

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

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. 392/Chd/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Manuj Jain HUF N.K. Oswal Hosiery Dal Bazar Ludhiana-141008, Punjab	बनाम	The Pr. CIT-1 Ludhiana
स्थायी लेखा सं. / PAN NO: AALHM1481N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से / Revenue by : Smt. Kusum, CIT DR

सुनवाई की तारीख / Date of Hearing : 29/11/2023
उदघोषणा की तारीख / Date of Pronouncement : 19/02/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of Ld. Pr. CIT, Ludhiana-1 dt. 31/03/2022 pertaining to Assessment Year 2017-18.

2. In the present appeal, the assessee has taken the following grounds of appeal:

1. "On the facts and circumstances of the case and in law, the PCIT-1 Ludhiana has erred in initiating proceedings u/s 263 of the Income Tax Act, 1961 by wrongly assuming jurisdiction u/s 263 hence the order passed by PCIT u/s 263 of the Income Tax Act, 1961 is bad in law and void-ab-initio.

2. Without prejudice to ground no. 1 above, on the facts and circumstances of the case and in Law, the Ld. PCIT has erred in assuming jurisdiction and passing the revisionary order u/s 263 of the Income Tax Act, 1961 in spite of the fact that the Ld. AO has made adequate inquiries and verification of documents were sought from the assessee during the course of assessment proceedings and AO has taken a permissible view. The order passes by the AO is neither erroneous nor prejudicial to the interest of revenue, hence the order of PCIT should be set aside.

3. The Ld. PCIT has revised the order of the A.O. u/s 263 only on the basis of the Audit objection hence passing the revisionary order u/s 263 on the basis of Audit objection is illegal and bad in the eyes of law.

4. The Ld. PCIT has not considered or has not uttered a single word on the Audit objection which violates the Principles of Natural justice, hence the order passed by PCIT u/s 263 of the Income Tax Act, 1961 should be set aside.

5. *That in the show cause notice the words erroneous and prejudice to the interest of revenue has not been mentioned and are missing hence initiating proceedings u/s 263 of the Income Tax Act, 1961 is illegal and uncalled for.*

6. *The assessee craves to leave, amend, alter or take additional grounds of appeal before or at the time of hearing."*

3. Briefly the facts of the case are that the assessee filed its return of income declaring total income of Rs. 3,44,820/- on 30/12/2017 which was selected for complete scrutiny and notice under section 143(2) and 142(1) alongwith questionnaire were issued. Thereafter taking into consideration the submission filed by the assessee, the return of income was accepted.

4. The assessment records were thereafter examined by the Ld. Pr. CIT and he was of the prima facie view that the order so passed by the AO was erroneous in so far as prejudicial to the interest of the Revenue and a show cause under section 263(1) was issued on 24/03/2022 and thereafter taking into consideration the submission filed by the assessee but not founding the same acceptable, the order so passed by the AO was set aside for passing a fresh order in accordance with law after providing sufficient opportunity of hearing to the assessee.

5. Against the said findings and the direction of the Ld. Pr. CIT, the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the Ld. Pr. CIT has set aside the assessment order for the reason that cash deposited by the assessee amounting to Rs 38,37,000/- during the demonetization period has not been properly examined by the AO. In this regard, it was submitted that the issue raised by the Ld. Pr. CIT was duly examined by the AO during the course of assessment proceedings and in this regard, our reference was drawn to the contents of the assessment order which read as under:

"3. *The assessee is engaged in the business of "Trading of Cloth." Assessee has shown income under the head "Income from Business and Profession" and "Income from Other Sources" during the year under consideration.*

4. *During the course of assessment proceedings various documents and details were called for and examined. From the perusal of reply filed by the assessee, it is noticed that the assessee had made purchases from M/s Vinay Knitwears Pvt. Ltd. Ludhiana.*

5. The assessee has explained that the source of cash deposit in the bank a/c is cash sales made by the assessee during the year.

6. The copy of account alongwith conformation from the parties was called for from the assessee. The same have been verified with the information submitted by the assessee through E-filing Portal and found that the payments made to the parties from whom goods were purchased were through cheques on various dates.

7. Further, from the reply filed by the assessee, it is noticed that assessee is doing business of Trading of Cloth on seasonal basis every year. To verify the same the copy of purchase bills was sought from the assessee through E-filing Portal. The same has been verified.

8. The reply filed by the assessee on various dates through E-filing Portal have been perused and after perusal no adverse inference has been drawn. Therefore, the returned income at Rs. 3,44,820/- is accepted."

7. It was further submitted that during the course of assessment proceedings, the AO issued necessary queries and which were duly responded to by the assessee and the same are summarized as under:

<u>Particulars of the queries raised by the AO</u>	<u>Reply furnished by the assessee during the original assessment proceedings</u>
1. Month-wise details of the cash deposited by the assessee during the AY 2017-18 and AY 2016-17 - Question 6 of the notice dated 20.05.2019- Page 15 of the Pb.	Reply filed during the course of the assessment proceedings wherein month-wise cash deposit is disclosed and enclosed in the paperbook at page 19.
2. The copy of the bank account statement- Question 7 of the notice dated 20.05.2019- Page 15 of the Pb.	Reply filed during the course of the assessment proceedings and enclosed in the paperbook at page 19 and the copy of the bank account statement enclosed at page 22 which depicts the payment being made to the supplier amounting to Rs.38,00,000.
2. Details of purchases above Rs.5 Lakhs made during the year-Refer Question 22. of the notice dated 20.05.2019- Page 15 of Pb	Reply filed during the course of the assessment proceedings which depicts that the assessee has made purchases from M/s Vinay Knitwears Pvt. Ltd. and enclosed in the paperbook at page-20.
3. Details of sales above Rs.5 Lakhs made during the year- Refer Question 23. of the notice dated 20.05.2019- Page 15 of Pb	Reply filed during the course of the assessment proceedings stating that no sales above Rs. 5 Lakhs and the same is enclosed in the paperbook at page-20 and no adverse inference has been drawn by the Ld. AO
4. Valuation of the closing stock- Refer ques 27 of the notice dated 20.05.2019- Page 16 of Pb	Reply filed during the course of the assessment proceedings wherein the item wise quantity and the amount of the closing stock and enclosed in the paperbook at page-20
5. Method of Valuation of the closing stock-Refer ques 28 of the notice dated 20.05.2019- Page 16 of Pb	Reply filed during the course of the assessment proceedings and enclosed in the paperbook at page-20
6. Copy of the purchase bills from M/s Vinay Knitwears Pvt. Ltd.- Refer notice dated 24.05.2019- Page 24 of the Pb.	The confirmed copy of account of the supplier namely M/s Vinay Knitwears Pvt. Ltd. along with the copy of the purchase bills had been filed vide reply

	dated 30.05.2019 and the same are enclosed at pages 26-37 of the paperbook and no defects has been pointed out by the AO.
7. Reasons for not doing business in earlier months Refer notice dated 24.05.2019- Page 24 of the Pb.	The reasons have been furnished vide reply dated 30.05.2019 stating that the knitted cloth is generally sold in winter season and thus, the assessee only chose this season for making the sales.
8. Mode of payment made from whom the purchases have been made- Refer notice dated 24.05.2019- Page 24 of the Pb.	It has been submitted vide reply dated 30.05.2019 that the payments have been made through banking channels and the same is clear from the copy of bank account statement already filed.
9. Details of cash deposited during the demonetization period-Refer notice dated 24.05.2019- Page 24 of the Pb.	The reply has been filed vide Point No. 9 was of the reply dated 30.05.2019 explaining the source of the cash deposits and thus the AO applied his mind on the said issue.
10. Confirmed copy of account of the supplier-Refer notice dated 24.05.2019- Page 24 of the Pb.	The confirmed copy of account of the supplier has been filed vide reply dated 30.05.2019 and enclosed in the paperbook at page 27 of pb.
11. The copy of the cash book- Refer notice dated 24.05.2019-Page 24 of the Pb.	The cash book has been filed vide reply dated 30.05.2019 and the same is enclosed in the paperbook at pages-38-56. The said cash book duly depicts the sources of cash deposit and no adverse inference has been drawn by the Ld. AO regarding the same.
12. Month-wise cash deposit along with comparison with last year- Refer notice dated 24.05.2019- Page 24 of the Pb.	It has been submitted vide reply dated 30.05.2019 as asked by the AO to examine the cash in hand in respect of the cash deposit

8. It was accordingly submitted that from the above, it is factually clear that the source of cash deposited by the assessee during the demonetization period was duly verified and examined by the AO and after due application of mind, he has taken a possible view based on the facts and circumstances of the present case. It was accordingly submitted that it was clearly not a case of lack of inquiry or for that matter, lack of proper application of mind by the AO and therefore on this count, the order so passed by the AO cannot be held to be erroneous in so far as prejudicial to the interest of Revenue.

9. It was further submitted that the Ld. Pr. CIT has invoked the provision of Explanation-2 to Section 263. In this regard, it was submitted that the case of the assessee does not fall in any of the limbs of Explanation 2 to section 263 as the AO has made sufficient inquiry on the issue concerned and there is no lack of inquiry on the part of the AO. It was further submitted that the degree of reasonable faith and not doubting everything coming to the AO's notice in the assessment proceedings cannot be said to be lacking any bonafide and as long as the path adopted by the AO is

taken bonafide and where he has adopted a course permissible in law, he cannot be faulted with and therefore, in such circumstances, the powers under section 263 of the Act cannot be invoked.

10. Regarding various observations made by the Ld. Pr. CIT in the impugned order, it was submitted that the same are merely based on assumptions and conjectures and are more in the nature of suspicion rather than based on any specific findings and in this regard, our reference was drawn to the written submissions and the contents thereof read as under:

Sl.	Allegations by PCIT	Submissions filed before AO and considered during the assessment
1.	<p>The assessee has not furnished bills of sales nor details of persons to whom sales were made.</p> <p>Low cash in hand till 30th September but sudden increase in the month of October</p>	<p>a. The assessee has filed the cash book, confirmed copy of account of the creditor, purchase, bills and details of stock before the AO and the same stands accepted after due application of mind. The same has been filed via reply dated 30.05.2022.</p> <p>b. Further, the copy of the cash book duly reflects the bill wise details of the sales made by the assessee along with the Bill Numbers.</p> <p>c. On merits it is submitted that there is no mandatory provision in the Act which mandates the assessee to maintain the details of the customers moreover, when the same has already been offered to tax in the form of sales and reliance in this regard is being placed on the following judgments:-</p> <p>(i) The judgement of Hon'ble High Court of Bombay in the case of R.B. Jessaram Fatehchand (Sugar Dept.) v. CIT reported at [1970] 75 ITR 33 (BOM.) <i>"There is no necessity for assessee to maintain the addresses of customers and failure to maintain the same or to supply them as and when called for cannot give rise to suspicion with regard to genuineness of transactions"</i></p> <p>(ii) The Hon'ble High Court of Kerala reported at [1972] 83 ITR 484 (Kerala): M. Durai Raj v. CIT.</p> <p>(iii) M/s Asian Consolidated Industries Limited vs ITO in ITA No. 4873/Del/1998 order dated 05.10.2018 (Del Bench)</p> <p>(iv) ITO vs M/s Sunny Jewellery House in ITA No.196/Chd/2014 order dated 06.05.2016.</p> <p>(v) ACIT vs M/s Kewal Singh in ITA No. 664/Chd/2016 order dated 08.02.2017- It was also held that vis-a-vis cash sale non-inclusion of addresses of customers could not be the basis for rejection of books of account.</p> <p>d. Further, when the cash book provided by the assessee has been accepted and no adverse inference regarding the details of stock has been drawn by the AO and moreover, sales have been disclosed in the Profit and Loss account and the taxes due on the same has been paid thus, adding the same cash would amount to double deduction and reliance in this regard is placed on the following judgments: -</p>

		(i) Pr. Commissioner of Income Tax vs Akshit Kumar 197 DTR 121 Delhi HC- Relevant Para-15 to 17 of page 10 to 11.
2.	The business affairs have been carried on only for a period of 1 month making no sale otherwise than in cash and it has also been alleged that why the assessee discontinued its business even when the business was lucrative	As mentioned above the assessee has made sales of Knitted Cloth which is a hosiery item and used in the winter only and is merely a seasonal business. The assessee earned profit in such period by making retail sales of such item on seasonal basis only. The same has been submitted before the Ld. AO also during the course of the assessment proceedings also and has duly been accepted without drawing any adverse inference regarding the same vide reply dated 30.05.2019. Further, it is the prerogative of the assessee only that whether to make such sales in cash or otherwise and there is no provision in the Income Tax also that bars the assessee from making such cash sales. Further as per the settled law of the Supreme Court in the case of SA Builders Ltd. vs CIT reported in 288 ITR 1 and Commissioner of Income-tax v. Dalmia Cement (P.) Ltd. 121 Taxman 706 (Delhi HC) it has been held that that the Income Tax Department cannot sit on the armchair of the businessman.
3	There are only 10 purchase bills with and each bill contains 2 to 3 different purchases of cloth without there being any description. It has also been mentioned that there is no quality or description of cloth is mentioned	It is submitted that the bills duly mention the quantity and its respective rates and it is not the responsibility of the assessee to take care that how the bills of the suppliers are made and furthermore, it is very much understandable that a knitted cloth is of many different types and the rates of such different quality varies a lot. The same quality goods are further sold by the assessee and that too at profit and thus, when the sales of the same along with its profit has been booked by the assessee then the allegation made by the PCIT is without any basis.
4	That the sales bills exceeds Rs.20000 and that the knitted cloth is only purchased by manufacturer or trader not by any individual/final consumer and thus, it is not a usual thing as the same would be violation of provisions of section 40A(3)	It is submitted that it is not a valid allegation as the goods could be purchased by many small time traders who does not usually maintain their books of accounts on a regular basis and for the said kind of traders who usually comes 2-3 times for the purchase of small quantity of knitted cloth it is not possible for them to come again and again and furthermore, the provisions of section 40A(3) are not applicable when the return of income is being filed on presumptive basis which majority of the times are filed by such small time traders.
5	Not possible for seller to give new business such as the assessee, to allow credit period of 2 months.	It is submitted that it is a normal business practice in hosiery industry to allow such credit especially to the business houses who normally has hosiery background and which in the case of the assessee is applicable since the Karta of the assessee is engaged in the Hosiery business from the past many years. Furthermore, the assessee has been regularly running its business in the subsequent years and in this competitive market credit period are allowed for retaining the market.

11. It was submitted that the issues raised by the Ld. PCIT were duly examined by the AO after making necessary enquiries. It was submitted that there is difference between 'no enquiry' and 'inadequate enquiry' and where the Ld. AO made enquiries as seems appropriate on the facts and in the circumstances of the case, assumption of

jurisdiction under section 263 of the Act is not warranted. It was further submitted that the Ld. PCIT has failed to point out what further enquiries or verification, the Ld. AO ought to have made. In cases where the allegation is of "proper enquiries", the burden is on the Ld. PCIT to conduct prima facie further enquiries by himself and basis the same, arrive at a finding that the order so passed is erroneous in so far as prejudicial to the interest of Revenue and he cannot simply set aside the order of the Ld. AO for further enquiries. In support of his aforesaid contentions, the Id AR has relied on the decisions in case of CIT vs Sunbeam Auto Limited reported in 332 ITR 167 (Delhi), CIT vs Anil Kumar Sharma reported in 335 ITR 83 (Delhi), Ganpati International, Jagraon vs PCIT (in ITA No. 932/Chandi/2019) and others. It was accordingly submitted that in view of the same, the order so passed by the Id PCIT be set-aside and that of the AO be confirmed.

12. Per contra, the Ld. CIT/DR has relied on the findings of the Ld. Pr. CIT. It was submitted that the business affairs of the assessee have been arranged in a manner to generate cash in hand to deposit during the period of demonetization. All the facts like doing business only for a period of less than a month, making no sale otherwise than in cash, depositing no amount in the bank till demonetization took place, making no payment to the creditors during this period are strange and unusual factors and are not noticed in any kind of business. As claimed by the assessee, he has traded in knitted cloths. It was submitted that a perusal of the details produced / filed by the assessee during the proceedings before the undersigned show that total purchases are on 10 bills only and on each bill 2 to 3 different purchases of cloth have been made by the assessee at different rates without there being any description. The bills of purchase mention only "cloth" and per Kg rates vary from Rs. 200/- and odd to Rs. 400/- & odd and even somewhere Rs. 700/- & odd, however no quality or description of Cloth is mentioned. All these show that the records maintained by the assessee are not real and the apparent is not real which should have been tested on the human probability test by conducting proper inquiries and verifications.

13. It was submitted that the assessee, apparently, was totally new in the business and despite that the alleged seller of cloth gave him credit of Rs. 40,00,000/- for about two months. This important aspect has not been examined by the AO. Further, neither the

existence of the seller nor his creditworthiness has been examined. The AO has not made any independent verification of anything. He has not enquired as to when the bank account was opened and what have been the financial activities of the assessee during the earlier and later years. He has failed to take notice of the fact that except the entries of cash deposit during demonetization and debit of cheques in favour of a single party, there is no transaction in the bank account during the year. From these, it is clear that the AO has not conducted the required investigations and enquiries.

14. It was submitted that within a span of one month, the assessee earned profit of Rs. 3.50 lacs without investing anything. Why did the assessee discontinue such a lucrative business has not been considered while accepting whatever claim was made. 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 availability of cash for aforesaid cash deposits.

15. It was submitted that under the aforesaid circumstances, the order of the A.O. was rightly held as erroneous as the AO did not enquire/verify about the complete details and documentary evidences of availability of cash for aforesaid cash deposits and also is prejudicial to the interest of the Revenue being unexplained cash deposits having escaped taxation. Detailed and deep enquiries were required to be made on the issue discussed above before accepting claim of the assessee. In this regard, it is worthwhile to refer to provisions of Explanation 2 to Section 263(1) of the Income Tax Act, 1961 according to which an order passed by the A.O. shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue for various reasons including the fact that if in the opinion of Principal Commissioner or Commissioner the order is passed without making any enquiry or verification which should have been done and also includes the order which is passed allowing any relief without enquired into the claim.

16. We have heard the rival contentions and perused the material available on record. The Id PCIT has issued the show-cause u/s 263 stating that the assessee has deposited cash amounting to Rs 38.37 lacs in old currency notes during the period of demonization and during the course of assessment proceedings, the assessee was

asked to explain the source of cash deposit and in response, the assessee submitted that the source of cash deposit was out of the sale proceeds from trading in knitted cloth. Thereafter, the Id PCIT has stated that to substantiate the claim of cash sales, no supporting documentation has been furnished by the assessee and further, other than the period of demonization, no cash was deposited in the bank account and basis the same, the show-cause was issued by the Id PCIT.

17. We therefore find that it is an admitted fact that the AO did carry out the enquiry during the course of assessment proceedings, explanation regarding cash deposit during the demonization period was called for and the assessee in response filed its submissions. The same is also evident from the assessment order where the AO has held that the assessee was engaged in seasonal trading of cloth every year and during the year under consideration, the purchases were made from M/s Vinay Knitwears Pvt Ltd and in that regard, copy of purchase bills, copy of purchase account, mode of payment and the confirmation from party were called for and which was duly submitted by the assessee and verified and found to be in order by the AO. Further, the AO has recorded the fact that the sales were made in cash and copy of cash book detailing the individual sales and relates particulars are forming part of the assessment record. We therefore find that the matter relating to purchases and sales and the source of cash deposit has been duly enquired into by the AO, necessary enquiries have been made and basis examination thereof, the source of cash deposit as arising out of sale proceeds has been accepted by the AO and in respect of which, the assessee has disclosed profit and paid taxes thereon.

18. During the revisionary proceedings, we find that basis same material and documentation available as part of the assessment records, the Id PCIT has recorded certain findings which are more in the nature of apprehension and suspicion in terms of mode and manner of conduct of the business by the assessee and held that detailed and deep enquiries were required to be made by the AO and which he has failed to make and thus, the order so passed has been held to be erroneous in so far as prejudicial to the interest of the Revenue. No fresh material has come to the notice of the Id PCIT and basis re-appreciation of the same material, he has arrived at a different finding. Here it is relevant to note that re-appreciation of the same material is not based

on any further enquiry/investigation carried out of the Id PCIT but basis certain apprehension and suspicion in terms of mode and manner of conduct of the business by the assessee and pointing out certain deficiencies in terms of documentation so maintained and furnished by the assessee. In our view, where the AO has carried out the necessary enquiry and investigation, and formed a reasonable view and passed a speaking order, in order to disturb the findings of the AO and more so, holding the assessment order as erroneous in so far as prejudicial to the interest of Revenue, certain minimum inquiries ought to have been conducted by the Id PCIT which apparently has not happened in the instant case.

19. Coming to specific findings of the Id PCIT regarding non-furnishing of bills of sales, the Id AR has submitted that copy of cash book has been furnished during the course of assessment proceedings which contains bill wise details of sales made by the assessee. Regarding sales in cash and that too for a month, the Id AR has submitted that the said fact has been duly noted by the AO that the assessee was engaged in seasonal trade activity of hosiery items and there is no bar under law to undertake cash sales. Further, there are certain observations regarding purchase bills, sales bills and credit availed by the assessee which we find has been suitably explained by the assessee.

20. Here, it is relevant to note that besides the normal notion of business in terms of regularity of purchases and sales and continuity over a period of time, a solitary activity or an adventure in the nature of trade equally qualifies as business where it satisfies the necessary attributes of purchase and sale supported by appropriate documentation. In the instant case, where the assessee has carried out seasonal trade in hosiery items duly supported by documentary evidence, the AO having examined the same and having formed a considered view accepting the said transactions and resultant profit has been brought to tax, the Id PCIT cannot be permitted to invoke his jurisdiction merely because he believes that there are certain deficiency in the documentation so maintained and furnished by the assessee and therefore, the order so passed is erroneous as the same require further examination and verification.

21. We therefore find that there was proper application of mind on the part of the AO and the matter has been duly examined by the AO during the course of assessment proceedings. It is not a case where necessary inquiries have not been carried out by the AO, and in such cases, it is important that for holding the order so passed by the AO as erroneous and prejudicial to the interest of the Revenue, certain further verification and inquiries should have been conducted by the Ld. Pr. CIT which has not happened in the present case and therefore the basic condition for invoking the provision of Section 263 are not satisfied in the instant case. Merely stating that detailed and deep enquiries are required in the instant case will result in taking away a vested right of the assessee in terms of completed assessment where it has already gone through the rigorous examination by the AO and the same cannot be sustained in the eyes of law even drawing support from the explanation 2(a) to Section 263 unless it is pointed out as to which enquiry or verification was not made by the AO before passing the assessment order as held by the Punjab & Haryana High Court in case of **Pr. CIT (Central) Vs. Kanin (India)** [2022] 141 taxmann.com 83 (P&H) and the relevant findings read as under:

"9. Ld. Senior Standing Counsel is not in a position to deny the fact that prior to passing of order under section 143(3) of the Act, a questionnaire was issued by the Assessing Officer in the course of assessment proceedings to the assessee. The specific issues addressed by the appellant in the present proceedings were part of the questionnaire. It is in the backdrop of these circumstances that the Tribunal recorded the finding to the following effect :—

"In the facts of the present case, the Pr. CIT has exercised the power by merely flagging certain issues extracting the Show Cause Notice, extracting part of the reply of the assessee and without caring to address the same has summarily arrived at the conclusion ignoring the facts, evidences and plethora of jurisprudence available on the issue which casts responsibility on the Pr. CIT to point being out the error and not any and every error but such an error which is prejudicial to the interests of the Revenue. The twin requirements and the sine qua non for exercising the Revisionary Power cannot be left at the mercy of whims and fancies of Revisionary Authority the same should be brought out on record mere suspicions are not enough. In order to support the conclusion drawn reference may also be made to the decision of the Co-ordinate Benches in Narain Tatu Rane (supra) which clearly brings out that the explanation cannot be said to have overridden the law as incorporated by various High Courts which have consistently held that before reaching to the conclusion that the order of the AO is erroneous and prejudicial to the interests of the Revenue, the Revisionary authority itself has to undertake some enquiries to establish that the assessment order is erroneous and prejudicial to the interests of the Revenue."

10. *Trite it is that in order to attract section 263 of the Act, twin conditions are to be satisfied namely :—*

(i) The order of the Assessing Officer sought to be revised is erroneous, and

(ii) It is prejudicial to the interest of the Revenue.

11. The contention of Ld. Senior Standing Counsel that the order passed by the Assessing Officer will fall within the ambit of Explanation 2(a) appended to section 263 of the Act, cannot be accepted till it is pointed out as to which inquiry or verification was not made by the Assessing Officer before passing the order.

12. Ld. Counsel for the appellant is not in a position to point out as to what are those inquiries or verification which should have been made but have not been made by the Assessing Officer in the present case so as to make the present case fall within Explanation 2 attached to section 263 of the Act.

13. In the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] 109 Taxman 66/243 ITR 83 (SC) Apex Court has held that -

'The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income-tax Officer is unsustainable in law.'

14. The substantial questions of law sought to be raised in Para No. 3 of the grounds of appeal are pure questions of fact which have been adequately answered by the Tribunal.

15. Consequently, finding no merit in the instant appeals, the same are hereby dismissed."

22. In case of **CIT vs Sunbeam Auto Limited** (*supra*), the Hon'ble Delhi High Court held that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry" and if there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. It has been held that it is not necessary that the Commissioner is bound to arrive at a definite finding and express a final view but least that is expected from him is to record a finding that order so sought to be revised was erroneous and prejudicial to the interest of Revenue and the basis of arriving at such a prima facie finding.

23. Following the aforesaid decision, in subsequent decision in case of **CIT vs Anil Kumar Sharma** (*supra*), the Hon'ble Delhi High Court held that even if the inquiry was termed as inadequate, that would not by itself give occasion to the Commissioner to pass orders under section 263 of the said Act, merely because he has a different opinion in the matter. It was held that once application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner

having a different opinion and the findings of facts arrived at by the Tribunal do not warrant interference of this Court.

24. Similarly, in case of **Ganpati International vs PCIT** (*supra*), the Chandigarh Benches have held that where the AO had made the enquiry and Id. PCIT is trying to substitute the plausible view taken by the Assessing Officer with his own view, the said course of action is not permissible under the revisionary provisions under section 263 of the Act

25. In light of the aforesaid discussion and in the entirety of facts and circumstances of the present case, we find that where the matter relating to source of cash deposit during the demonization period has been duly examined by the AO and there is due application of mind as discernable from the assessment order and underlying assessment records, there is no justifiable basis to invoke the revisionary jurisdiction u/s 263 of the Act. In view of the same, we set-aside the order of the Id PCIT u/s 263 and the order of the AO is hereby revived.

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

Order pronounced in the open Court on 19/02/2024

Sd/-

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

Sd/-

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

AG

Date: 19/02/2024

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