IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI

BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.402/Del/2021
(ASSESSMENT YEAR 2011-12)

Smt. Daya Rani D/o Shri Om Prakash Bansal H.No.756, Delhi Road Kala Aam, Bulandshahr PAN-ASEPR 888Q	Vs.	Pr. CIT Ghaziabad
(Appellant)		**(Respondent)**

Assessee by	Dr. Rakesh Gupta, Adv. and Sh. Deepesh Garg, Adv.
Department by	Shri T James Singson, CIT-DR

Date of Hearing	06/02/2024
Date of Pronouncement	20/02/2024

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Principal Commissioner of Income Tax, Ghaziabad, [hereinafter referred to as 'Ld. CIT(A)'] dated 10/02/2021 against the order passed by Income Tax Officer, Ward-3(1), Bulandshahr (hereinafter referred to as the 'Ld. AO') u/s 143(3)/147 of the

Income Tax Act (hereinafter referred to as 'the Act'), for the Assessment Year 2011-12.

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

"1. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the reassessment order dated 16-11-2018 as erroneous as well as prejudicial to the interest of revenue and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in setting aside the impugned reassessment order dated 16-11- 2018 and directing the assessing officer to examine the issues involved afresh and that too by recording incorrect facts and findings and without observing the principles of natural justice and more particularly when all the details/information/evidences were available on the record at the time of assessment proceedings and assessee has rightly claimed the exemption u/s 54F of Income Tax Act.

3. That having regard to facts & circumstances of the case, Ld. Pr.CIT has erred in law and on facts in passing the impugned order u/s 263 and that too without providing the opportunity of being heard and in violation of principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. Pr.CIT in passing the impugned order u/s 263 is bad in law and against the facts and circumstances of the case and is in violation of principles of natural justice.

5. That having regard to the facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 which is bad in law inter alia for this reason that the reassessment order passed u/s 143(3)/147 dated 16.11.2018 which is sought to be revised u/s 263 itself was invalid inter alia on various grounds as mentioned below and thus proceedings initiated u/s 263 against the invalid reassessment order is clearly bad in law.

(a) That assumption of jurisdiction u/s 147 is itself is bad in law as the reason recorded would not have led to the formation of belief of escapement of income.

(b) That no valid satisfaction/approval u/s 151 was obtained.

(c) That impugned reassessment order was passed without complying with the mandatory conditions of section 147 to 151.

6. That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other."

3. The only effective issue to be decided in this appeal is as to whether the Ld. PCIT had validly assumed his revision jurisdiction u/s 263 of the Act both in law and on facts.

4. We have heard the rival submissions and perused the materials available on record. The assessment for the Asst Year 2011-12 was completed u/s 143(3) r.w.s 147 of the Act on 16/11/2019 determining the total income of Rs.3,90,290/- accepting the return of income. The reasons recorded for reopening the assessment are as under:-

"11. Reasons for the belief that income has escaped assessment In this case, AIR as well as CIB information for the F.Y. 2010-11 (Relevant to the A.Yr. 2011- 12) has been received that assessee has done following transaction:-

1. Cash deposit above Rs. 10 Lacs of Rs. 35,80,000/-having account held with IDBI bank ltd.

2. Purchase of Immovable property of Rs.66,14,000/- with Sub Registrar-l, Bulandshahr.

3. Paid Rs. 5 lacs or more for acquiring bonds issued by RBI of Rs. 20,00,000/-

4. Time deposit exceeding Rs. 2 Lacs with a banking company of Rs.5,50,000/-having account held with Union Bank.

To verify the above information, a query letter dated 19.02.2018 was issued and served through speed post to the assessee. Assessee submitted detailed reply and submitted copy of ITR showing income of Rs.3,90,290/- filed on 30.03.2013. On perusal of assessee reply it was found that assessee has sold plots of Rs.59,49,500/- and from this amount she has done above transaction and purchased RBI bonds and done time deposits. During verification it was noticed that assessee has taken cost of improvement of Rs. 15,81,658/- and not produced specific evidence regarding this also assessee has not submitted any cogent reply regarding time deposit of Rs. 5.50,000/- held with Union Bank. Thus assessee has failed to prove genuineness and creditworthiness of above transaction, meaning thereby above transaction has not been disclosed before the department. Since necessary permission u/s 133(6) of the Income Tax Act, 1961 has already been accorded by the Ld. Principal Commissioner of Income Tax, Ghaziabad. In view of the above, I have reason to believe that the income of Rs.1,27,44,000/- has escaped assessment within the meaning of Sec. 147 of the Income Tax Act, 1961."

Dated: 16.03.2018"

5. The assessee in response to notice u/s 148 of the Act issued on 29/03/2018 responded that the return already filed on 30/03/2013 declaring taxable income of Rs.3,90,290/- may be considered as a return in response to notice u/s 148 of the Act. Subsequently, the assessee furnished various replies together with documentary evidences in response to various queries raised by the Ld. AO, including those issues that are subject matter of reasons recorded for reopening the assessment. The Ld. AO after examining the detailed explanations given by the assessee together with

documentary evidences did not draw any adverse inference thereon and accepted the returned income of the assessee in the reassessment order passed on 16/11/2018. In other words, no addition was made by the Ld. AO in the reassessment proceeding in respect of issues that are subject matter of reasons recorded for reopening the assessment.

6. This reassessment was sought to be revised by the Ld. PCIT by invoking his revision jurisdiction u/s 263 of the Act on the issue of capital gains, investment of Rs.5,50,000/- in time deposits with the Axis Bank and deduction u/s 54 of the Act on the ground that the Ld. AO had not made enquiries on the same thereby making his order erroneous and prejudicial to the interest of the Revenue.

7. At the outset, we find once the Ld. AO having recorded the reasons for reopening the assessment and having formed a belief that income of the assessee had escaped assessment, had not made any addition in the reassessment proceedings in respect of issues that are subject matter of reopening. Hence, the very basis of formation of belief for the Ld. AO vanishes. Hence, the Ld. AO could not have framed any reassessment per se. Logically the Ld. AO

should have simply dropped the initiation of reassessment proceedings instead of passing a separate reassessment order. Once, the reassessment order per se framed by the Ld. AO is not sustainable in the eyes of law, any revision order passed thereon u/s 263 seeking to revise such unsustainable order cannot be accepted in the eyes of law and consequential revision order also passed u/s 263 of the Act deserves to be quashed. Our view is further fortified by the decision of the Delhi Tribunal in the case of Sh. Pramajit Singh vs. PCIT in ITA No. 446/Del/2022 dated 01/12/2023 wherein the Tribunal placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Software Consultants. in ITA No.914 of 2010 dated 17/01/2012. The relevant operative portion of the decision of the Tribunal are as under:-

> *"15. This is an undisputed fact that the issues which prompted the Assessing Officer to reopen the assessment were duly considered and reply of the assessee was accepted and no addition was made. This fact has also not been disturbed by the PCIT in his order u/s 263 of the Act.*
>
> *16. In our considered opinion, the Assessing Officer could not have made the addition on the issues raised by the PCIT in his order as no addition was made on account of reasons recorded for reopening the assessment.*
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> *17. The Hon'ble High Court of Delhi in the case of CIT Vs. Software Consultants I.T. Appeal No. 914 of 2010 order dated 17.01.2012 21 Taxmann.com 155 was seized with the following question of law:*
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> > *"Whether the Tribunal was right in law in holding that the CIT had wrongly invoked the jurisdiction u/s 263 of the Act."*

18. The Hon'ble High Court, on facts similar to the facts of the appeal under consideration, held as under:

> *"9. One of the contentions, which has been accepted by the tribunal is that the order of the Assessing Officer cannot be regarded as erroneous even if the Assessing Officer had failed to carry out necessary verification and required enquiries in respect of the share application money, as no addition has been made on account of the reasons for reopening, which were recorded before issue of notice under Section 148 of the Act. It has been held that the Assessing Officer could not have made an addition on account of share application money as no addition has been made on account of FDRs of Rs.20 lacs. The tribunal has noticed and recorded that in the reasons for reopening it was mentioned that the assessee had made investment in form of FDRs of Rs.20 lacs but in the assessment order passed under Section 147/143(3) of the Act it has been held that the respondent assessee had been able to show and establish the genuineness of and capacity to make the said investment.*

10. Similar issue had arisen before this Court in Ranbaxy Laboratories Limited versus CIT, (2011) 336 ITR 136 (Delhi). In the said case, the Division Bench had also examined Explanation 3 to Section 147, which was inserted by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1989. Reference was made to the decision of the Bombay High Court in CIT versus Jet Airways India Limited, (2011) 331 ITR 236 (Bom.) in which it has been held as under:

> *"The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows : (i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year ; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148 ; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section ; and (iv) though the notice under section 148(2) does not include a particular, issue with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section."*

11. Thereafter, the High Court referred to the decision of the Rajasthan High Court in the case of CIT versus Shri Ram Singh, (2008) 306 ITR 343 (Raj.) in which it has been observed as under:

> *"It is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had 'reason to believe' to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147.*
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> *To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that*

any income chargeable to tax, which, according to his 'reason to believe', had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

12. The Division Bench in Ranbaxy Laboratories Limited (supra)considered the judgment of the Supreme Court in the case of V. Jagmohan Rao versus CIT and EPT, (1970) 75 ITR 373(SC) and CIT versus Sun Engineering Works Private Limited, (1992) 198 ITR 297 (SC) and has then elucidated:

"18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v. Jet Airways (I) Limited [2011] 331 ITR 236 (Bom). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items, viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under sections 80HH and 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under sections 80HH and 80-I and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80- I which as per our discussion

was not permissible. Had the Assessing Officer proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per Explanation 3 to reduce the claim of deduction under sections 80HH and 80-I as well."

13. On the second aspect raised by the Commissioner of Income Tax with regard to the Assessing Officer accepting the loss return of Rs.1,02,756/-, we are of the view that the same did not require exercise of revisionary power under Section 263 of the Act. The observations of the Assessing Officer were only to the extent of stating that he had accepted the return. Benefit of carry forward of loss can be claimed in case a return is filed under Section 139(1). It is not the case of the Revenue that the assessee had tried to claim benefit of carry forward of loss on the basis of the order passed under Section 147/143(3) of the Act.

14. For exercise of power under Section 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under Section 148 of the Act. This position is not disputed and disturbed by the Commissioner of Income Tax in his order under Section 263 of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under Section 147/148. Accordingly, the assessment order is not erroneous. Thus, the Commissioner of Income Tax could not have exercised jurisdiction under Section 263 of the Act.

15. The question of law is accordingly answered in affirmative against the Revenue and in favour of the assessee. There will be no order as to costs."

19. As mentioned elsewhere, the facts of the case in hand are pari materia same as the facts considered by the Hon'ble High Court [supra]. Therefore, we have no hesitation in setting aside the order of the PCIT dated 17.02.2022 and restore that of the Assessing Officer dated 06.08.2019

20. In the result the appeal of the assessee in ITA No. 446/DEL/2022 is allowed."

8. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we have no hesitation to hold that the Ld. PCIT erred in assumption of jurisdiction u/s 263 of the Act in the facts and circumstances of the instant case. Since, revision order passed u/s 263 of the Act is

quashed on legal ground, the other factual and legal arguments made by the Ld. AR need not be adjudicated and they are left open.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20th February, 2024.

Sd/-	Sd/-
(SAKTIJIT DEY)	**(M. BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 20/02/2024
Pk/sps
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI