

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "SMC", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 420/JPR/2024 (A.Y. 2013-14)

Dinesh Kumar Chaurasia,

M/s. Mahendra Gargieya & Associates,
537-539, Gargieya's 5th Floor, Mahima Trinity,
Near Jyoti Rao Phule College,
New Sanganer Road, Jaipur – 302 019.

PAN No.: ABAPC 0810D

..... Appellant

Vs.

ACIT, Central Circle - 3,
Jaipur – 302 005.

..... Respondent

Appellant by	:	Mr. Mahendra Gargieya, Adv., Ld. AR
Respondent by	:	Ms. Anita Rinesh, JCIT, Ld. DR
Date of hearing	:	09/12/2024
Date of pronouncement	:	30/12/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. PCIT (Central), Jaipur dated 14.03.2024 passed u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2013-14. The assessee has raised the following grounds of appeal:-

1. The Ld. Pr.CIT (Central), Jaipur seriously erred in law as well as on the facts of the case in invoking the provisions of Section 263 of the Act and therefore, the impugned order dated 14.03.2024 u/s. 263 of the Act kindly be quashed.

2. *The Id. Pr. CIT (Central), Jaipur seriously erred in law as well as on the facts of the case in assuming jurisdiction u/s. 263 of the Act by wrongly and incorrectly holding that the subjected assessment order passed u/s. 147 of the Act dated 09.06.2021 is prejudicial to the interests of the revenue. The assumption of jurisdiction u/s. 263 of the Act being contrary to the provisions of law and facts on record, hence, the proceedings initiated u/s. 263 of the Act hence, the impugned order dated 14.03.2024 deserves to be quashed.*

3. *The Id. Pr. CIT (Central), Jaipur erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 09.06.2021 by incorrectly observing that neither the appellant/AR attended nor any submission was made, which allegation, is absolutely incorrect on the face of the record in as much as for at least four times (dated 06.01.2023, 09.10.2023, 23.01.2024 & 04.03.2024), submissions were uploaded on the official website of ITD and also sent through email but were unfortunately ignored. It is a classic example of the violation of principle of natural justice and of the mandatory requirement of providing opportunity of being heard before an order could be passed. The impugned order suffering from the serious violation deserves to be quashed and set aside without giving any second chance to the erring officer.*

4. *The Id. Pr. CIT (Central), Jaipur, in the impugned order passed u/s. 263 of the Act, raised an altogether new issue of the alleged non-examination of sundry creditors of Rs. 29,46,000/-, which has never been a part of the SCN issued dated 04.03.2024. Thus, here gain, there is the serious violation of principle of natural justice and an issue which she has gone beyond the SCN, could not have been made a basis of reaching a conclusion that the subjected assessment order is be erroneous and prejudicial to the interest of the revenue. The impugned order thus, to this extent is a nullity being without jurisdiction and therefore deserves to be quashed on the aspect relating to alleged non-examination of sundry creditors of Rs. 29,46,000/-*

5. *The Id. Pr. CIT (Central), Jaipur further seriously erred in not applying her mind that the Id. AO made full enquiries and applied his mind on asking the source of the investment made in the purchase of the flat, which was brought to the notice of the Id. Pr. CIT vide our written submissions but completely remained unattended/ignored. Hence, this issue could not have become a basis of holding the subjected assessment as erroneous and prejudicial to the interest of the revenue and therefore, the impugned order passed u/s. 263 of the Act deserves to be quashed and set aside with respect to this issue also.*

6. *The Id. Pr. CIT (Central), Jaipur further seriously erred in law and on facts in as much as interestingly, the Id. PCIT (Central) did not disturb the assessment order but then she passed the impugned order for initiation/source of purchase of immovable property as also sundry creditors. Such a direction, however, on the*

face of it, is completely beyond jurisdiction as never contemplated by the provisions of Section 263 of the Act. The Id. Pr. CIT thus, has clearly acted beyond jurisdiction and therefore the impugned order deserves to be quashed and set aside.

7. the appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

2. The brief facts of the case are that the assessee individual filed his return of income on 23.11.2013, declaring total income at Rs. 3,70,630/-. The return of the assessee was processed u/s. 143(1) of the Act vide intimation dated: 02.02.2014. Thereafter, a survey action took place on the assessee on 29.10.2019, in which two sale agreements were found dated: 18.01.2012 and 16.06.2011. On this issue we have gone through the note of the AO briefing the facts before the superior authorities to take permission for the purposes of section 148 of the Act and following facts emerged out of that,

"As per this note the sale agreement dated: 18.1.2012 was found and impounded. Through this sale agreement, Sh. Mahendra Mehra purchased property being land on Khasra No. 6453 & 6454 measuring 2 Bighas 6 Biswas situated in Tonk on 18.1.2012 from 6 parties namely Sh. Charan Singh, Sh. Bharat Singh, Ms. Sharda, Manbhar, Angoori and Smt. Phoola, r/o Dhanna Talai Tonk for Rs. 1,26,50,000/- Out of total sale consideration. Rs 11 Lacs were paid in cash on the date of agreement. Balance amount of Rs. 115.50 Lacs were to be paid, in three installments of Rs. 40 Lacs on 28.2.2012, Rs. 35.50 Lacs on 30.7.2012 and Rs. 40 Lacs on 30.1.2013. As per endorsement on the back side of the agreement, Sh. Mehra also paid cash of Rs. 40 Lacs on 28.2.2012. The remaining payment of Rs. 75.50 Lacs were made in the year under consideration as per terms and condition of the sale agreement. Thus, total payments of Rs 75.50 Lacs (Rs. 35.50 Lacs + Rs. 40.00 Lacs) in cash were made during the year under consideration.

A). *during, the course of survey proceeding u/s. 133A of the IT Act, a sale agreement dated: 16.6.2011 was also found and impounded. Through this sale agreement, Sh. Mahendra Mehra purchased land on Khasra No. 78 measuring 11 Bighas 1 Biswa situated in village Sewarampora, Tonk on 16.6.2011 from Sh. Gordhan Das, r/o Tonk for Rs. 1,36,50,000/-. Out of total sale consideration, Rs. 10 Lacs were paid in cash on the date of agreement. Balance amount of Rs.*

126.50 Lacs, were to be paid in three installments, i.e. on 15.11.2011, 15.4.2012 and 15.9 2012. As per endorsement on the back side of the agreement, assessee paid Rs. 38 Lacs in cash on 15.11.2011. Sh. Mehra paid balance amount of Rs. 88.50 Lacs during the year under consideration as per terms and condition of the sale agreement. Thus, total payments of Rs. 88.50 Lacs (Rs. 38.00 Lacs + Rs. 50.50 Lacs) in cash were made during the year under consideration.

B). During course of assessment proceedings in the case of Sh. Mahendra Mehra for the A.Y. 2012-13, his statements were recorded in which he claimed that above transactions were made on behalf of Sh. Dinesh Chaurasia (the assessee) and sale agreements were made in his names just because of reason that land belongs to ST/SC community which can only be purchased by the person of same community and to subvert the legal prohibitions on sale of such lands, his name was used as purchaser. He also alleged that entire payment was made by Sh. Chaurasia. Considering his statements and the fact that original sale agreements were found at the business premises of the assessee during survey protective addition of Rs. 99 Lacs was also made in the hands of the assessee (Sh. Chaurasia)

C) Since the part payment towards sale agreements was made in the year under consideration also and proceeding in the case of Sh. Mahendra Mehra has also been initiated u/s. 147 of the Act for the year under consideration separately to make protective addition in the hands of Sh. Chaurasia, proceeding u/s. 147 is required to be initiated in this case also.

D) Analysis of information collected/received

The information has been verified with the return of income filed. The issue has already been dealt with during the course of assessment proceedings in the case of Sh. Mahendra Mehra and assessee (Sh. Chaurasia) and protective addition made therein.

E) Enquiries made by the A.Q. as sequel to information collected/ received.

The said documents have been found from the business premises of the assessee during the course of survey and protective addition was made in the case of assessee for A.Y. 2012-13 for part investment. Hence no separate enquiries are required to be made

F) Findings of the A.O.

Since original documents were found from the premises of the assessee and the source of investment in purchase of lands is not explained, it can be concluded that the investment in purchase of property to the extent of Rs. 1.64 crores an unexplained in the hands of assessee which has escaped assessment u/s. 147 of the Act on protective basis.

The unexplained investment to the tune of Rs. 164 Lacs on protective basis has escaped assessment in the hands of assessee which is chargeable to tax

G) Applicability of the provisions of section 147/151 to the facts of the case;

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration. No assessment as stipulated u/s. 2(40) of the Act has been made. The return has been simply processed u/s. 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 of the Act are applicable to the facts of this case and assessment year and hence this is deemed to be a case where income chargeable to tax has escaped assessment.”

3. In view of the above, the case of the assessee was reopened and a notice u/s. 148 of the Act was issued vide dated: 21.03.2020. In response to this notice, the assessee filed a return on 08.03.2021 again declaring the same figure of Rs. 3, 70,630/-. Although, the case was assessed at Rs. 1, 67, 70,630/- (Rs. 3, 70,630/- + Rs. 1, 64, 00,000/-) on protective basis and on substantive basis Rs. 164 Lacs were added in the hands of the buyer on papers mentioned (supra), i.e. Sh. Mahendra Mehra. Nowhere, it's emanating from records before us that the assessee challenged this order of the AO done on protective basis). Later on, a notice u/s. 263 of the Act vide dated: 04-08-2022 was issued by the office of the Ld. PCIT (Central), Jaipur in the case of the assessee and thereafter further notices were also issued vide dated: 26-09-2022, 02-11-2022, 18-11-2023 and 04-03-2024. In her order the Ld. PCIT (Central), Jaipur alleged that the neither assessee nor his authorised representative attended the matter for hearing and no reply/submission/adjournment ever made to her office.

4. Ultimately, considering the last notice issued by the office of the Ld. PCIT (Central), Jaipur vide dated: 04-03-2024, the order u/s. 263 of the Act was passed *Ex-Parte* vide dated: 14-03-2024. The assessee being aggrieved with the same preferred the present appeal before us. We have gone through the copy of the

reasons recorded u/s. 148 of the Act Dated: 12-03-202 vide page no. 1 to 4 of the paper book, Copies of the notices issued u/s. 263 of the Act as mentioned (supra) and are part of the paper book filed before us, Copies of the submission made by the assessee before the Ld. PCIT (Central), Jaipur, Copies of the assessment order and Ld. CIT(A)'s order in the case of Sh. Mahendra Mehra for A.Y.s 2012-13 and 2013-14 filed by the office of the Ld. CIT, DR and copy of the assessment order in the case of the assessee for immediate preceding A.Y., i.e. 2012-13.

5. It is observed that the case of the assessee was assessed as protective assessment for the preceding year also. It confirms the stand of the Revenue that, in the matter of the assessee, the revenue is firm about the status of the matter, i.e. to be assessed under the protective scheme of assessment. It is further observed that the order of the Ld. CIT (A) in the case of Sh. Mahendra Mehra for A.Y.s 2012-13 and 2013-14 was passed on 12.10.2023 and confirmed the order as substantive assessment, whereas the notice u/s. 263 of the Act was issued first time on 04-08-2022 and final order was passed on 14.03.2024. This chronology of event has its own importance, i.e. **when the status of Sh. Mahendra Mehra has been taken as substantive and further confirmed by the Ld. CIT (A), there is no protective assessment stands on its own feet now against the assessee under consideration.**

6. In view of above, the notices mentioned (supra) issued u/s. 263 of the Act are no more valid as the order against which the same were issued, is no more in existence, as the department has taken a firm stand against Sh. Mahendra Mehra. Now let's consider the position of law with regard to protective assessments. The concept of protective assessment has not been defined in the Income-tax Act and

there are no specific provisions governing the same. However, it is well settled by judicial precedents and it is an established departmental practice which has gained judicial recognition by the Courts over the years that in the interest of revenue, protective assessment can be framed in a situation where the revenue during the proceedings finds that a particular amount of income can be taxed in the hands of different persons/assessee but the Assessing Officer is not sure enough about such person in whose hands the income is chargeable to tax. A protective assessment is regarded as being protective because it is an assessment which is made '*ex abundanti cautela*' where the department has a "doubt as to the person who is or will be deemed to be in receipt of the income". A decision of Constitution Bench of Supreme Court in case of *Lalji Haridas v. ITO* [1961] 43 ITR 387, is a foundation laid by way of judicial recognition on the point where in the Apex Court considered the question where it appeared to the income tax authorities that certain income had been received during the relevant assessment year, but it was not clear as to who had received that income and *prima facie* it appeared that the income might have been received either by A or by B or by both together. It was held that in such cases, it would be open to the income tax authorities to determine the question by taking appropriate proceedings against both A and B. The Apex Court further observed that in the proceedings taken against both A and B, however, exhaustive inquiry should be made and the question as to who is liable to pay the tax should be determined after hearing objections and the proceedings against the other person might also continue. It was also observed that a final determination had to be made in one of the proceedings and until proceedings against the one had been fully determined, no assessment order should be passed.

7. Further in the case of **[2021] 127 taxmann.com 280 (Raj.) PCIT (Central), New Delhi v. Kalyan Build mart (P.) Ltd.**, it is held by the Hon'ble jurisdictional High Court that

"1. Revenue is aggrieved by the orders of the ITAT on two counts: firstly, the appeal is filled with respect to reassessment under section 147/148 of the Income-tax Act and secondly, upholding the Appellate Commissioner's order which directed cancellation of the assessment made on protective basis and its correctness.

2. Brief facts are that one Madan Mohan Gupta in the course of search and seizure proceedings, under section 132 of the Act made a statement on the basis of reopening of the present assessee's completed assessment for the year 2008-09. In the substantive proceedings, several assesseees were subjected to taxation on basis of search and substantive additions were made (as against Navratan Kothari, Vimal Chand Surana (HUF), Kushal Chand Surana and Rajendra Kumar Jain, etc.) for different years falling in the block assessment period. No substantive addition was made, however, in respect of the assessee company. A protective assessment was made on assumption that in the event substantive additions were to be set aside, the assessee was liable to pay this amount. The CIT (A) directed that amounts brought to tax on protective basis ought to be deleted. The CIT (A)'s reasoning was that additions were enhanced in the case of other assesseees and some of the amounts were deleted in view of documentary evidence gathered. The CIT (A) made two tabular charts in Para 2.1.8.5. One reflected the amounts added by the AO and the final amount sustained on the basis of assessment of evidence. After discussing all these aspects, the CIT (A) held that additions made on protective basis were not sustainable, in the following terms:

"In this case, on the basis of noting on impugned seized documents and evidences gathered during the remand proceedings, and enhancement notice u/s. 251(2) of the Act vide letter dated 21-3-2017 has been given to the assessee. Subsequent to receipt of written compliance from the assessee, following additions are required to be made in assessee's hand as per the detailed discussion made in para 2.1.8.5 with respect to Issues No. 1,2,3,4 & 5 as under :

Sl. No.	ITA No.	A.Y.	Name	Addition made by AO	Addition sustained	Relief	Balance Sustained (Final Addition)

10	146/15-16	08-09	M/s. Shri Kalyan Build mart (P.) Ltd.	Rs. 14,24,12,650/= (Protective)	---	Rs. 14,24,12,650/-	----
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As per detailed discussion in above para and in particularly in para 2.1.8.6 no additions of Rs. 14, 24, 12,650/= on protective basis in the hands of assessee company and also on substantive basis in the hands of Sh. Madan Mohan Gupta have been proposed. Accordingly, addition made of Rs. 14, 24, 12,650/= on protective basis in the hands of company is hereby deleted. Assessee's appeal in Gr No. 2 stands allowed."

3. The assessee's appeal with respect to reopening of assessment was allowed. The CIT (A) held that reassessment notice was invalid. The ITAT in its elaborate order discussed the validity of reassessment notice and upheld the order of the CIT (A). It is argued that ITAT did not deal with the grounds of appeal or the reasoning of the CIT (A) on the issue of deletion of protective assessment made by the AO.

4. This court has considered the grounds of appeal urged by the revenue in support of present appeal under section 260A. Undoubtedly, the court has to consider as to whether a substantial question of law arises in the context of reasoning of the ITAT in holding the deletion of protective assessment. However, what is apparent is that the AO in this case proceeded, without furnishing any reasoning and added amounts to assessee's account imposing tax on it purely on protective basis after the substantive additions in respect of each amount which were made at third parties' end. The CIT (A) in our opinion was correct in his analysis noticing that as against documentary evidence available, only some additions could be sustained even in respect of such third parties. Consequently, in the absence of any reason to involve the present assessee, which had sold the lands to the third party and against whom there was no allegation of withholding material or suppression of facts, nor was anything incriminating recorded, no protective assessment could have been made.

5. for the foregoing discussions, this court is of the opinion that no substantial question of law arises.

8. The ratio laid down above is further confirmed by the Hon'ble Apex Court in the case of the same assessee vide **[2021] 127 taxmann.com 281 (SC) PCIT, Central v. Kalyan Build mart (P.) Ltd.** In view of the above, we are of the firm view that, the revenue has taken a firm view against Sh. Mahendra Mehra; hence there

can't be any simultaneous proceedings of the same matter and amount against the assessee under consideration.

9. To further strengthen our view, we draw strength from the following judicial pronouncements of Hon'ble Apex Court and Hon'ble High Courts as under:

[2023] 153 taxmann.com 298 (SC) PCIT (Central) v. Panchmukhi Management (P.) Ltd.

G.K. Consultants Ltd. v. ITO [IT Appeal No. 1502 (Delhi) of 2013, dated 27-6-2014], [upheld in *CIT v. G.K. Consultants Ltd.*, [IT Appeal No. 86 of 2015, dated 24-5-2016] High Court]

[2024] 167 taxmann.com 358 (Mad.) Ramakrishnan Ramasubramani v. ITO

Considering the ratios lay down by the Hon'ble courts and specific chronology of events in the matter, **Ground Nos. 1 and 2 raised by the assessee are allowed and order of the Ld. PCIT passed u/s. 263 of the Act is quashed with consequential impact.**

10. Ground No. 3 pertains to non-consideration of the assessee's submissions made vide dated: 06.01.2023, 09.10.2023, 23.01.2024 and 04.03.2024. On this issue we have gone through the factual paper book submitted by the assessee, wherein it is submitted before us in the form of screen shots of reply uploaded (Copies of replies also submitted before us). It is observed that the contentions raised by the assessee are correct and the order passed by the Ld. PCIT (Central), Jaipur was being passed without due consideration of the assessee's submission and certainly a serious violation of the Principle of the Natural Justice. **In the**

result, Ground No. 3 raised by the assessee is also allowed and order declared to be bad in law, as the same violated the Principle of Natural Justice.

11. Rest of the grounds are not adjudicated as the same are academic now in the light of our findings (supra) and Ground Nos. 1, 2 and 3 raised by the assessee are already been allowed.

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

Order pronounced in the open court on 30th day of December 2024.

Sd/-

(Dr. S. SEETHALAKSHMI)

JUDICIAL MEMBER

Jaipur, दिनांक / Dated: 30/12/2024

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)

ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	30.12.2024		Sr.PS/PS
2	Draft Placed before author	30.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

