

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.223/Ahd/2021
Assessment Year: 2015-16**

Dasrathsinh Ghanshyamsinh Chudasama, A-56, Marketing Yard, Chhatra, Bhavnagar, Gujarat – 364 004. [PAN – AGBPC 3921 H]	Vs.	The Principal Commissioner of Income Tax-6, Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Dhrunal Bhatt, AR	
Revenue by	Shri Durga Dutt, CIT-DR	
Date of Hearing	30.05.2024	
Date of Pronouncement	08.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 30.04.2020 passed by the PCIT-6, Ahmedabad for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal :-

- “1. The grounds of appeal mentioned hereunder are without prejudice to one another.*
- 2. The order passed by learned Pr. CIT-6, Ahmedabad is bad in law and void ab initio as the same has been passed after the limitation period.*
- 3. The learned Pr. CIT-6 failed to consider the fact that the issue under revision on additions/disallowances is already before the appellate authority and therefore such issue is beyond the jurisdiction by virtue of Explanation 1(c) of Section 263 of the Act.*

4. *The order passed u/s.263 of the Act by the learned Pr. CIT is totally unjustified on facts as also in law therefore the same may kindly be quashed."*

3. The return of income was filed by the assessee on 19.10.2015 declaring total income of Rs.(-) 31,52,060/-. The same was processed under Section 143(1) of the Income Tax Act, 1961. The case was selected for limited scrutiny. Notice under Section 143(2) of the Act was issued on 21.09.2016. The Assessing Officer passed Assessment Order dated 27.11.2007 thereby making addition in respect of interest free advance amounting to Rs.3,60,000/-, addition on cash gift amounting to Rs.34,00,000/-, addition on unsecured loan amounting to Rs.19,50,000/- and addition on cash deposit in Bank amounting to Rs.1,63,49,423/-. Thus, the Assessing Officer assessed the total income of the assessee at Rs.1,89,07,363/-. The PCIT issued show cause notice under Section 263 of the Act dated 28.02.2020 in respect of the observation that during the assessment proceedings, the assessee failed to submit any documentary evidence regarding the source of cash deposit in the Bank and gift received in cash and, therefore, Section 115BBE of the Act thereby making addition made under Section 68 should have been taxed at 30% and not as per the slab rates. Thus, the PCIT passed order under Section 263 of the Act vide order dated 30.04.2020 thereby directing the Assessing Officer to calculate tax as per Section 115BBE of the Act.

4. Being aggrieved by the Order under Section 263 of the Act, the assessee filed appeal before us.

5. The Ld. AR submitted that in respect of the Assessment Order passed by the Assessing Officer thereby making addition in respect of cash gifts, unsecured loans and cash deposits in Bank, the assessee is before the CIT(A) and wherein the CIT(A) passed ex-parte order which was restoked back by the ITAT to the file of the CIT(A). The Ld. AR submitted that the show cause notice of the PCIT issued under Section 263 of the Act did not categorically give the finding that the Assessment Order is erroneous and prejudicial. The Ld. AR submitted that the notice issued is vague and factually incorrect and does not categorically conclude that the Assessment Order is erroneous and prejudicial and hence Section 263 Order needs to be quashed. The Ld. AR further submitted that the PCIT in paragraph no.3 observed that the assessee

has not submitted any documentary evidence and in paragraph no.4 he stated that the Assessing Officer has without application of mind and without verification and accounts. These factual findings are incorrect on the part of the PCIT. The fact is that the Assessing Officer has made detailed enquiry, verification of books of accounts at length including working out peak balance while making addition of Rs.1.63 crores in respect of cash deposits and he also examined the peak balance. So, the premises based on which is made itself on shaky ground. The process of initiating action under Section 263 of the Act is very casual which resulted in conclusion drawn by the PCIT to be inconclusive. The Ld. AR further submitted that the PCIT has to be absolutely clear that the order is both erroneous and prejudicial at the time of the issue of notice. In absence of this unequivocal conclusion the exercise opens doors of review of the earlier order passed by the Assessing Officer. The Ld. AR relied upon the decision of CIT vs. Vijay Kumar Koganti [2020] 120 taxman.com 430, Food Corporation of India Limited vs. State of Punjab and Others (AIR 2001 SC 250). The show cause notice is the sole basis on which the revisionary proceedings are initiated and the same is without the force of conviction and, therefore, the entire proceedings become void ab initio. The Ld. AR submitted that consequent to the order of the CIT(A), the order of the Assessing Officer merges with the order of the CIT(A) and hence the PCIT cannot exercise jurisdiction under Section 263 of the Act. In this case, the CIT(A) has already passed an order before the issue of notice to the assessee. The AR relied upon the decision in case of CIT vs. Slum Rehabilitation Authority [2019] 107 taxmann.com 18 (Bombay) and CIT vs. Smt. A.S. Narendrakumar [1988] 41 Taxman 226 (Bombay). Since the assessee is already before the CIT(A), order under Section 263 of the Act itself is bad in law and the powers of the CIT(A) are coterminous with that of Assessing Officer and consequently the CIT(A) applied Section 115BBE and gave direction to the Assessing Officer accordingly. Consequently, both the PCIT and CIT(A) cannot have jurisdiction on the same issue. The Ld. AR relied upon the decision of Hon'ble Apex Court in the case of Jute Corporation of India Limited vs. CIT [1990] 53 Taxman 85. The Ld. AR submitted that he intended that revisionary proceeding is that the income should be taxed under Section 115BBE of the Act and there is no change in assessed income. Thus, the observation of PCIT is merely to rectify the error of not taxing income under Section 115BBE of the Act. The Ld. AR relied upon the Tribunal's decision in the case of Narayan Tatu Rane vs. ITO. If the Revenue could have rectified

this error, it should have been done under Section 154 of the Act. The Ld. AR further submitted that order under Section 263 of the Act was passed without giving opportunity of being heard and the same is against the principles of natural justice and hence null and void. The order was passed on 30.04.2020 after the lockdown was imposed from 24.03.2020 and on account of Covid the limitation period got extended from 15.03.2020 to 28.02.2022. This should apply to submissions to be made by the assessee as well. But the PCIT provided opportunity to make submission before 25.03.2020 and as the assessee failed to respond, the PCIT passed order dated 30.04.2020. Order under Section 263 of the Act exceeds the show cause notice issued in the sense that in paragraph no.4 there is no categorical finding that tax should be calculated at 30% which has been the finding of the PCIT in his 263 order. The Ld. AR relied upon the decision of Hon'ble Apex Court in case of Amitab Bachchan, 384 ITR 200, decision of Hon'ble Apex Court in the case of Malabar Industries vs. CIT [2000] 109 Taxman 66 (243 ITR 83)

6. The Ld. DR submitted that the Assessing Officer in the Assessment Order passed under Section 143(3) of the Act should have been made addition in consonance of Section 68 of the Act and thereby the tax should have been calculated as per Section 115BBE of the Act which the Assessing Officer failed to do so and, therefore, the assessment is erroneous and prejudicial to the interest of the Revenue. The Ld. DR further submitted that the PCIT has rightly invoked Section 263 of the Act and directed correctly to the Assessing Officer to calculate the tax as per Section 115BBE of the Act.

7. We have heard both the parties and perused all the relevant material available on record. There is a delay of 451 days in filing the present appeal for which the assessee has given explanation that major period of the delay comes during the Covid period and, therefore, the delay may be condoned. After going through the records, it appears that the order was passed by the PCIT on 30.04.2020 when the lockdown in respect of Covid Pandemic was declared by Government of India and, therefore, the assessee will not be held personally responsible for the delay. Hence, the delay is condoned. As regards to invoking of Section 263 of the Act, the PCIT has not pointed out the aspect of Assessment Order being erroneous and prejudicial to the interest of

the Revenue. In fact, all the additions made by the Assessing Officer are in consonance with the Income Tax Statute. The calculation of tax as per Section 115BBE of the Act is a mistake which can be rectified under Section 154 of the Act and, therefore, the provisions of Section 263 of the Act cannot be invoked in this scenario as it is not derived from Section 263 of the Act where the mistake in the Assessment Order carried out by the Assessing Officer can be rectified. Thus, invocation of Section 263 of the Act itself is not justifiable in the present assessee's case.

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

Order pronounced in the open Court on this 8th August, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 8th August, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad