

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 446/Chd/ 2022

निर्धारण वर्ष / Assessment Year : 2017-18

Smt. Kanta Rani Sirhind Road, New Grain Market, Patiala, Punjab	बनाम	The Pr. CIT Patiala
स्थायी लेखा सं./PAN NO:AEQPR5653C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rajiv Saldi, C.A
राजस्व की ओर से/ Revenue by : Shri Vivek Nangia, CIT, D.R
सुनवाई की तारीख/Date of Hearing : 02/02/2023
उद्घोषणा की तारीख/Date of Pronouncement : 20/02/2023

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of Learned Principal Commissioner of Income Tax, Patiala [in short the 'Ld. PCIT'] dt. 27/03/2022 pertaining to A.Y. 2017-18 wherein the assessee has challenged the order passed under section 263(1) of the Income Tax Act, 1961 (in short 'the Act') and has taken the following grounds of appeal:

- "1. That the Ld. Principal CIT passed the order under section 263(1) which was barred by limitation. As the assessment order was passed on 19.03.2019 and limitation had expired on 31.03.2021.1 The order .is passed on 27.03.2022. Hence liable to be cancelled.*
- 2. That without prejudice to above the notice issued under section 263 by Ld. Principal CIT and order passed under section 263 is illegal bad in law and against the facts of the case.*
- 3. That the Ld. Principal 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 Ld. Principal CIT has exceeded his jurisdiction issuing the notice u/s 263 and passing the order 263(1).*
- 4. That the Ld. Principal 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 2017-18 in not only prejudicial to the interest of Revenue but it is also erroneous on*

account of cash deposit in demonetization amounting to Rs. 24,00,000/-. Although deposits were duly explained before the Ld. AO.

5. That the proceeding and the order passed by the Ld. Principal CIT u/s 263 is perverse as it based on general observation and not specific to the facts of the case.

6. That the Ld. Principal CIT ignored the fact that the Ld. AO during assessment proceedings had thoroughly examined the assessment record of the year in question and earlier two years i.e. 2015-16 and 2016-17 also.

7. That the Ld. Principal CIT ignored the fact that the deposit were made from the books of account of the appellant. The deposit in books were from the sale proceeds of the plot (capital gain shown and tax paid).

8. That the Ld. Principal CIT failed to appreciate that Ld. AO had examined the amount received by the appellant by recovery suit and compromise through court and said necessary information/ details/ documents have been furnished by the assessee which have been examined verified and placed on record.

9. That the appellant craves the right to add, delete or amend any ground(s) of appeal before or during the appellate proceedings."

2. Brief facts of the case are that the assessee filed her return of income on 21/07/2017 which was selected for limited scrutiny to examine cash deposits during the demonetization period. Thereafter notice under section 143(2) and 142(1) alongwith questionnaire were issued and after taking into consideration the submissions filed by the assessee, the returned income declared by the assessee was accepted. Subsequently, the assessment records were called for and show cause notice under section 263 was issued by the Ld. Pr. CIT and after considering the submissions filed by the assessee but not finding the same acceptable, the order passed by the AO under section 143(3) dt. 19/03/2019 was held to be erroneous as well as prejudicial to the interest of the Revenue and the same was set aside for passing a fresh order in accordance with law after providing sufficient opportunity to the assessee.

3. Against the said order, the assessee is in appeal before us.

4. During the course of hearing, the Ld. AR submitted that during the year under consideration, the assessee had deposited a sum of Rs. 28,00,000/- in her bank account and during the course of assessment proceedings, necessary explanation were called for and duly examined by the AO. The source of cash deposits was explained out of

cash in hand at the beginning of the year amounting to Rs. 24,34,428/- which was duly reflected in the returned income filed for A.Y. 2016-17 which was filed on 12/08/2016 well before the declaration of demonetization and the balance amount of Rs. 4,00,000/- was explained as received during the year on account of compromise reached with certain party.

4.1 In this regard, our reference was drawn to the notice issued under section 143(2) dt. 21/09/2018 wherein it was mentioned that the case of the assessee has been selected for limited scrutiny to examine cash deposited during the demonetization period. Thereafter, another notice under section 142(1) dt. 04/01/2019 was issued by the AO wherein the assessee was asked to furnish the source of cash deposits made during the demonetization period alongwith documentary evidence. Further the assessee was also required to furnish the bank statement for the relevant period and all the bank accounts maintained by the assessee and the family members. In response, the assessee vide its submission dt. 10/01/2019 submitted that the assessee was doing business of Commission Agent which was earlier carried on by her husband who has since expired and was having an opening balance of cash in hand amounting to Rs. 24,34,428/- and the cash has been deposited out of the said cash in hand. It was further submitted that the assessee has sold her share in agriculture land and out of the sale proceeds, an amount of Rs. 4,00,000/- has been deposited in her bank account. It was submitted that after taking into consideration, the submission of the assessee and examining the same, the AO issued another notice under section 142(1) dt. 29/01/2019 wherein assessee was asked to furnish balance sheet for the year ended 31/03/2014 to 31/03/2016 and further, the submissions of the assessee that the cash deposit of Rs. 4,00,000/- was out of sale proceeds of agriculture land were not accepted and the assessee was again asked to submit documentary evidence in that regard. In response the assessee vide submissions dt. 06/02/2019 submitted copy of the previous year ITR as well as balance sheet. It was further submitted that the assessee has inadvertently stated earlier that the amount has been received from the sale proceeds of the agriculture land, in fact the assessee has filed the legal suit against M/s Surinder Kumar Jatinder Kumar, Patiala for bounce of cheques and later on, a compromise was made by the party and an amount of Rs. 4,00,000/- was received which was deposited in the

bank account, copy of the bounce cheque, copy of the suit filed and the copy of the compromise agreement was submitted for necessary examination by the AO. It was also submitted that assessee has sold agriculture land and the proceeds of the same were also deposited in the bank account through RTGS. It was further submitted that the AO also independently verified the returned income from the I.T Portal in order to compare and verify the cash position as disclosed by the assessee in the previous year with the figures in the balance sheet provided by the assessee. Further the AO also made independent inquiry with banks by calling for bank statement by issuing notice under section 133(6) of the Act. It was accordingly submitted that the AO made extensive inquiry both from the assessee as well as from independent sources and after due verification, has accepted the explanation of the assessee regarding cash deposited during the demonetization period. It was accordingly submitted that it is not a case where the AO has not conducted due inquiry and verification and therefore the order passed by the AO cannot be termed as erroneous in so far as prejudicial to the interest of the Revenue.

4.2 It was further submitted that the assessee throughout the assessment proceedings as well as proceedings under section 263 has claimed that it was having cash in hand as on 31/03/2016 amounting to Rs. 24,34,429/- as per books of account regularly maintained by her and said cash in hand was duly reflected in the return of income filed for A.Y. 2016-17 on 12/08/2016 well before the date of demonetization i.e 08/11/2016 and given that there is no evidence on record to prove that the aforesaid cash has been utilized by the assessee anywhere else. It is clear that for A.Y. 2017-18 there is no income which has been under assessed by the AO. As such there is no question of any prejudice cost to the Revenue. It was submitted that the contents of the show cause notice as well as the findings of the Ld. PCIT are relating to cash generated during the previous A.Y. 2015-16 and 2016-17 and not for the year under consideration. It was submitted that even though the AO was not required to examine the cash in hand as on the beginning of the financial year which was duly reflected in the returned income, still AO has gone ahead and verify the same. However the same cannot be a basis for issuing show cause under section 263 of the Act and if at all, the Revenue has any objection regarding the availability of cash at the beginning of the

financial year, then the matter may be looked at for the previous year and not for the year under consideration.

4.3 It was further submitted that it is a case where proceedings under section 263 have been initiated purely based on the audit objection and therefore it is a case of borrowed satisfaction. In this regard our reference was drawn to the audit memo issued on 12/02/2021 and the contents of the show cause dt. 11/02/2022 and it was submitted that there is no difference between the wordings and sequence of figures of the audit team and the reasons for issuance of notice under section 263 by the Pr. CIT. It was accordingly submitted that it is a clear case of borrowed satisfaction and the Id PCIT has not independently apply his mind before initiating the proceedings under section 263 of the Act. It was further submitted it is not a case where explanation to Section 263 can be invoked as the said explanation could be invoked only in cases where mandatory inquiry is not conducted. It was submitted that in the instant case the AO has conducted all the requisite and necessary inquiries which was required to be conducted and has taken accepted the explanation of the assessee and the Id PCIT therefore cannot substitute the view taken by the AO and impose his view and direct another round of verification. In light of the above, it was submitted that the order so passed by the Pr. CIT be set aside and the order of the AO be sustained.

5. Per contra, the Ld. CIT DR has relied on the findings of the Ld. Pr. CIT and our reference was drawn to the relevant findings which read as under:

(ii) The assessee's contention regarding amount of Rs.5,80,000/- received from Sh. Mohan Lai towards compromise of Court case in F.Y.2014-15; is not acceptable because a perusal of Court order reveals that the Court had passed order on 12.12.2011, therefore, the assessee had not provided any documentary evidence that can prove that the compromise amount received in cash during F.Y.2014-15.

(iii) Further contention of the assessee regarding receipt of Rs.6,37,000/- towards compromise with Sh.Amarjeet Singh in F.Y.2015-16 is also not acceptable because on perusal of court order dated 24.12.2015, the actual date of receipt of the compromise amount cannot be ascertained in the absence of any documentary evidence in respect of payment received by the assessee.

(iv) The Counsel's version is that withdrawn amount of Rs.7,80,000/- out of maturity amount of LIC & Reliance policy was kept with the assessee upto November, 2016 till the time of deposit. This argument is not acceptable as it is against the human probability that such large amount of cash was kept in the hands of the assessee. The safety of the money is much more secure in the bank account than in the hands of the assessee. Further no evidence could be furnish by the assessee which

substantiates her claimed keeping money at home. Similarly, the argument of the assessee that she kept with her all the cash sale consideration of land sold at village Sanour for Rs.2,70,000/- and Rs.3,00,000/- till the demonetization period is not also not plausible.

(v) The assessee also has not explained the source of addition of Rs. 1,08,862/- to capital account on account of profit in sale of shares which was also required to be verified by the AO.

4.1 Therefore, the increase in cash balance from Rs.4,76,831/- as on 31.03.2014 to Rs.24,34,429/- as on 31.03.2016 remained unexplained being sufficient time elapsed since the receipt/withdrawal of amounts and deposit of the said amounts in the bank accounts and required to verify as to the reasons for keeping such huge amounts in cash for such a long period in spite of the assessee having bank account and to consider the taxability of the same. Further, the Assessing Officer during the course of assessment proceedings has failed to verify the cash flow statements and respective withdrawals.

From the above, it is evident that the assessment order was passed without making inquiries or verification. The A.O. did not enquire/verify about the complete details and documentary evidences of cash deposits during demonetization.

5. Under the aforesaid circumstances, the order of the A.O. is erroneous as the A.O. did not enquire/verify about the complete details and documentary evidences of cash deposits and also is prejudicial to the interest of the revenue being unexplained cash deposits escaped for taxation."

6. We have heard the rival contentions and perused the material available on record. Firstly, we refer to the Id AR's contention that though the impugned matter pertains to assessment year 2017-18, the Id PCIT is asking the AO to re-inquire the availability of cash in earlier two years i.e, assessment year 2015-16 and 2016-17, and availability thereof at the beginning of the year and by doing so, he has exceeded his jurisdiction u/s 263 which is limited to matters pertaining to impugned assessment year 2017-18. Though at first blush, the said contention appears interesting but on examination thereof, we are unable to accept the said contention and doesn't believe that the same supports the case of the assessee. The reason for the same is that it is the assessee's explanation that the deposit of cash during the financial year relevant to assessment year 2017-18 is out of opening cash-in-hand at the beginning of the financial year. In support of her explanation, the assessee has further submitted explanation and related documentation regarding individual transactions whereby she was in receipt of funds and which were kept by her as cash-in-hand. The explanation and documentation so submitted therefore have to be examined and verified by the AO and only where the AO is satisfied with such explanation, the same can be accepted and in an event, the explanation is not accepted, the AO has to lead independent positive evidence to rebut the same. Therefore, in the context of

explanation so submitted by the assessee regarding the nature and source of deposits in the earlier years and availability thereof at the beginning of the year and out of which, the deposits have been made in her bank account, the Id PCIT has exercised his jurisdiction u/s 263 of the Act and we are of the considered view that the same is clearly subject matter of examination and emerging out of the assessment order and there is no infirmity in initiation of proceedings and exercise of jurisdiction u/s 263 of the Act. Where the said contention of the Id AR is accepted, then, it will lead to a situation where the assessee shall be at liberty to plead the source of deposits in their bank account out of opening cash-in-hand and irrespective of merit of such explanation and whether substantiated or not, the said explanation has to be accepted by the AO on face value and the Id PCIT would be without any recourse and cannot take any action u/s 263 of the Act which he is otherwise duty bound to exercise and in our considered view, the same cannot be allowed as we believe that the same would be putting restrictions on the powers and duties of the Id PCIT and something which is extraneous to the provisions of section 263 of the Act.

7. Now, coming to the explanation of the assessee regarding availability of opening cash-in-hand of Rs 24,34,429/- out of which a sum of Rs 24,00,000/- was deposited during the demonetization period. It has been explained that firstly, the cash-in-hand of Rs 24,34,429/- has been duly disclosed in the balance sheet of the assessee for year ended 31.03.2016 and the contents of the balance sheet are forming part of the return of income filed by the assessee for the financial year 2015-16 relevant to assessment year 2016-17. It was submitted that the return of income for the assessment year 2016-17 was filed on 12/08/2016 well before the start of the demonetization period and thus, it is evident that the assessee has duly disclosed to the Revenue the availability of cash-in-hand at the beginning of the year and well before the demonetization period. It has been further submitted that the said opening cash-in-hand has been received on account of maturity proceeds from LIC and reliance policies on death of her husband, Comprise and settlement amounts received pursuant to Courts orders, sale of shares and sale of plot of land and withdrawals from the bank account. It has been further explained that the reason for keeping cash-in-hand was insecurity of the assessee and undergoing mental trauma on account of death of her

husband, divorce proceedings of her daughter and various Court cases. We find that the aforesaid explanation were furnished in the context of specific notices issued by the AO calling for the explanation in support of cash deposit and the AO has examined the said explanations and has further carried out verification from the banks and after examining earlier years tax returns, has accepted the same in support of cash availability at the beginning of the year and deposit therefrom during the demonization period. We therefore find that the matter relating to source of cash deposits during the demonization period has been duly examined by the AO and he has taken all requisite steps calling for explanation from the assessee, issuing further notices where the earlier explanation was not acceptable and calling for further information and after carrying out independent examination from past year tax returns available on department's IT Portal and calling from the information from the bank has accepted the said explanation so furnished by the assessee.

8. Now, coming to the findings of the Id PCIT, regarding amounts received by the assessee, pursuant to comprise and settlement as per various Courts orders, the Id PCIT has accepted the fact that these Court orders are on record and the compensation amount as so stated therein and the parties to the compensation are thus not disputed. However, for the reason that the exact date of receipt of compensation is not discernable, the explanation of the assessee has been negated. We find that the date of the Court's order are clearly discernable from the records and one of the such order is dated 24/12/2015 and it can reasonably be presumed that the amount has been received by the assessee within a reasonable period pursuant to such Court order during the financial year 2015-16 in absence of any evidence that such Court order has not been honoured and complied with by the other party and which is not the case of the Revenue either.

9. Further, regarding other receipts on maturity of insurance policies, sale of land etc, the factum of these transactions and necessary evidence on record has not been disputed by the Id PCIT. Only reason why the Id PCIT has not accepted the explanation of the assessee is that it is against human probability that the assessee would be keeping huge cash-in-hand for such long period of time and no evidence has been

furnished. In this regard, we believe that the human probability has to be seen in context of surrounding circumstances of the assessee prevalent at the relevant point in time and a reasonable inference has to be drawn. In context of present assessee, after the death of her husband, the assessee was undergoing a difficult phase in her personal life and it must have took her time to gain understanding of business and financial dealings of her late husband, thereafter she took steps to recover money advanced to various parties by her husband, the cases were filed before the Courts and compromise/settlement reached and pursuant thereto, she has recovered the amount advanced by her late husband. Further, the trauma and pain in her life got further aggravated on account of divorce proceedings of her daughter. In the said background, if we see the assessee's explanation, we find that she has sufficiently explained and demonstrated the availability of cash which she kept in her possession instead of depositing the same with bank or any other relative/third party and thus, she has discharges the initial onus placed on her. In absence of any contrary evidence on record, such an explanation has not been rebutted in the present case and thus, the same deserve acceptance. We find that similar issue came up for consideration before the Amritsar Benches of the Tribunal in case of **ITO vs Chandan Nijjer** (ITA no. 61/Asr/2016 dated 98/08/2016) wherein negating the similar contention raised by the Id DR, the Coordinate Bench has held as under:

11. *The Department contends that since the assessee had not disclosed the purpose of withdrawal of cash from bank and usage thereof, the Id. CIT(A) ought not to have granted her the benefit of such cash withdrawn from the bank, a long period back. However, there is no legal basis for such stand taken by the department. There is no law warranting any such requirement for the assessee to make such a disclosure. As per the decision of the Delhi Bench of the Tribunal in the case of 'Mrs. Deepali Sehgal', dated 05.09.2014, in ITA A.Y. 2011-2 No.5660/Del/2012, as correctly taken note of and followed by the Id. CIT(A), it is not mandatory under any law that an individual has to keep his/her savings in the bank account only and not as cash in hand. In 'Shiv Charan Dass vs. CIT', 126 ITR 263 (P&H), in this regard, it has been held by the Hon'ble jurisdictional High Court that the onus is on the Department to show that the explanation of the assessee should not be accepted. Further, it is trite that nobody can be asked to prove a negative, as was sought to be done by the AO.*

10. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the matter has been duly examined by the AO and the assessment order so passed by him cannot be held as erroneous in so far as prejudicial to the interest of the Revenue. In the result, the impugned order

passed by the Id PCIT u/s 263 is set-aside and that of the AO passed u/s 143(3) is sustained.

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

Order pronounced in the open Court on 20/02/2023

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 20/02/2023

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