

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"RAIPUR" BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 84/RPR/2020)

(निर्धारण वर्ष / Assessment Year : 2015-16)

<b>Ankit Agrawal</b> Korba Road, Agrasen Chowk Champa Janjgir Champa, Chhattisgarh - 495671	<b>बनाम/</b> Vs.	<b>Pr. Commissioner of Income Tax</b> Bilaspur, Chhattisgarh - 495001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASIPA6207H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Sunil Agrawal, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri P. K. Mishra, CIT.DR

सुनवाई की तारीख / Date of Hearing	29/07/2021
घोषणा की तारीख /Date of Pronouncement	12/10/2021

आदेश/ORDER

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the Principal Commissioner of Income Tax, Bilaspur ('PCIT' in short), dated 31.03.2020 passed under s.263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 15.11.2017 under s. 143(3) of the Act concerning AY 2015-16 was sought to be set aside for reframing assessment in terms of supervisory directions.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer (A.O.) was directed to pass the assessment order *de novo* after making enquiries on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning A.Y. 2015-16. The assessee has challenged the assumption of jurisdiction by the PCIT under section 263 of the Act on the ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the Revenue.

3. Briefly stated, the assessee claims to be deriving income in the capacity of vehicles selling agent of M/s. Vishal Automobiles. The return of income was filed by the assessee declaring total income of Rs.4,19,440/-. The return of the assessee was selected for limited scrutiny assessment through CASS on the reasons of cash deposits in savings bank account. Notice under sections 143(2) and 142(1) of the Act was issued in this regard for compliance of the details. In response thereto, the assessee filed his reply and explanations before the AO on the issue of cash deposits in to the Bank. All the bank statements operated by the assessee were stated to be filed before the AO. As stated, the AO verified and examined all the cash deposits in such bank account of the assessee which fact has been recorded in the assessment order itself. The AO in the assessment order has also recorded the findings of fact in para 3 of the assessment order that assessee was asked to explain the source of cash deposits made by him on various dates during F.Y. 2014-15 relevant to A.Y. 2015-16 in question. It is further noted that particulars/details filed by the assessee in this regard were examined. An enquiry was also carried out with Vishal Automobiles by issue of notice under s.133(6) of the Act. Having weighed the facts available before him, the AO finally held that the

collection charges of Rs.300/- per vehicle sold through Vishal Automobiles requires to be enhanced to Rs.500/- per vehicle. An addition of Rs.2,03,000/- was accordingly made after accepting the nature and source of cash deposits.

4. After completion of the assessment, the PCIT in exercise of revisionary powers issued show cause notice dated 27.02.2020 proposing revisionary proceedings under s.263 of the Act. As per show cause notice, the PCIT essentially alleged that the AO has failed to verify the source of deposit of cash in the bank of account of the assessee. It is further noted that despite the averments made by Vishal Automobiles in response to notice under s.133(6) of the Act that no commission has been paid to the assessee, the assessment was made disregarding such assertions. The PCIT finally alleged that the assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue on the ground that the AO has completed the assessment on the basis of inadequate enquiries in relation to cash deposits in the bank. The PCIT accordingly set aside the assessment order on the aforesaid issue and restored the matter for fresh assessment by passing the revisional order in exercise of powers conferred under s.263 of the Act.

5. Aggrieved, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the learned counsel for the assessee submitted, at the outset, that the PCIT has wrongly proceeded to invoke Section 263 of the Act without appreciating the facts in right perspective. Giving the brief history of the case, the learned counsel submitted that the case was selected for 'limited scrutiny' through CASS on the reasons of cash deposits in the saving bank account. In the course of the assessment proceedings,

the relevant copies of the bank accounts were called for and examined. It was submitted that the assessee is engaged as a collection center for Vishal Automobiles and mostly the amounts received towards sale of vehicle are in the form of cash which are deposited in his bank account and ultimately gets transferred to Vishal Automobiles. The cash deposits in the bank accounts represent the cash received from customers of the vehicle which are ultimately transferred to the apex seller i.e. Vishal Automobiles. The assessee has earned Rs.300/- by way of collection charges which was offered for taxation after making enquiry with Vishal Automobiles under s.133(6) of the Act. In the course of assessment, the AO observed that quantum of collection charges income declared by assessee is not satisfactory. The learned AR submitted that the AO substituted the income @ Rs.500/- per vehicle in place of Rs.300/- per vehicle having regard to the facts viewed by the AO and the addition of Rs.2,03,000/- was made by the AO on this score. In this factual background, the learned counsel submitted that the PCIT mis-directed himself in law and on facts in setting aside the assessment order under s.263 of the Act on the premise that none of the bills issued by Vishal Automobiles shows the name of the assessee in any manner etc. and there is no written agreement or terms and conditions available towards collection charges etc. The learned counsel submitted that the PCIT has ignored the vital fact that the cash deposits collected on sale of vehicle are transferred to Vishal Automobiles and only collection charges are retained the evidences towards transfer of money to Vishal Automobiles etc. corroborates the case of the assessee together with other relevant facts. The AO has made all reasonable enquiry and collected information from Vishal Automobiles and has come to a conclusion which is rational in the facts and could not have been disturbed by the Revisional Commissioner to substitute his views. The learned

counsel thus urged for setting aside and cancellation of revisional order and restoration of the assessment order.

7. Learned CIT-DR, on the other hand, supported the revisional action of the PCIT and submitted in furtherance that the PCIT was justified in the absence of proper enquiry on cash deposits in the light of Explanation (2) to Section 263 of the Act applicable to the assessment year in question.

8. We have heard the rival submissions on the issue.

9. As pointed out on behalf of the assessee, the case was selected for limited scrutiny on the very point of verification of source of cash deposits in the savings bank account of the assessee. All the bank accounts operated by the assessee were placed before the AO which the AO admits in the assessment order. The AO has further observed in the assessment order that the source of cash deposits in the various bank accounts were enquired and enquiry was also carried out with Vishal Automobiles under s. 133(6) of the Act as the assessee has claimed to work as a collection center for Vishal Automobiles. After making such enquiries, the AO did not agree with the quantum of commission income claimed to have been earned by the assessee on sale of vehicle and adjusted upward from Rs.300/- per vehicle to Rs.500/- per vehicle. It was found as a matter of fact that the amount of cash deposits was transferred to Vishal Automobiles against the sale of vehicles. On appreciation of these facts, in totality, the AO admitted the claim of the assessee towards transacting cash receipt of cash deposits against sale of vehicle. The amounts were transferred to Vishal Automobiles against the delivery of vehicle and the assessee, in the process, has earned commission income. The view taken by the AO on

appreciation of facts of the case cannot be outrightly rejected and condemned as lacking in plausibility. The view taken by the AO appears to be a fair and reasonable view having regard to the facts available on record. In such circumstances, the view taken by the AO on appraisal of facts and circumstances in discharge of *quasi judicial* function cannot, in our view, be disregarded in a light hearted manner merely on the ground that Vishal Automobiles has not accepted the facts of the sharing commission with the assessee. It is a matter of record that cash deposits were transferred to Vishal Automobiles regularly. Thus, apparently the assessee was acting as a collection center for Vishal Automobiles notwithstanding absence of any formal arrangement for doing so. This kind of informal arrangement of earning money is not uncommon. The action of the AO in taxing estimated commission income based on such cash transactions in no sense can be assailed as wholly untenable. The AO, in our view, had good reason to accept the version of the assessee in totality of facts. The PCIT before coming to conclusion adverse to the assessee ought to have noted the fact that why a person will transfer the cash deposits to the automobile dealer without any consideration. The considerations were supply of vehicle and some commission income to the assessee working in fringes. Needless to say, the revisional authority is expected to exercise its powers under the Act with diligence, dexterity and reasonableness to achieve and advance the object of provision. The PCIT while alleging inadequacy in enquiry has himself failed to conduct any minimal enquiry expected of him before setting aside the issue back to file of the AO. There are no yardsticks available towards the extent of enquiry in the facts peculiar to a given case. The test of reasonableness has to be weighed from the perspective of a prudent person instructed in law. Explanation (2) cannot be invoked based on an arbitrary opinion but its applicability is

essentially contextual. In the light of delineations, the revisional order, in the instant case, does not meet the requirement of law and deserves to be set aside.

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

Order pronounced on **12/10/2021** by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-  
(N. K. CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*True Copy*

*S. K. SINHA*

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर /  
DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary  
ITAT, Raipur (on Tour)