

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH

**Before: Dr. BRR Kumar, Vice President
And Ms. Suchitra Kamble, Judicial Member**

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| ITA No. 1078/Ahd/2024 Assessment Year 2018-19 |
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| Chandrakant Vallabhbhai Koladia, 201-202 Yug Co-op Hsg. Society, Nr. Jaldhara Chokdi GIDC, Ankleshwar-393002 PAN: AJWPK6597K (Appellant) | Vs | The PCIT, Central Circle-1, Vadodara (Respondent) |
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**Assessee by: Shri Rasesh Shah, A.R.
Revenue by: Shri Prathvi Raj Meena, CIT-D.R.**

Date of hearing : 13-01-2025
Date of pronouncement : 04-02-2025

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed against the order dated 19-03-2024 passed by PCIT(Central), Surat At Vadod for assessment year 2018-19.

2. The grounds of appeal are as under:-

“1. In the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s. 263, although the assessment order passed u/s. 143(3) of the I. T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the order passed u/s. 143(3) with a direction to the assessing officer as per para no. 9 of the revision order to pass fresh assessment order after taking into consideration, the issues as may be considered together with the issues discussed in order.

3. It is therefore prayed that above order passed by Pr. CIT u/s. 263 may please be quashed or modified as your honours deem it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. The assessee filed return of income for assessment year 2018-19 on 31-08-2018 declaring total income of Rs. 1,23,69,720/-. The case was selected for scrutiny and scrutiny assessment u/s. 143(3) of the Income Tax Act was finalized on 28-05-2021 determining total income at Rs. 1,23,69,720/-. The Pr. CIT observed that during the course of survey proceedings, a diary was found and the statement recorded during the survey, the assessee accepted unaccounted income of Rs. 54,14,166/- which were not reflected in the regular books of accounts. The Pr. CIT further observed that the assessee declared gross income of Rs. 1,25,29,720/- in the return of income filed for the year under consideration including additional income of Rs. 55,14,000/- declared during the course of survey. During the course of survey proceedings, the assessee admitted the cash payment of Rs.

7,60,000/- for construction and furniture of his house out of the unaccounted income which was recorded in the regular books of accounts and declared as income from other sources in Part B-4 of the ITR as per the observation of the Pr. CIT in para 2 of order u/s. 263.

3.1 After issuing notice dated 01-03-2024 u/s. 263 of the Act, the assessee filed reply dated 07-03-2024. The Pr. CIT held that since during survey proceedings, the assessee admitted that the impounded diary notarized as annexure BF-1 is his personal diary and has no relation with the company (answer to question no. 8) and the payments are related to construction and furniture of his house, no residential house at Ankleshwar. The Pr. CIT held that the assessee has not submitted any details of chemical trading activity in respect with whom the assessee was trading and which assessee was trading and whether such chemicals were purchased and the mode of the payment of such purchase along with whom the purchases were made/mode of receipt of the sale consideration. Therefore, the Pr. CIT held that the assessee failed to adduce any evidence to prove that the income was earned from regular business activity.

3.2 The Pr. CIT further held that the assessee is director of M/s. Siddharth Interchem Pvt. Ltd. and declared income of Rs. 71,10,600/- under the head income from salary on account of being full time director for assessment year 2018-19. On account of disclosure made during survey, the assessee offered Rs. 55,14,000/- in the return of income and has given the break up being Rs. 47,54,000/- under the head income from business and profession and Rs. 7,60,000/- under the income from other sources (including Rs.

8,65,120/-). The Pr. CIT subsequently held that recording of entries in the books of accounts without any corroborative evidence to support such entries and offering same to tax as income in the return of income would not meet the conditions of recording any accounts and offering satisfactory explanation with regard to nature and source thereof. The Pr. CIT held that such income falls under residential head of income and not under the head business income.

3.3 The Pr. CIT held that in the present case, the assessee offers suo moto income while filing return of income for which no valid piece of evidence such as purchase bill, mode of payment etc. qua the excess stock has been furnished, thereby failed to explain source of excess stock admitted in the course of survey. The onus of explaining source of excess stock as per provisions of section 69B of the Act always lies with the assessee. The assessee failed to submit details such as names/identity of the sellers from whom chemicals were purchased for the trading, when it was purchased, purchase bills, mode of payment for such purchases, source of payment for such purchases etc and names/identity of the purchasers to whom chemicals were sold for the trading, when it was sold, sale bills, mode of receipt for such sale consideration, etc. and details of brokerage income from whom received, the mode of receipt and evidences thereof etc. (as per page no. 12 of the Section 263 order dated 19.03.2024 of the PCIT)

3.4 The Pr. CIT held that under the provisions of section 69A of the Act, the initial onus by explaining source of money is cast upon the assessee. The assessee cannot shift its onus on the Assessing Officer without placing valid

piece of evidence. Thus, in the present case, the assessee had unaccounted money for which the assessee had no explanation with corroborative evidences which were required to establish the source of such income. Hence, the provisions of section 69A of the Income Tax Act are applicable and also the provisions of section 115BBE of the Act are also applicable as on the amount unexplained money, the taxability is determined u/s. 115BBE. The assessee paid the taxes on the normal rate of taxes and without any proper verification, the Assessing Officer also taxed the income at normal rate of taxation without invoking the provisions of section 115BBE of the Act. Thus, the Assessing Officer without proper verification and inquiry and without application of his mind has taxed the additional income disclosed by the assessee of Rs. 55,14,166/- of which Rs. 7,60,000/- was incurred as personal expenditure at normal rate of taxes and without invoking the provisions of section 115BBE of the Act.

3.5 The Pr. CIT therefore held that the assessment order u/s. 143(3) of the Income Tax Act dated 28-05-2021 is erroneous and prejudicial to the interest of revenue and set aside the said assessment order with a direction to the Assessing Officer to pass fresh assessment order after taking into consideration the issues discussed in the order u/s. 263 of the Act.

4. Aggrieved by the order u/s. 263 of the Act, the assessee has filed appeal before the ITAT.

5. The Id. A.R. submitted that the Pr. CIT erred in passing the order u/s. 263, although the assessment order passed u/s. 143(3) of the Act was neither

erroneous nor prejudicial to the interest of the Revenue. The Id. A.R. submitted that the issue discussed by the Pr. CIT u/s. 263 of the Act are already dealt by the Assessing Officer in the assessment proceedings u/s. 143(3) of the Act thereby calling upon the details related to the survey proceedings including that of copy of trading, profit and loss account and balance sheet along with schedules, tax audit report u/s 44AB in Form 3CB/3CD, professional trial plans, profit and loss account and balance sheet for the period of 01-04-2017 to date of survey i.e. 13-03-2018 and from date of survey 31-03-2018. The Assessing Officer during the assessment proceedings also has asked for the details of all the business concerns associated with the assessee along with assessee ledger account appearing in the books of associated concerns. The Assessing Officer also called upon the unsecured loans of sundry creditors, sundry debtors along with opening stock and closing stock. The Assessing Officer also called upon the trading receivables exceeding Rs. 1,00,000/-. The questionnaire to the notice dated 12-04-2021 issued u/s. 142(1) specifically called upon the details which is mentioned in query/questionnaire no. 20 related to impounded material i.e. annexure BF-1. The assessee has replied the same vide letter dated 02-05-2021 and as relates to the said query has given the supporting documentary evidences. The Id. A.R. submitted that the issue was already verified by the Assessing Officer and has rightly been dealt by the Assessing Officer. The order of the Pr. CIT u/s. 263 is only that of second opinion and there is no prejudice to the interest of revenue even if the normal tax rate has been applied by the Assessing Officer.

6. The Id. D.R. submitted that the Assessing Officer was very well aware of the submission taken into consideration during the survey proceedings and in fact during the survey proceedings impounded material i.e. annexure BF-1 categorically has been admitted and in fact the assessee without any hesitation offered the said component to the income. But if the survey would have not been taken into place, the assessee would have been scot free. But here in the present case, the Assessing Officer failed to recognize this and has not been cognizance of Section 68 r.w.s. 115BBE of the Act. Therefore, the Id. D.R. submitted that proceedings u/s. 263 invoked by the Pr. CIT is justifiable. Besides this, the Id. D.R. relied upon the decisions of the Rajkot Tribunal and Ahmedabad Tribunal in cases of Vijubha Jitubha Jadeja vs. PCIT (2023) 154 taxmann.com 615 and Shiv Shakti Enterprise vs. PCIT (2023) 157 taxmann.com 492 respectively.

7. We have heard both the parties and perused all the materials available on record. It is pertinent to note that at the time of assessment proceedings the query at questionnaire no. 20 of the notice u/s. 142(1) dated 12-04-2021 was more specifically in relation to survey action conducted at the business premises of M/s Siddaath Interchem Pvt. Ltd. and the impounded material found (Annexure BF-1). The Assessing Officer also called upon the details of disclosure made in respect of unaccounted income in cash during survey proceedings. The assessee while answering the queries/questionnaire has given the details of income declared and tax paid for this Assessment Year as well as other three Assessment Years. The income declared in A.Y. 2018-19 during the survey was 55,14,000/- and tax paid was 41,73,786/- . Thus, the assessee admitted the income before the Assessing Officer. In fact, the

assessee declared the said income on the very same day when the survey which was conducted on the assessee's business premises.

7.1 The Ld. DR has relied upon the decision of Hon'ble Apex Court in case of D.N. Singh vs. CIT 454 ITR 595 but this will be applicable if the merits of unexplained money (Bitumen) u/s 69A should be taken into account or not and the said decision ultimately held in favour of the assessee, but ultimately it was on merit and not on the point of validity of Section 263 of the Act. In fact, in the said case, there is a finding that Section 69A was applied in respect of the income which has not been reflected in the books of accounts but found to / belong to the assessee.

7.2 But in present assessee's case, the assessee when filed the income in respect of notice u/s. 143(2) thereby declaring gross income of Rs. 1,25,29,720/- also included additional income of Rs. 55,14,000/-. Hence, the income was explained and therefore the Assessing Officer has taken a conscious decision thereby not invoking Section 68 along with section 115BBE of the Act. Thus, the observation made by the Pr. CIT is second opinion which is not allowable while invoking Section 263 of the Act. The decisions relied by the Id. D.R. in para 8 has categorically mentioned that the assessee has remedy by way of right to appeal against orders prejudicial to it and the same can be dealt with in appeal only. The Tribunal further observed that the PCIT in revisionary provisions u/s. 263 of the Act cannot adjudicate/deal with issues decided by the Assessing Officer to the purchases of the assessee. After giving the said finding, the Tribunal has gone into the merits of the assessment proceedings which is not the

scope/purview of section 263 of the Act and in what context the Tribunal has gone into the merits is not explained by the Id. D.R. at this juncture. In case of Shiv Shakti Enterprise (supra) where the Tribunal has directly come to the merits about the applicability of Section 69A read with Section 115BBE but has not discussed the issue related to the proceedings u/s. 263 of the Act. Thus, these case laws relied by the Id. D.R. will not be applicable under the present proceedings u/s. 263 of the Act as the provisions u/s. 263 are revisionary power and not a review power. Question of applicability of tax rate will come into picture if the assessee would have not declared prior to the conclusion of the assessment proceedings but in the present case on the survey proceedings itself, the assessee has declared the income and the same is not denied by the Pr. CIT being the income from business out rightly only has given his opinion it should have been treated as income from other sources. In case of PCIT vs. Dharti Estate (R/Tax Appeal No. 72 of 2024 order dated 23.01.2024), the Hon'ble Gujarat High Court held as under:

“4. As observed by the Tribunal, the Assessing Officer has made sufficient inquiry and as such during the course of regular assessment under Section 143(3) of the Act, by assessing the income of Rs.41.78 lakhs which included the income surrendered pursuant to the search of Rs.22.19 lakhs as current year's business income undefined offered to tax by charging tax and interest at normal rates and raised new demand. Notice was also issued by the Assessing Officer under Section 154 of the Act on the ground that the tax rate on the surrendered income was to be charged as per Section 115BBE, however it was found that there was nothing stated in either pre-amended or post-amended provision of Section 115BBE that when the assessee surrendered undisclosed income during the search action for the relevant years, higher tax rate is required to be charged.

5. In the facts of the case, during the course of assessment proceedings, as the Assessing Officer had made due inquiries and was aware of the fact that the assessee had disclosed the income as business income in his return of income in respect of which it had claimed expenditure in relation to interest and remuneration paid to partners and after making inquiries, Assessing Officer allowed the claim of the assessee by treating undisclosed income found during the survey as assessee's business income and in view such finding of facts arrived at by the Tribunal, we are of the opinion that no substantial question of law arises from the impugned order of the Tribunal.

6. The Appeal being devoid of any merit, is accordingly dismissed.”

Thus, the purview and scope of section 263 do not envisaged the Pr. CIT to go into the adjudication on merit of the assessment which is made by the Assessing Officer after proper verification of the evidences. The Pr. CIT has to only look into the issue whether the assessment order is erroneous or prejudicial to the interest of revenue or not. Therefore, the Pr. CIT was not right in invoking Section 263 of the Act in the present assessee's case.

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

Order pronounced in the open court on 04-02-2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT
Ahmedabad : Dated 04/02/2025

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद