

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 644/Ahd/2024
Assessment Year : 2013-14**

Kaivan Jitendrakumar Shah HUF, 27A, Anmol, Maharashtra Society, Nr. Lions Hall, Mithakali, Ellisbridge, Ahmedabad-380009 PAN : AAHHK 9488 B	Vs	The Pr. Commissioner of Income Tax, Ahmedabad-1, Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Sulabh Padshah, AR
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 12/08/2024
घोषणा की तारीख /Date of Pronouncement : 14/08/2024

आदेश/O R D E R

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order passed by the learned Principal Commissioner of Income Tax, Ahmedabad-1 [hereinafter referred to as "PCIT" in short] dated 27.03.2024, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" in short], for the Assessment Year (AY) 2013-14.

2. The brief facts of the case are that the return of income for AY 2013-14 was filed by the assessee on 22.09.2013 declaring a total income of Rs.83,72,000/-. Subsequently, the case was reopened under Section 147 of the Act with the issuance of notice under Section 148 of the Act dated 30.03.2021. The revised assessment was completed u/s 147 r.w.s. 144B of the Act dated 21.03.2022 and the return of income as shown by the assessee was accepted. The assessment record was subsequently called for by the ld. PCIT wherein he noticed that the issue on which the case was reopened was not properly

examined by the AO. The case was reopened to examine the accommodation entry of Rs. 35,04,500/- taken by the assessee from paper/dummy company controlled and managed by an entry operator Shri Rajiv Shah (Jignesh Shah & Sanjay Shah Group). According to the Id. PCIT, in spite of this specific reason for reopening no addition was made and, therefore, the order of the Assessing Officer was treated as erroneous and prejudicial to the interest of the Revenue. Accordingly, the Id. PCIT had passed the impugned order directing the Assessing Officer to complete the assessment *de novo* after proper examination of the issues and duly examining the facts of the case. Aggrieved by the order passed by the Id. PCIT, the assessee is in appeal before us.

3. The assessee has taken following grounds of appeal:-

"1. The learned Pr. C.I.T. has erred in passing Order u/s. 263 without jurisdiction and appropriate powers available under the Act. It is submitted that the order passed u/s. 263 is bad in law and void ab initio.

2. The learned Pr. C.I.T. has erred in invoking the provisions of Section 263 of the Income Tax Act on the ground that order passed by the A.O. u/s 147 r.w.s. 144B of the Act for A.Y. 2013-14 is erroneous and prejudicial to the interest of revenue. It is submitted that the order passed by the learned A.O. is neither erroneous nor prejudicial to the interest of revenue. On facts and circumstances of the case, the order passed by Pr. C.I.T. u/s 263 of the Act is completely incorrect both on facts and in law and the same be quashed and set aside accordingly.

3. The learned Pr. C.I.T. has erred in holding that the Assessing Officer has not verified the issue of accommodation entries amounting to Rs.35.04,500/-. It is submitted that the case being reopening of assessment had reopened on ground of accommodation entries in form of fictitious loan received of Rs 35,04,500/- and after verification of objection filed against such reopening and after due application of mind, the Ld. AO has passed the order accepting the contention of the Appellant. It is therefore submitted that is no question of any lack of inquiry or verification on the part of assessing officer and further under assessment of income. In view of this, order passed u/s 263 being totally illegal and unjustifiable be set aside and Assessment Order passed u/s 147 r.w.s 144B of the Act be restored. The same please be held accordingly.

4. *The learned Pr. C.I.T. has erred in holding that the Assessing Officer has not verified the issue of accommodation entries of Rs. 35,04,500/- with Jignesh Shah. It is submitted that during reopening proceeding while granting the approval u/s 151 of the Act, the Pr. C.I.T. has himself confirmed the information about accommodation entries in form of fictitious loan of Rs. 35,04,500/-, whereas, now he turned up and wrongly invoked the provisions of Section 263 of the Act under shelter that the AO has not verified issue properly. Thus the actions of Pr. CIT u/s 263 of the Act is itself contradictory to his own earlier action, which is not at all permissible in the eyes of law. In view of this, the order passed u/s 263 of the Act being incorrect and illegal and deserves to be quashed.*

5. *The learned Pr. C.I.T. has further erred in invoking provisions of Section 263 on basis of different facts during proceeding. It is submitted that in notice u/s 263 was issued on the ground of accommodation entry transaction in the form of fictitious loan of Rs. 35,04,500/- from Dishman Group, whereas the order u/s 263 was passed on basis of sale of penny stock scrip of Safal Herbs Ltd. Rs. 35,04,500/- through Jignesh Shah/Sanjay Shah/Rajiv Shah Group. Thus, the Ld Pr. CIT himself is contradictory about facts of the case and such action of invoking provision u/s 263 of the Act are itself illegal and unjustifiable in the eyes of law. The same be held accordingly.*

6. *The order passed by the learned Pr. C.I.T. is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*

7. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing."*

4. Shri Sulabh Padshah, Id. AR of the assessee submitted that the issue on which the case was reopened was duly examined by the AO in the course of assessment proceedings. He had drawn our attention to notice u/s 142(1) of the Act dated 28.01.2022 issued by the Assessing Officer, wherein the reason for reopening was reproduced and the assessee was required to make the submissions. The Id. AR submitted that a detailed reply was filed by the assessee vide letter dated 24.02.2022 which was duly considered by the Assessing Officer and only thereafter no addition was made by him. The Id. AR contended that the order of the Assessing Officer was not erroneous as he had passed the order after examining the facts of the case and duly

considering the reply of the assessee. Therefore, the ld. PCIT was not correct in initiating proceedings u/s 263 of the Act on the ground that the matter was not examined by the Assessing Officer. The ld. AR further pointed out that identical issue was involved in assessee's case for AY 2014-15 as well. In that year also, the case was reopened for the same reason and no addition was made by the Assessing Officer. The ld. PCIT had also initiated proceedings u/s 263 of the Act for AY 2014-15 which was dropped vide the order dated 27.03.2024 for the reason that the reopening was made on incorrect formation of belief. The ld. AR submitted that in view of these facts, the ld. PCIT was not correct in setting aside the order for AY 2013-14. He also relied upon the following decisions in support of his contention that the order of the Assessing Officer was not erroneous and prejudicial to the interest of the Revenue:-

1. *Dee Are Texfab Pvt.Ltd vs vs PCIT (ITAT Ahmedabad) (Order Dt 25-7-2024)*
2. *HBC Lifesciences Private Limited vs PCIT (ITAT Ahmedabad) (Order Dt 5-7-2024)*
3. *M/s. Pramukh Realty vs PCIT (ITAT Rajkot) (Order Dt 21-03- 2023)*
4. *CIT vs Kamal Galani (Guj. HC) (Order Dt 11-06-2018)*
5. *PCIT vs Klaxon Trading Pvt Ltd (Delhi HC) (Order Dt 29-11- 2023)*
6. *PCIT Vs Shivshahi Punarvasan Prakalp Ltd (Bombay HC) (Order Dt 5-8-2022)*
7. *Ahlcon Parenterals (India) Ltd Vs PCIT (ITAT Delhi) (Order Dt 21-05-2024)*
8. *Shri Jignesh Lilachand Shah Vs PCIT (ITAT Ahmedabad) (ITA No. 149/Ahd/2021) (Order Dt 21-3-2023)*

5. Per contra, Shri Sudhendu Das, ld. CIT-DR, submitted that the ld. PCIT had given a categorical finding that the order of the Assessing Officer was erroneous since the information available in the "Insight Portal" of the

Department was not properly examined by the Assessing Officer in the course of assessment. He strongly relied upon the order of the Id. PCIT.

6. We have carefully considered the rival submissions and facts of the case. It is found that the reason for which the case for AY 2013-14 was reopened by the Assessing Officer was duly confronted to the assessee vide notice u/s 142(1) of the Act dated 28.01.2022. In fact, this reason was reproduced in the notice and the assessee was asked to explain as to why the amount of Rs. 35,04,500/- should not be added to the income of the assessee. It transpires that the information was received regarding accommodation entry taken by the assessee from paper/dummy company controlled and managed by one Shri Rajiv Shah. The assessee had filed a detailed reply dated 24.02.2022 wherein he had denied having received any amount from Shri Rajiv Shah (of Jignesh Shah & Sanjay Shah Group). In fact, the assessee had also enclosed the details of his unsecured loans and the bank book copy to establish the fact that there was no entry from anyone amounting to Rs.35,04,500/-. Further, the assessee had requested the Assessing Officer to provide the evidence for such transaction and also the supporting documents as available with the Assessing Officer in support of the information on the basis of which the case was reopened. After considering the reply of the assessee, the Assessing Officer had completed the assessment and the returned income was accepted. It is found that the issue on which the case was reopened was duly examined by the Assessing Officer in the course of assessment proceedings. The assessee had denied the alleged transaction and thereafter no evidence was brought on record by the Assessing Officer to establish the alleged transaction on the basis of which the case was reopened. No evidence in respect of the alleged transaction was provided to the assessee as requested by him. The AO had, in essence, accepted the reply of the

assessee that there was no such transaction. Under these circumstances, the order of the Assessing Officer cannot be held to be erroneous or prejudicial to the interest of the Revenue.

7. In the course of proceedings u/s 263 of the Act as well, the assessee had denied having made any transaction with Shri Rajiv Shah or Jignesh Shah or Sanjay Shah Group as referred in the notice issued by the Id. PCIT. In fact, the assessee had also requested the Id. PCIT to provide the details of the transactions on the basis of which the proceedings u/s 263 was proposed to be invoked. However, the Id. PCIT did not make any inquiry in the matter, and dismissed the objection of the assessee. The alleged transaction was categorically denied by the assessee before the Assessing Officer as well as before the Id. PCIT. It was incumbent upon the Revenue to provide the evidence on the basis of which the case was reopened by the Assessing Officer, when the transaction was out-rightly denied by the assessee. Since the matter was duly examined by the Assessing Officer in the course of assessment proceedings, we do not find the order of the Assessing Officer as erroneous and prejudicial to the interest of the Revenue. The Assessing Officer had taken a view after considering the reply of the assessee and dropped the proceeding u/s 147 of the Act, by accepting the returned income. The action of the Id. PCIT to impose his own view in the proceedings u/s 263 of the Act on the view as taken by the AO, without bringing any new fact or anything adverse on record, cannot be held as correct.

8. It has been held by the Hon'ble Jurisdictional High Court in the case of *CIT vs. Kamal Galani 95 taxmann.com 261 (Gujarat)* that once the Assessing Officer carried out detailed inquiries, it was not open for the Commissioner to reopen the issue on mere apprehension and surmises. The *Explanation-2* to

Section 263 of the Act stipulates that the order of the AO will be deemed to be erroneous and prejudicial to the interest of the revenue, if such order is passed without making enquiries for verifications which should have been made or if the order is passed allowing any relief without enquiring into the claim. This condition is not found fulfilled in this case as the AO had made detailed inquiries on the issue of accommodation entry which was denied by the assessee and no further evidence was brought on record to establish the said alleged transaction. It was held by the Hon'ble Delhi High Court in the case of *CIT Vs. Sunbeam Auto Ltd. - (2011) 332 ITR 167 (Delhi)* that one has to see from the records as to whether there was application of mind before allowing the expenditure and one has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry'. If there was any enquiry, even inadequate, that would not by itself give occasion to the Commissioner to pass order 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. The present case cannot be treated as a case of 'lack of inquiry' as the AO had examined the issue in the course of assessment proceeding. The scope of Commissioner's power under Section 263 of the Act would be available when the AO conducts no enquiry or no proper enquiry or doesn't apply his mind to the legal issues arising out of the material on record; only then the revisional power is available. In the present case, the AO did conduct proper inquiries based on which the case was reopened and had accepted the explanation of the assessee. Therefore, the Ld. PCIT was not justified in invoking the revisional jurisdiction u/s 263 of the Act and directing further inquiries or taking different view in the matter without bringing anything on record to establish that the view as taken by the AO was not correct.

9. In view of the above facts, we are of the considered opinion that the present order of the Id. PCIT is not tenable in law as the foundation to exercise the revisionary jurisdiction u/s 263 of the Act is missing in the present case. Therefore, the order of the Id. PCIT passed u/s 263 of the Act is quashed and set aside.

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

Order pronounced in the open Court on 14th August, 2024 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, Dated 14/08/2024

*BTK

Sd/-

(NARENDRA PRASAD SINHA)
ACCOUNTNAT MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि □ धिकरण □ पीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहस्रक पंजीकर (Asstt. Registrar)
आयकर □ पीलीय □ धिकरण