

**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. 117/RPR/2019)

(निर्धारण वर्ष / Assessment Year : 2014-15)

<b>Shri Brajesh Khandelwal</b> Prop. M/s. Khandelwal Agro, Industrial Ward, Dhamtari, Chhattisgarh - 493773	<b>बनाम/</b> Vs.	<b>Principal</b> <b>Commissioner of</b> <b>Income Tax-1</b> C. R. Building, Civil Lines, Raipur, Chhattisgarh - 492001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEUPK4379J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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

सुनवाई की तारीख / Date of Hearing	29/07/2021
घोषणा की तारीख /Date of Pronouncement	14/10/2021

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-1, Raipur ('PCIT' in short), dated 29.03.2019 passed under s.263(1) of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 03.10.2016 under s. 143(3) of the Act concerning AY 2014-15 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 is engaged in the business of flour and rice mill in proprietary concern M/s. Khandelwal Agro, Dhamtari (CG). For the A.Y. 2014-15 in question, the assessee filed return of income declaring taxable income at Rs.9,11,650/-. The case of the assessee was selected for limited scrutiny under CASS on certain points. The assessment was carried out vide order dated 03.10.201 where by the income returned was assessed as such.

4. After completion of the assessment, the PCIT in exercise of revisionary powers issued show cause notice dated 04.02.2019 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 genuineness and creditworthiness of the lenders who have given loans to the assessee during the year. This lack of enquiry has rendered the order as erroneous and prejudicial to the interest of the Revenue. The PCIT has also alleged that the assessee has failed to verify huge interest payment made during the year. 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. We have carefully considered the rival submissions on challenge to the jurisdiction acquired under s.263 of the Act and consequential revisional order passed thereon. In defense of the assessment order, the assessee contends that;

(i) The case was selected for limited scrutiny for below mentioned reasons:

- (a) Substantial increase in capital in a year.
- (b) Huge interest paid which are not commensurate to loans raised and assessee has shown less turnover.
- (c) Mismatch in sales turnover reported in Audit report and ITR.
- (d) Mismatch in amount paid to related to persons u/s 40A(2)(b) reported in Audit report and ITR.
- (e) Mismatch between income/Receipt credited to P&L A/c.

With reference to above points, the PCIT has alleged that the AO has not conducted any specific enquiry with reference to point nos. a & b above.

(ii) It is contended that the verification of increase in capital required in 'limited scrutiny' does not include verifications on unsecured loans. The scope of enquiry in the limited scrutiny thus did not encompass a detailed and scrupulous enquiry into nature and source of loans taken in this year.

(iii) Vide questionnaire dated 29.06.2016 & 20.07.2016, the requisite enquiries were made by the AO towards capital account of the assessee and also funds borrowed during the year together with bank statement etc. The assessee was specifically asked vide question no.3 of questionnaire dated 20.07.2016 by the AO towards genuineness, identity and creditworthiness of the lender. It is thus after making pointed enquiries, the assessment was carried out.

(iv) The relevant evidences towards loans taken from the various lenders were duly furnished. Most of the loans were either squared up in the same year or partly or fully repaid in the subsequent assessment years. The interest was also credited in the lenders' accounts and TDS was deducted thereon. The income tax return of the lenders were also filed, most of which were assessable with the same AO.

(v) It is not in every case that every evidence produced has to be tested by cross examination of the persons under s.131/s.133(6) of the Act. If there is nothing suspicious on record to indicate that the

evidence produced is not reliable and the AO was satisfied in exercise of statutory discretion available to him, it is not open to the PCIT to exercise powers of revision in the name of adequate enquiry for the purposes of substitution of his view with that of AO.

(vi) The powers under s.263 of the Act cannot be exercised to merely find out the probability of order being erroneous.

7. On cumulative reading of the facts brought out on record, it appears that the limited scrutiny was not strictly meant for verification of loans which is inherently different from capital of the assessee. The AO was expected to verify increase in capital and not on procurement of loans. Notwithstanding, the assessee has presented the relevant data before the AO in support of loans obtained. The interest was paid on the loans and repayment was also made as claimed. In such situation, the view taken by the AO towards bonafides of loans appears quite reasonable and plausible. This being as a rational view taken by the AO cannot be brushed aside in exercise of revisional powers. Indulgence with the order of AO on allegations of inadequacy in enquiry from the point of view of PCIT would render the task of AO arduous and extremely difficult. Further the observations made by the PCIT appear to be in the realm of suspicion and surmises. For instance, the PCIT has observed that assessee has merely credited the interest amount in the account of lender and has not been actually paid during the year. The PCIT has ignored the fact of deduction of TDS and consequent taxability of such interest in the hands of lender. The fact of repayment of loan has not been taken into account despite such facts having been brought to his notice in the revisional proceedings. Apparently, the exercise of power by the PCIT on items unconnected to limited scrutiny is apparently unjustified and nonetheless, the assessee has placed reasonable evidences to support the factum of receipt of loan. The scope of Section 263 of the Act does not permit the PCIT to substitute his view with that of AO in

the garb of directions towards enquiry on facts already on record. The revisional action in the instant case is clearly not justified. The revisional order is accordingly set aside and the assessment order is restored.

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

**Order pronounced on 14/10/2021** 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)