sec.263 of the Act.
3. The learned Commissioner ought to have considered the submissions made by the appellant and ought not to have invoked the proceedings u/s.263 of the Act.

4. The learned Commissioner failed to appreciate the fact that AO has considered the issue in depth during the Original Assessment proceedings and specific queries had been raised on the transactions (which were under revision under section 263 of the Act) and in response to the same the Appellant had provided all the details as called for.
 5. The Ld. CIT failed to consider that inadequate enquiry would not give an occasion to exercise jurisdiction under Section 263 of the Act.
 6. The learned Commissioner ought to have appreciated the fact that the appellant had furnished all the details as required by the Assessing Officer in the course of assessment proceedings u/s.143(3) of the Act and thereby the AO was satisfied with the claim of the appellant and therefore the revision initiated under section 263 of the act was uncalled for.
 7. The Ld. Commissioner erred in holding that the order now passed was made without making proper enquiries or verification which should have been made and hence the assessment order passed was not only erroneous but also prejudicial to the interest of revenue.
 8. The learned Commissioner erred in setting aside the order passed U/S 143(3) of the Act dated 23.12.2019 directing the AO to reverify the cash deposits made during the demonetization period, and the cash payments made in contravention of section 40A(3) when the same were already examined in detail during the Scrutiny Assessments.
 9. The learned Commissioner failed to appreciate that the Appellant assessee had challenged the Assessment order dt. 23/12/2019 in Appeal before the CIT(A) and had also gone for the VSV scheme 2020 to settle the issues with the Income Tax Department.
 10. The Ld. CIT erred in relying on section 5(3) and section 8 of the Direct Tax Vivad Se Vishwas Scheme Act 2020 in order to revise the order passed under 143(3) of the Act dated 23/12/2019.
3. The brief facts of the case are that the assessee is a proprietor of the firm HVK Agencies, which is into the wholesale business of palm oil, sunflower oil and vegetable oil. The assessee filed the return of income for AY 2017-18 on 05.11.2017 declaring a total income of Rs.1,46,760/-. The case was selected for complete scrutiny under CASS for and especially verifying the cash deposits during the demonetization period. Notice under Section 143(2) of the

Act was duly served upon the assessee. The AO vide notice under Section 142(1) of the Act called for details such as computation of income, P&L Account, Balance Sheet and bank account statement. The bank account details of the assessee were obtained under Section 133(6) of the Act. The AO noticed certain discrepancies/violations on perusal of the details furnished by the assessee. There was a difference of Rs.11,36,909/- noticed by the AO in the closing cash balance of the assessee as of 31.12.2016. The AO called for further details in this regard. The assessee vide letter dated 25.11.2019 explained and reconciled the discrepancy of Rs.11,36,909/- which will result in an unexplained difference of Rs.92,838/-. Relevant statement of discrepancy and the reconciliation are reproduced below: -

PARTICULARS	During Verification on 19/11/2019	AS PER ASSESSEE'S REPLY ON 25/11/2019
Total sales(VAT Incl.) during de- monetisation period	Rs.1,38,15,884/-	Rs. 1,31,90,449/-
Add: Old notes(cash balance as on 8/11/2016)	Rs.45,72,613/-	Rs.45,72,613/-
Total	Rs. 1,84.88,497/-	Rs.1,77,63,062/-
Less: Cash deposits in Bank		
1. Syn Bank OD — 1464	1. Rs.1,34,68,765/-	1. Rs.1,34,68,765/-
2. SBI Current A/C3159	2. Rs.20,00.000/-	2. Rs.20,00,000/-
3. Synd Bank SB 58195	3. -----	3. Rs.2,00,000/-
4. Synd Bank C/A1233	4. Rs.11,88,000/-	4. Rs 11,40,000/-
5. Mahalaxmi Co-op Bank	5. -----	5. Rs.2.40,000/-
	Rs.1,66,56,765/-	Rs.1,70,48,7651-
Balance	Rs.18,31,732/-	Rs.7,14,297/-
Less: Closing cash in hand as per books	Rs.6,94,823 (as on 31.12.2016)	Rs.8,07,135 (as on 30.12.2016)
Difference	Rs 11,36,909/-	-Rs.92,838

4. Accordingly the AO treated a sum of Rs.92,838/- as unaccounted cash credit under Section 68 of the Act and applied tax rate under Section 115BBE of the Act. The PCIT initiated revision proceedings by stating as under: -

“2, The assessee has deposited cash of Rs.1,70,48,675/- during the demonitization period in his bank accounts in five different Banks. The Assessing Officer should have obtained the cash denomination for all bank accounts, however, he has obtained these details only in respect of one Bank. The AO has not obtained and verified the cash denomination details from the other four Banks. The assessee has shown cash in hand of Rs.45,72,613/- as on 8.11.2016. This has not been verified. The assessment has been completed without obtaining the SBN details from the Banks. When the case was selected for scrutiny specifically for examining cash deposited during the demonetization period, it was necessary for the Assessing Officer to examine the source of cash deposited and carry out necessary investigation in accordance with law and CBDT guidelines. The AO should have analysed the bank accounts and trend of cash receipts and examined the cash sales and the stock register during the specified period. The AO should have also examined the cash sales during the specified period and ascertained the cash in hand as on 8.11.2016 after examination of books, specially by obtaining the cash book. The Assessing Officer has not done so. The Assessing Officer has not conducted necessary inquiries and has not made the additions required as per law.

3. It has also been observed that the assessee has made cash payment of Rs.46,678/- on 12.06.2016 towards inward carriage which is in contravention of Section 40A(3). However, this has not been disallowed by the Assessing Officer.”

5. The PCIT issued show cause notice in response to which the assessee made submissions wherein it was stated that he has applied for the Direct Tax Vivad Se Viswas (DTVSV) scheme and has filed a letter before the CIT(A) for withdrawal of his appeal filed against the order passed under Section 143(3) of the Act. The assessee further submitted that the AO has already examined the details pertaining to the cash deposits during the assessment proceedings and has made the impugned addition by application of his mind.

6. The PCIT did not accept the submissions of the assessee and set aside the order of the AO by u/s. 263 of the Act. With regard to the submission that the assessee has opted for DTVSV the PCIT held as under: -

“6. The Assessee has stated that he has opted for the Direct Taxes Vivad Se Vishwas Scheme and has filed Form-4 under the VsV Scheme. He has not stated that any Form-5 has been issued and if Form-5 has not been issued, the process under the VsV Scheme cannot be said to be complete. The assessee has not given the complete facts regarding his declaration under the VsV Scheme. In any case, even if the assessee's claim regarding his declaration under the VsV Scheme is correct, any benefit would be limited in terms of the VsV scheme, only to the specific declaration made by the assessee and the related disputed tax and the due amount paid under the VsV Scheme. Any benefit cannot possibly extend beyond this and cannot extend to any further addition made by the Assessing Officer in consequence of this order.

7. This is clear from section 8 of the Direct Tax Vivad Se Vishwas Act which is as follows:

No benefit, concession or immunity to declarant

8. Save as otherwise expressly provided in sub-section (3) of section 5 or section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in **any proceedings other than those in relation to which the declaration has been made.**

Section 5(3) of the Direct Tax Vivad Se Vishwas Act is as follows:

(3) Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter **covered by such order** shall be reopened in any other proceeding under the Income-tax Act.... (emphasis added)

8. The assessee has not been able to substantiate his claim that revision u/s 263 is not permitted in the facts of his case. In this case, revision u/s 263 is in respect of 'proceedings other than those in relation to which the declaration has been made' in terms of section 8 of the Direct Tax Vivad Se Vishwas Act and it does not relate to a 'matter covered by such order' in terms of section 5(3) of the VsV Act.

9. In view of the above discussion and the facts of the case, the assessee's claim is not acceptable at this stage. The assessee has not given the complete facts regarding his declaration under the VsV Scheme. As discussed in the last para, the Assessing Officer will examine the assessee's claim of declaration under the VsV Scheme and decide the claim in accordance with law.”

7. The learned A.R. reiterated the submissions made before the lower authorities. The main contention of the learned A.R. is that the issue of cash deposits made during the demonetization was opted for DTVSV and the assessee has filed Form 4. Considering this the learned A.R. submitted that the same issue cannot be subject matter of revision proceedings under Section 263 of the Act. The learned A.R. in this regard relied on the decision of the Hon'ble Madras High Court in the case *Gopalakrishnan Rajkumar vs. PCT* (2022) 445 ITR 557 (Mad). On merits the learned A.R. submitted that the AO had called for specific details with respect to the cash deposits made during the demonetization period and has considered all the bank accounts in the name of the assessee for this purpose. The fact that the AO had called for details with regard to the discrepancies found with respect to the details submitted makes it clear that the details submitted have been perused by the AO and he has applied his mind while accepting the reconciliation statement and made additions accordingly.

8. The learned D.R. submitted that mere furnishing of reconciliation statement and making additions does not evidence that the AO has conducted proper enquiries with regard to the cash deposits. Therefore, the learned D.R. supported the order of the PCIT.

9. We have heard the rival contentions and perused the material on record. We will consider the issue of whether revision proceedings can be initiated when the assessee has opted for DTVSV. We notice that the Hon'ble Madras High Court while considering a similar issue in the case of *Gopalakrishnan Rajkumar* (supra) has held that –

“39. The question therefore that arises for consideration is whether the impugned proceedings initiated after the petitioners opted to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020 are sustainable or not?

40. The expression disputed tax has been denied in Section 27 of the Direct Tax Vivad Se Vishwas Act, 2020 reads as under:

- (j) "disputed tax", in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:—
- (A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;
- (B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;
- (C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;
- (D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;
- (E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under subsection (13) thereof;
- (F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the

reduced tax credit or loss or depreciation, in such manner as may be prescribed.

- (k) "Income-tax Act" means the Income-tax Act, 1961;
- (a) "last date" means such date as may be notified by the Central Government in the Official Gazette;
- (b) "prescribed" means prescribed by rules made under this Act;
- (c) "specified date" means the 31st day of January, 2020;
- (d) "tax arrear" means,—
 - (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
 - (ii) disputed interest; or
 - (iii) disputed penalty; or
 - (iv) disputed fee,

as determined under the provisions of the Income-tax Act.

41. As per section 3 of the the Direct Tax Vivad Se Vishwas Act, 2020, notwithstanding anything contained in the Income-tax Act or any other law for the time inforce the amount payable by a declarant shall be as specified in the table to the said section.

42. As per section 4(6) of the Direct Tax Vivad Se Vishwas Act, 2020, the declarations filed under Section(1) shall be presumed to have never been made if:-

- "(a) Any material particular furnished in the declaration is found to be false at any stage;
- (b) The declarant violates any of the conditions referred to in this Act;
- (e) The declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section(5)

And in such cases, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-Tax Act against the declarant shall be deemed to have been revived."

43. Section 6 of the Direct Tax Vivad Se Vishwas Act, 2020, makes it very clear that once there is a compliance with the timeliness specified under section (5), the designated authority shall not institute any proceedings in respect of an offence or aims or levy any penalty or charge any interest under the Income-tax in respect of the tax arrears.

44. Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020, also makes it clear that save as otherwise expressly provided in sub-section (3) of section 5 or section 6, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

45. The intention of the parliament enacting the of the Direct Tax Vivad Se Vishwas Act, 2020, is to bring a closure of disputes in respect of tax arrears. Whether the petitioner had correctly or wrongly availed the benefit of section 57(F) of the Income-tax Act or not cannot be re-opened once again under section 263 of the Income-tax Act, 1961.

46. Once the petitioners had opted to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020, the proceedings initiated under section 263 have to go. If on the other hand the respective petitioners had not filed Form 1 and 2 or not accepted with the issue of Form 3, the Impugned Notice seeking to re-open the assessment under section 263 of the Income-tax Act, 1961 could be justified.

47. The Finance Minister in her speech on 1-2-2020 announced the the Direct Tax Vivad Se Vishwas Scheme to bring down the litigation. The Government intended to reduce the litigation, so that the taxpayers can buy peace with the department. The aforesaid scheme was to be implemented on 30-6-2020.

48. The taxpayers whose appeals were pending at any level were entitled to avail benefit of the scheme. Therefore, there is no justification in proceeding further with the impugned proceedings initiated by the first respondent under section 263 of the Income-tax Act, 1961.

49. Therefore, I am inclined to allow these writ petitions. Accordingly these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

10. We notice that in assessee's case the issue of cash deposits during the demonetisation period have been considered by the AO in original assessment proceedings under Section 143(3) of the Act and the assessee has opted for DTVSV scheme for the additions made in this regard. Section 8 of DTVSV Act as quoted by the PCIT, clearly mentions that the immunity is not available for any proceedings **other than those in relation to which the declaration has been made**. In the given case however the PCIT has initiated the revision proceedings u/s.263 on the same issue for which the assessee has already opted for DTVSV. It is also noticed the assessee has filed the necessary forms under the DTVSV scheme which have been accepted and therefore in our considered view the decision of the Hon'ble Madras High Court is clearly applicable to the assessee's case. Accordingly we hold that the PCIT is not justified in initiating the impugned proceedings under Section 263 of the Act when the assessee has opted to settle the dispute under DTVSV scheme. We

therefore quash the order of PCIT and allow the appeal in favour of the assessee.

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

Dictated and pronounced in the open Court on 17th November, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Padmavathy S)
Accountant Member

Bengaluru, Dated: 17th November, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT - Hubli*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

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Assistant Registrar
ITAT, Bengaluru

n.p.