

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.3078/Del/2017
Assessment Year: 2012-13

Smt. Sarita Kashyap, Prop. Sneh Overseas, IX-6808, Kapoor Basti, Malhotra Gali, Gandhi Nagar, New Delhi	Vs.	Pr. CIT-19, New Delhi
PAN :BLKPS6539Q		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Umesh Takyar, Sr.DR

Date of hearing	07.03.2022
Date of pronouncement	16.03.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal has been filed by the assessee calling into question order dated 30.03.2017 passed by learned Principal Commissioner of India Tax, Delhi-19, under section 263 of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2012-13.

2. When the appeal was called for hearing, none appeared for the assessee. Perusal of record reveals that on past several occasions when the appeal was fixed for hearing, the assessee remained absent.

3. Considering the above, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative.

4. We have heard learned Departmental Representative and perused the materials on record. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed her return of income on 29.09.2012 declaring total income at Rs.21,85,050/-. The return of income filed by the assessee was selected for scrutiny and assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 23.02.2015 determining the total income of Rs.57,29,700/-. After completion of assessment, learned Commissioner (Appeals) called for and examined the assessment record in exercise of power conferred under section 263 of the Act. After verifying the record, he observed that the Assessing Officer has not made proper inquiries on the following issues:

- (i) Household expenses shown of Rs.3,50,000/- is apparently inadequate.
- (ii) During the A.Y. 2011-12, the assessee had shown G.P. @ 8.33% which declined to 6.65% during the relevant year. The explanation given by the assessee is general in nature. The AO should have called for proper explanation from the assessee and investigated the matter in depth.
- (iii) The A.O. has called for only broad details for commission/discount paid at Rs.1,39,49,992/-. The parties to whom commission/discount paid are all foreign parties to whom sales made. The A.O. should have called for the terms and agreements of sales for allowing commission/discount. Also this should have been examined with reference to preceding assessment year. This issue was the main reasons for selection of the case for scrutiny but the same has not been properly enquired and addressed.

5. Stating that while finalizing the assessment proceeding, the Assessing Officer has not properly examined these issues, learned PCIT held that the assessment order is erroneous and prejudicial

to the interest of the Revenue. Thus, after issuing the show-cause-notice and considering assessee's submissions, learned PCIT set aside the assessment order with a direction to consider the issues mentioned by him in the show-cause-notice afresh.

6. On a perusal of the impugned assessment order, which by any standard is a detailed one, it is observed that the Assessing Officer, in course of assessment proceeding has made a number of queries to the assessee on various issues. After conducting detailed inquiry and issuing questionnaire, the Assessing Officer has ultimately completed the assessment making the following additions/disallowances, aggregating to Rs. 35,44,650/-

- (i) *Disallowance of Rs.16.52,367/- out of purchases.*
- (ii) *Disallowance of Rs.6,65,283/- out of expenses of Capital nature*
- (iii) *Disallowance of Rs.5,14,916/- out of job work charges.*
- (iv) *Disallowance of Rs.7,08,485/- out Dyeing, washing, Finishing and Embroidery charges.*
- (v) *Disallowance of Rs.3,600/- of penalty expenses.*

7. Thus, a scrutiny of the assessment order would clearly reveal that it is not a case where the Assessing Officer has passed

the order mechanically without any inquiry and proper application of mind. Whereas, learned PCIT has considered the assessment order erroneous and prejudicial to the interest of Revenue as according to him, the household expenses shown at Rs.3,50,000/- is inadequate, the explanation given by the assessee regarding reduction in gross profit rate is general in nature and as regards the commission/discount of Rs.1,39,49,992/-, the Assessing Officer has called for only broad details instead of calling for terms of agreement for sale, for allowing commission/discount. Thus, from the issues noted by revisionary authority, it is very much evident that in course of assessment proceeding, the Assessing Officer, indeed, had inquired into all these issues and being satisfied with the explanation/submission of the assessee, has not made any addition/disallowance. What the revisionary authority by exercising power under section 263 of the Act desires is to substitute his own opinion/decision with that of the Assessing Officer. In fact, the revisionary authority himself has gone into the allowability or otherwise of each item of expenditure claimed by the assessee. This, in our view, is not the intent and purport of section 263 of the Act. It is a fact on record that on all the issues

raised by the revisionary authority in the show-cause-notice issued under section 263 of the Act, the Assessing Officer has conducted inquiry in course of the assessment proceeding and has decided those issues applying his own wisdom. Only because such decision of the Assessing Officer is not to the liking of learned PCIT, it cannot be said that the assessment order is erroneous and prejudicial to the interest of Revenue. It is further relevant to observe, in response to the show-cause-notice issued under section 263 of the Act, the assessee has furnished a detailed reply which has been extensively reproduced in the impugned order of learned PCIT. However, there is no speaking order of learned PCIT on various submissions made by the assessee, not only on the jurisdictional aspect but also on merits. Final conclusion of learned PCIT reads as under:

“5. After carefully considering assessee’s submission as well as AO’s report as well as all the relevant facts, details and evidence on records, I find that proper enquiries on these issues were not made by the AO, and to that extent impugned assessment order was erroneous and prejudicial to the interest of revenue. I set aside the assessment as per provision u/s 263 of the I.T. Act, 1961, for a fresh consideration on aforesaid aspects.

6. Thus, I set aside the assessment with instructions to the AO to enquire deeply into above issues and then reframe the assessment order.”

8. Thus, it is manifest, through an order bereft of reasoning, learned PCIT has rejected assessee's submission and has set aside the assessment order without any strong finding either with regard to the error in the assessment order or prejudice caused to the Revenue. Thus, in our considered opinion, the assumption of jurisdiction under section 263 of the Act in the present case is invalid. Accordingly, we quash the impugned order of learned PCIT passed under section 263 of the Act and restore the assessment order.

9. In the result, the appeal is allowed.

Order pronounced in the open court on 16th March, 2022

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 16th March, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi