

Sec. 263 revision initiated by CIT second time to cancelling non-existing original assessment order isn't tenable: HC

Facts of the case - PCIT v. Padma Kumar Jain - [2022] (Jharkhand)

A search and seizure operation was conducted by the Assessing Officer (AO) in the business and residential premises of the assessee-individual. After completion of the search and seizure, a notice under section 153A was issued to which the assessee filed a return of income and an assessment order was passed.

Subsequently, the Principal Commissioner of Income-tax (PCIT) under section 263 directed AO to pass a fresh order cancelling the 1st assessment order. The AO passed the second assessment order under section 143(3) read with section 263.

Later, section 263 proceedings were again initiated for the second time by cancelling the first mentioned assessment order. The assessee objected to the initiation of third assessment proceedings and requested to drop the proceedings.

On appeal, the Rachi Tribunal has quashed the second revisional proceedings. The matter then reached the Jharkhand High Court.

Decision of the case:

- The High Court held that there is no bar under section 263 to initiate two proceedings of the same assessment year if the same is within the time limit prescribed. However, the PCIT has no jurisdiction to cancel the already cancelled first assessment order.
- The first assessment order was already cancelled by CIT during the first round of 263 proceedings. Thus the valid assessment order in the instant case would be the second assessment order passed by AO.
- The PCIT exercised its jurisdiction for the second time to examine the expenses (loss and damage expenses of Rs. 4 crores) without cancelling the second assessment order. Further, the issues were also already examined by the AO in the original assessment and subsequently by PCIT in the second assessment. PCIT while invoking section 263 for the second time is providing another opportunity to the AO when the entire books of accounts were already furnished by the assessee to the AO.
- Therefore, directing made to AO for the 3rd time to scrutinize the books of accounts is not permitted by law. Hence, the directions made by PCIT are erroneous.