

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.105/Ahd/2021
(Assessment Year: 2015-16)

Dineshbhai Dahyabhai Patel, Devasya Kidney Hospital, 3, Panchalnagar Society, Nr. Bhamjipura Cross Roads, New Vadaj Roads, Ahmedabad-380013	Vs.	Deputy Commissioner of Income Tax, Circle-4(2), Ahmedabad
[PAN No.AAMPP2178A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
Respondent by:	Shri R. N. Dsouza, CIT DR

Date of Hearing	26.09.2024
Date of Pronouncement	09.10.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Ahmedabad-3, vide order dated 30.03.2021 passed for A.Y. 2015-16.

2. The Assessee has taken the following grounds of appeal:-

“1. The Principal Commissioner of Income Tax -3, Ahmedabad, erred in passing the order under section 263 of the Income Tax Act, 1961, setting aside the order of Assessing Officer passed under Section 143(3) r.w.s. Section 147 of the Income Tax Act, 1961, which is requested to be deleted.”

3. The brief facts of the case are that the assessee filed his return of income on September 28, 2015, declaring a total income of Rs. 53,76,830/-. The initial assessment under section 143(3) of the Income Tax Act was completed, resulting in a total income assessment of Rs. 54,06,208/-, which

included an addition of Rs. 29,378/- due to income mismatch per Form 26AS. Subsequently, the assessment was reopened under section 147 and finalized on December 2, 2019, resulting in a revised total income of Rs. 67,06,230/-. This revision included an addition of Rs. 1,56,122/- under section 56(2)(vii) and Rs. 11,43,895/- attributed to short-term capital gains. During the review of the case records, Principal CIT noted that the cash book for the relevant year reflected multiple cash payments exceeding Rs. 20,000/- to various individuals on the same day, which contravened section 40A(3) of the Act. These cash transactions included payments for petrol, medical expenses, and conference fees, among others, totaling to Rs. 40,31,520/-. Section 40A(3) disallows deductions for expenditures made in cash exceeding specified limits unless certain exceptions apply, which were found not to be relevant in this instance. Principal CIT observed that the Assessing Officer raised the issue of disallowance under section 40A(3) during assessment proceedings, but the assessee only provided cash book without sufficient corroborative evidence to substantiate the claims. The Assessing Officer, having not verified the entries or collected additional facts, finalized the assessment based solely on the cash book by the assessee. This lack of inquiry indicated that the assessment order was erroneous and prejudicial to the interests of the Revenue. Consequently, the Principal Commissioner deemed the original assessment order erroneous and prejudicial to the interests of the Revenue under Explanation 2(a) of section 263 of the Act. A show-cause notice was issued on March 19, 2021, requesting the assessee to justify why the disallowance should not be made. As per Principal CIT, the assessee failed to respond adequately. Upon reviewing the case, Principal CIT held that the Assessing Officer had not

conducted necessary inquiries regarding the cash transactions and the legitimacy of the cash book entries. This failure constituted grounds for revision under section 263, as similar precedents established that assessments which are lacking adequate inquiry are erroneous and prejudicial to interests of Revenue. Accordingly, Principal CIT held that the assessment order dated December 2, 2019, was erroneous and prejudicial to the interests of the Revenue due to the absence of proper inquiry and verification. The assessment order was therefore set aside, with directions for the Assessing Officer to conduct the required inquiries, verify the issues raised, and conduct the assessment de novo.

4. The assessee is in appeal before us against the order passed by Principal CIT u/s 263 of the Act.

5. Before us, the Counsel for the assessee submitted that the PCIT has passed an ex-parte order without adhering to the principle of natural justice. The Counsel for the assessee submitted that the revisionary proceedings under Section 263 of the Act have been concluded by the PCIT only within a period of 12 days, even though more than one year's time was available with the PCIT to pass the order. The Counsel for the assessee invited our attention to the following dates and events so as to appreciate the controversy in hand, from a correct perspective:

Date	Event
02.12.2019	Assessment Order u/s 143(3) r.w.s. 147 was passed
19.03.2021	Show cause notice u/s 263 was issued
30.03.2021	Order u/s 263 was passed
31.03.2022	Last date for passing order u/s 263

5.1 Therefore, from the perusal of the table, it was pointed out that the revisionary proceedings under Section 263 of the Act were effectively completed by PCIT only within a period of 12 days, right from issuance of show-cause notice under Section 263 of the Act on 19.03.2021 and the final passing of the order under Section 263 of the Act on 30.03.2021. This is despite the fact that the PCIT had more than one year's time i.e. he had time till 31.03.2022 to pass the order under Section 263 of the Act. Therefore, it was submitted that the PCIT has shown "undue haste" in passing order under Section 263 of the Act and he should have issued another notice giving more time to the assessee to present the case on merits. Secondly, the Counsel for the assessee submitted that while passing the 263 order, there was apparent "non-application of mind" by the PCIT while passing the 263 order since he made reference to claim of "deduction under Section 54B" of the Act, whereas, as a matter of fact, the assessee has not raised any such claim. It was pointed that even the show-cause notice under Section 263 of the Act did not contain any reference to claim under Section 54B of the Act. Therefore, not only has PCIT shown undue haste in passing the 263 order but there has been an apparent non-application of mind at the time of passing of order by PCIT. Thirdly, the Counsel for the assessee submitted that the order has been passed by PCIT under Section 263 of the Act on an incorrect presumption of facts. The Counsel for the assessee submitted that the PCIT has erred in observing that assessee has made payments exceeding Rs. 20,000/- on a single day, whereas the fact of the assessee's case is that assessee has not made even a single payment in excess of Rs. 20,000/- and all cash payments have been made by the assessee within the prescribed limit. The assessee has passed a single

“cumulative” entry for payment of expenses, for the same period. The Counsel for the assessee submitted that copy of cash book (reproduced before us at Pages 47-200 of Paper Book) was duly submitted by the assessee before the Assessing Officer and the assessee has not violated the provisions of Section 40A(3) of the Act. The Counsel for the assessee submitted that the aforesaid facts were submitted before the Assessing Officer at assessment stage and it was after taking into consideration the facts of the assessee’s case that no disallowance was made by the Assessing Officer under Section 40A(3) of the Act. The Counsel for the assessee further submitted that the issue on hand had been examined in detail at the stage of original assessment, which is evident from notice dated 03.04.2019 at point “ii” (pages 42-44 of the Paper Book), assessee’s reply dated 11.04.2019 (Query 2) at pages 45-46 of the Paper Book. Therefore, the Counsel for the assessee submitted that when this issue has been examined in detail at the stage of original assessment, it is not open to the Department to invoke revisionary jurisdiction under Section 263 of the Act. Lastly, the Counsel for the assessee submitted that this can be at best be a case of “inadequate” enquiry by the Assessing Officer but it is definitely not a case of “lack of enquiry by the Assessing Officer”, as alleged by PCIT in the 263 order. The Counsel for the assessee submitted that adequacy of enquiry cannot be the basis for initiating proceedings under Section 263 of the Act, the same being a purely subjective issue. Accordingly, in light of the facts placed on record and the judicial precedents on the subject, the Counsel for the assessee submitted that the matter may be set-aside to the file of the PCIT so as to allow adequate opportunity of hearing to the assessee to

present it's case on merits and thereafter, pass appropriate orders in accordance with law.

6. In response, the Ld. D.R. placed reliance on the observations made by the Ld. PCIT in the 263 order.

7. We have heard the rival contentions and perused the material on record.

8. On going through the facts of the instant case, we observe that the entire proceedings under Section 263 of the Act were initiated and completed by the PCIT within a period of only 12 days with the first show-cause notice under Section 263 of the Act having been issued on 19.03.2021 and the order have not been passed by the PCIT on 30.03.2021. Further, it is observed that the last date of passing of the order under Section 263 of the Act was 31.03.2022 i.e. the PCIT had one year's time to pass the order under Section 263 of the Act. Therefore, looking into the instant facts, it is difficult to comprehend as to why were the entire proceedings completed by the PCIT within such a short span of time. Further, on going through the contents of the 263 order, the PCIT has not pointed out as to how there was lack of enquiry on the part of the AO while allowing the claim of the assessee. The PCIT has made an observation that the AO failed to call for vouchers and verify the genuineness of the cash book with corroborative evidences. However, this may be a ground for disallowance of expenses on grounds of genuineness, but so far as the payment in excess of Rs. 20,000/- in terms of Rule 6DD is concerned, this query would have no bearing on the issue. Further, the Counsel for the assessee has submitted before us that if

- 7-

give an opportunity, the assessee is in a position to demonstrate that the assessee has not made any payment in excess of Rs. 20,000/- in violation of Section 40A(3) of the Act. Accordingly, looking into the instant facts, the matter is restored to the file of Principal CIT to hear the matter afresh, after giving due opportunity of hearing to the assessee, and thereafter pass appropriate orders in accordance with law.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on	09/10/2024
---	-------------------

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/10/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad