

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

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANISH AGARWAL, HON'BLE ACCOUNTANT MEMBER

ITA No. 2832/Del/2016
Asstt. Year: 2011-12

Umesh Garg,
105, Konark Colony,
Roorkee Road,
Meerut
(PAN: AFGPG0404B)
(Appellant)

VS. ITO, WARD 2(4),
Meerut

(Respondent)

Appellant by : Shri Sanjay Malik, Adv.
Respondent by : Shri Surender Pal, CIT(DR)

Date of Hearing	19.03.2025
Date of Pronouncement	18.06.2025

ORDER

PER MAHAVIR SINGH, VICE PRESIDENT :

This appeal by the Assessee is directed against the order of the Ld. PCIT, Meerut dated 17.03.2016 passed u/s. 263 of the Act which is pertaining to assessment year 2011-12.

2. The brief facts of the case are that the assessee is the proprietor of M/s A.R. Foods and the firm is engaged in the business of manufacturing of breads and rusks. Assessee during the previous year 2010-11 filed return on 30.9.2011 declaring an income of Rs. 2,26,070/-. Later, on the case was selected for scrutiny. The

assessment was completed on the returned income vide order dated 4.6.2013 u/s. 143(3) of the Act. Ld. PCIT noted that the assessment order passed by the AO appears to have been passed without proper inquiry. Hence, proceedings u/s. 263 of the Act, were initiated accordingly. Consequently, a notice dated 9.10.2015 u/s. 263 of the Act was issued to the assessee. In response to the same, assessee's AR filed the reply, which was considered by the Ld. PCIT, who observed as under:-

(a) During the relevant Previous Year, the assessee has withdrawn Rs. 44,80,400/- from the capital account. The counsel of the assessee vide his written submission dated 1/2/2016 submitted that the out of the total amount of Rs. 44,80,400/-, an amount of Rs. 4,80,400/- had been withdrawn for household expenses and Rs. 7,50,000/- had been used in M/s AR Dwelling Pvt. Ltd., in which the assessee is one of the Directors. No explanation was furnished regarding the balance Rs. 32,50,000/- that stood withdrawn from the capital account. The owner's capital is the part of the accounting equation that represents the liquid cash that the concern has earned, which it has on hand for daily operations as well as capital investments. When a business owner withdraws cash for personal use, these funds come out of this capital account. The larger the sum the owner withdraws, the smaller the sum that remains in the business as operating capital. However, the A.O has not asked for any clarification of this amount of Rs. 44,80,400/- that was withdrawn from the capital account. He has also not asked for copy of account of the assessee as appearing in the books of account of the firm i.e., M/s A.R Foods. Henceforth, this issue is being set aside to the file of the A.O with directions to examine and adjudicate this issue de-novo after collecting necessary evidences from the assessee.

(b) From the perusal of the balance sheet of the assessee for the year ending 31/3/2011, it is observed that the sundry receivables have been shown to the tune of Rs. 1,75,86,380/- as against meager sundry creditors worth Rs. 1,27,689/- The total sales effected during the entire year was Rs., 2,85,66,581.30. A comparison of the figures of sundry creditors and total - sales with the total amount of sundry receivables reveals a stark contrasting picture which ought to have been looked into by the Assessing Officer. Therefore, this issue is being set aside to the file of the AO directing him to co-relate the amount of sundry debtors with the amount of sundry creditors and the total turn-over of the firm after providing necessary opportunity to the assessee.

(c) The assessee vide his reply dated 4/3/2016 has submitted that the firm M/s A.R Foods was not doing well and therefore, a sum of Rs. 2,00,30,000/- was provided by M/s Garg Agencies (which is the proprietary concern of the Late Shri Umakant Garg, father of the assessee,) to M/s A.R Foods. However, vide reply dated 1/2/2016, the counsel of the assessee has stated that Rs. 2,00,30,000/- was received by the assessee from M/s Garg Agencies against goods supplied. This discrepancy between the two replies of the counsel of the assessee casts serious repercussions upon the motive of the influx of capital from M/s Garg Agencies into M/s A.R Foods. This issue was never delved into by the Assessing Officer especially in the background of the assessee withdrawing money from his capital account for investing into M/s A.R Dwelling Pvt. Ltd., in which the assessee is one of the Directors. During the course of assessment proceedings under 143(3) of the Act, no query was ever put forth before the assessee by the AO regarding the amount of investment made by him into his sister concern. It is pertinent to mention here that the A.O performs a quasi judicial function and the reason for his conclusions and findings should be forthcoming in the assessment order. The legislature has conferred duty upon the AO to analyse and scrutinize in a systematic manner the various information that are collected by him during the course of assessment proceedings. While framing the assessment order under Section 143(3) of the Act, it is expected from the AO that he will make a detailed inquiry to find out correct income of the assessee and not blindly rely upon the facts placed by the assessee on their face value [Jagdish Kumar Gulati vs. CIT, 269 ITR 71 (All)]

Therefore, this issue is being set aside to the file of the AO directing him to investigate the inflow of money from M/s Garg Agencies into M/s A.R Foods and the modus operandi of investment by the assessee into M/s AR Dwelling Pvt. Ltd after providing reasonable opportunity to the assessee.

(d) A perusal of the P&L a/c reveals that a sum of Rs. 27,02,436/- has been debited as bank charges and interest. No details have been gathered by the A.O in this regard. Failure to enquire into the glaring issues during the course of assessment proceedings by the AO tantamounts to the assessment being rendered erroneous. Reliance is further placed on the following judgment:

Gee Vee Enterprises vs. Addl. CIT, 99 ITR 375 (Del.) in which it was held that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income Tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of

the case the Income Tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.

8. Keeping in view the above narrated facts in the afore mentioned paragraphs, the AO will take appropriate action in the light of relevant provisions and rules and shall pass an appropriate order after examining all the above mentioned set aside issues properly and considering all evidences and affording reasonable opportunity to the assessee."

3. Against the above order, assessee has preferred an appeal before us.

4. At the time of hearing, Ld. AR for the assessee submitted that during the course of assessment proceedings, the AO issued notices u/s. 143(2) & 142(1) of the Act and also so called for necessary information vide order sheet entries. It was further submitted that compliance of the statutory notices was made and written submission alongwith required information / details / evidences were furnished. The assessment framed thus was after proper enquiry and scrutiny. He further submitted that assessment order dated 4.6.2013 u/s 143(3) was neither erroneous nor prejudicial to the interest of revenue. Thus on facts and in law, there was no legal warrant to initiate proceedings with the issue of notice u/s. 263 of the Act. Hence, the impugned order may be quashed accordingly.

5. Per contra, Ld. DR submitted that Id. PCIT has passed a well reasoned order, which does not need any interference.

6. Upon careful consideration, we note that in this case the return was filed on 30.9.2011 declaring income of Rs. 2,26,070/- and the same was processed u/s. 143(1) of the Act on income returned. Later on, the case was selected for scrutiny. It is further noted that AO issued notice u/s. 143(2) on 29.9.2012 which was duly served on 30.9.2012. Further, notices under section 142(1) issued from time to time and also required to furnish the necessary information vide order sheet entries on different dates. In compliance, the Ld. AR attended from time to time and filed written reply and required information alongwith necessary details / evidences and

after discussion with the Ld. AR, the assessment was completed on returned income at Rs. 2,26,070/-.

7. In regard to 1st issue on merits, the Ld. PCIT in his revision order notes that the assessee has withdrawn ₹44,80,400/- from the capital account and could not explained the withdrawals and its application. We noted that the assessee out of the total withdrawal of ₹44,80,400/- explained that ₹4,80,400/- was withdrawn for household expenses and a sum of ₹7.50 lakhs was utilised in M/s Dwelling Private Limited, where assessee is one of the Directors. The assessee explained for the balance that these were withdrawals and not the income. He stated that this amount was withdrawn out of capital account and amount withdrawn was utilised for expenses. We also noted that once there is a withdrawal from the capital account, it cannot be treated as income and there is no error in the order of the AO which caused prejudice to the revenue. Once the amount is not taxable which is withdrawn out of capital account, it cannot be treated as income and hence there is no prejudice caused to the revenue. Therefore, we find that the Ld. PCIT's finding on this very issue is without any basis and bad in law, thus, we reverse the same on this count.

8. In regard to another issue in the revision order passed by the learned PCIT is that there is receivables declared by the assessee of ₹1,75,86,386/- as against meager sundry creditors worth Rs. 1,27,689/- The Ld. PCIT notes that the sundry creditors receivable and total sale effected during the year reveals a stark contrasting picture which should have been verified by the Assessing Officer. The assessee before the AO filed the complete books of accounts which were duly examined by the AO. We noted that the assessee before the AO filed the complete books of accounts which were duly examined by the AO and even now before us assessee filed the complete details of sundry creditors vis-a-vis sale effected during the year and sundry receivables. We find no reason that what was the ambiguity having sundry

receivables of ₹1,75,86,386/- and how the PCIT reached the conclusion that the AO's order is erroneous and prejudicial to the interest of the revenue. In the absence of any adequate finding by the PCIT on this revision carried out, is bad in law, and thus, we reverse the same on this count.

9. The next issue is in regard to revision order passed by the Ld. PCIT is that there is a contradicted reply filed by the assessee dated 4.3.2016 wherein, it is admitted that a sum of ₹2,00,30,000/- was provided by the M/s Garg Agencies, the proprietary concern of assessee's father late Umakant Garg to M/s A.R. Fruits. The PCIT in his revision order notes that in the reply dated 1.2.2016 it was stated that the amount received by the assessee is ₹2,00,30,000/- from M/s Garg Agencies was against the goods supplied. Now before us assessee filed a complete details and we noted that the assessee has received a sum of ₹2,00,30,000/- during the year assessment year 2011-12 relevant to financial year 2010-11 from M/s Garg Agencies. We noted that M/s Garg Agencies is a proprietary concern of assessee's father and from the facts, it is noted that a sum of ₹51,41,000/- was credited to M/s Garg Agencies against the goods supplied and a sum of Rs. 1,48,90,000/- was credited to assessee Shri Umesh Garg. We noted that these facts were duly examined during the scrutiny assessment proceedings as the details were available before the AO. Even otherwise, the PCIT in his revision order has not given a finding that how this amount is taxable and which type of enquiry the AO has not carried out. It is not the case of the assessee that the assessee is withdrawing the money from his capital account for the purpose of investment into M/s AR Dwelling P Ltd., hence, we find no reasonableness in the finding of the PCIT on this count, thus, we reverse the finding of the Ld. PCIT on this issue.

10. The next issue in this revision order passed by the PCIT is verification of debit entry of ₹27,02,436/- as bank charges and interest. We noted from the copy of

account filed by the assessee that these bank charges and interest is clearly chargeable by the bank and claimed by the assessee. These details were available before the AO during the course of assessment proceedings in the form of books of accounts, which were duly examined by the AO during the course of assessment proceedings. Hence, we find no reasonableness in the finding of the Ld. PCIT on this count, thus, we reverse the finding of the Ld. PCIT on this issue.

10. In the background of the aforesaid discussions, the order passed u/s. 263 by the Ld. PCIT deserve to be quashed, hence, the same is quashed as such.

11. In the result, the Assessee's appeal is allowed.

Order pronounced on 18.06.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

SRBhatnagar

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Bench