

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1359/Mds/2014

निर्धारण वर्ष /Assessment year : 2010-2011

Shri. V.C. Raam Sukesh,
G1, Ground floor,
Shree Apartment,
No.31, Romain Rolland Street,
Puducherry 605 001.

Vs. The Income Tax Officer,
Ward I(2),
Pondicherry.

[PAN AHKPR 1504R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Philip George, Advocate
प्रत्यर्थी की ओर से /Respondent by : Smt. Parminder, IRS,

सुनवाई की तारीख/Date of Hearing : 22-06-2016

घोषणा की तारीख /Date of Pronouncement : 15-09-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax, Puducherry dated 12.03.2014 for the assessment year 2010-2011 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Brief facts of the case are that the assessee is an individual and filed Return of income on 28.02.2011 admitting total income of ₹4,74,175/- consisting house property income, income from capital gains and income from other sources and the return of income was processed u/s.143(1) of the Act. Subsequently, under scrutiny norms the case was selected and notice u/s.143(2) of the Act was issued. A notice u/s.142(1) with questionnaire of the Act was issued on 09.10.2012. In compliance to notices, the Id. Authorised Representative of assessee appeared from time to time, produced Books of account and other details. The Id. Assessing Officer having satisfied with the submissions completed assessment accepting the Returned income and passed assessment order u/s.143(3) of the Act dated 14.12.2012. Subsequent to assessment proceedings, the Id. Commissioner of Income Tax, Puducherry issued show cause notice under the powers conferred u/s.263 of the Act and issues were explained in notice whether assessee has made investments in the financial year 2009-2010 in the mutual funds aggregating to ₹36,29,435/- and were not reflected in the Balance Sheet and short term capital gains are not offered for taxation

2.1 On the second issue, the assessee has discontinued offering rental income from property and was settled as per family settlement agreement. The Id. CIT also called for explanation on non

inclusion of Bank accounts and Bank transactions involving investments in mutual funds, and also Balance sheet does not reflect the cash balance and drawings to meet the routine day to day family expenses and disputed actual profit disclosed as per income and expenditure account and financial position as per Balance Sheet. In compliance to the show cause notice issued by Id. Commissioner of Income Tax on 29.05.2013, the Id. Authorised Representative filed written submissions explaining that the Id. CIT has formed an opinion were the Id. Assessing Officer has concluded assessment without proper enquiry on various disputed points referred in the notice. The Id. Authorised Representative also submitted letters before Id. Assessing Officer on 29.10.2012, 05.11.2012 and 26.11.2012. In compliance questionnaire to the notice u/s.142(1) of the Act the Id. Assessing Officer has considered the submissions filed and supporting documentary evidence. The Id. Authorised Representative further explained that the Id. Assessing Officer has passed an order u/s.143(3) of the Act after having satisfied with the submissions of details in response to notice u/s.142(1) of the Act were details were explained. On the points raised by Commissioner of Income Tax on investments in mutual funds it was explained that investments are made from HUF funds and admitted in HUF return and the assessment of HUF was completed u/s.143(3) of the Act and the same was filed before Assessing Officer with details of investments and the Bank

account transaction of mutual funds; and the dispute has arisen due to furnishing of inaccurate PAN and therefore information was wrongly reflected in form 26AS. On the disputed issue of property income the assessee has discontinued offering rental income from property at Vivekandanagar, Puducherry where it was explained that the property was settled in the favour of Smt. P. Chandralekha and the assessee has filed detailed note explaining that the property was inherited by the assessee and his brother from deceased mother Smt. C. Madhavi on succession. Subsequently, the property was settled in favour of Smt. P. Chandralekha wife of brother through family settlement deed dated 30.06.2009. Hence, the assessee considered rental income for three months. Whereas Smt. P. Chandralekha is separately assessed to tax and disclosed the information and offering rental income in her Income Tax Return. On the next disputed issue, the assessee is not carrying on business in individual capacity and the income is derived as partner in partnership firm Vinbros and Co where assessee has representing in HUF capacity. The assessee's mother was assessed to Income Tax and Wealth Tax and died on 13.09.2008. and she died intestate leaving her two sons and therefore assessee has one half share of properties in HUF and other half in individual capacity. Further, these facts were brought to the knowledge of the Id. Assessing Officer and explained with supporting documentary evidence and filed details of inherited properties. On the issue of sources of

funds for meeting family obligations, it was explained that the assessee is a partner in Vinbros and Co which is assessed to tax separately alongwith his brother and the assessee has withdrawals from the partnership firm and were duly accounted and debited to capital account of the assessee and the withdrawals were utilized for family maintenance expenses along with other savings. The Id. Authorised Representative argued and contested the jurisdiction of Revision that the Id. Assessing Officer has made proper enquires and applied his mind on relevant material papers before passing assessment order and relied on judicial decisions. The Id. Assessing Officer was satisfied with the submissions though not reflected in assessment order and the issue of notice of revision u/sec. 263 of the Act is not accordance with law. The Id. Commissioner of Income Tax verified the documents and considered the submissions of the assessee and the assessment record and is of the opinion that assessee has not supported the case with documentary evidence of bank statement issued by bank instead supported on typed statements. Further, no explanations were provided in respect of assets owned by assessee's mother before the demise and the documentary evidence of property inherited was not sufficient and also the investments in mutual funds in individual and HUF capacity is required to be verified as there is inadequacy of details furnished by the assessee and further the assessee failed to explain the

transactions of individual or HUF and the transactions with family members. The Id. CIT observed that on inheritance and partition of properties the Id. Assessing Officer has failed to investigate properly and extensively in the scrutiny assessment and that the order passed u/s.143(3) dated 14.12.2012 is prejudicial to the interest of the Revenue and set aside with a direction to do proper investigation and examination and passed an order u/s.263 of the Act dated 12.03.2014. Aggrieved by the order, the assessee filed an appeal before Tribunal.

3. Before us, the Id. Authorised Representative argued ground of challenging the jurisdiction that the Id. CIT does not have jurisdiction to invoke provisions u/s.263 of the Act and the action of the Id. Assessing Officer is not against the interest of the Revenue. The Id. Commissioner of Income Tax presumed that the order passed u/s.143(3) of the Act dated 14.12.2012 is erroneous and prejudicial to the interest of the Revenue. The Id. Commissioner of Income Tax has not appreciated that the assessee has produced entire material in the assessment proceedings in compliance to notice u/s.142(1) of the Act and various letters are filed. The information submitted in the assessment proceedings are vital and the Id. Assessing Officer has applied his mind and took cognizance of the issues and passed the order. Further, the Id. Commissioner of Income Tax action in directing the Id. Assessing Officer to make enquiries is not in

accordance with law has exceeded jurisdiction for further investigation irrespective of the facts on record that all substantial materials are filed before the Id. Assessing Officer and prayed for quashing the impugned order and supported his arguments with judicial decisions. Further, it was submitted before the Id. Assessing Officer that the investments are disclosed in the capacity of HUF and was duly explained and is assessed to tax. The discontinuance of rental income at Vivekananda Nagar property, Puducherry was explained that the property was acquired on inheritance on demise of mother and settled in favour of sister in law and the rental income from said property was offered only for three months. Whereas Sister in law Smt. P. Chandralekha assessed to Income Tax and Wealth Tax is filing Return of income and wealth and disclosing rental income from the said property and was duly explained in assessment proceedings. The Id. Authorised Representative explained on the dispute of cash in hand and drawings that the assessee is a partner with Vinbros & Co and said partnership is assessed to Income Tax with higher income. The funds are withdrawn from assessee's capital account and was reflected in the Books of account of the firm. The assessee is having sufficient drawings in partnership and utilized for household and meeting family obligations and supported with legal decisions and filed details of letters in paper book and prayed for quashing the order of Id. Commissioner of Income Tax.

4. Contra, Id. Departmental Representative relied on the order of Commissioner of Income Tax and vehemently opposed to the grounds and prayed for dismissing the appeal.

5. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative emphasized on the jurisdiction of provisions of Sec.263 of the Act and the directions of the Id. Commissioner of Income Tax to do investigation and examination. The Id. Commissioner of Income Tax shall set aside the assessment order passed u/s.143(3) of the Act only were the Id.AO has not applied his mind nor conducted any enquiry before passing the order which is prejudicial to the interest of the Revenue. We perused the order of Id. Commissioner of Income Tax where the explanations are incorporated on disputed issue and the Id. Authorised Representative explained that the information was already produced before Assessing Officer in assessment proceedings and the Id. Assessing Officer having satisfied with details has passed the assessment order with due application of mind. The Id. Authorised Representative drew our attention to the reply filed in the appellate proceedings at page 2 of paper book with letters dated 29.10.2012, 05.11.2012 and 26.11.2012 and reflected at page nos.6 to 10 alongwith copy of the Income Tax Returns of assessee's HUF at page 11 and form No. 26AS and reconciliation of TDS claim in

capacity of individual and HUF. The information submitted is exhaustive and the assessee has filed said information before Id. Assessing Officer which consist of voluminous transaction of mutual funds, bank accounts, properties and bank deposits. Further at page 49 of paper book, notice u/s.142(1) of the Act was issued alongwith questionnaire annexure by the Id. Assessing Officer calling for certain details and documents. The assessee has complied the directions and submitted information, the Id. Assessing Officer has summarily accepted the details and passed the assessment order. The Id. Authorised Representative supported his arguments with the judicial decisions and vehemently emphasized that Id. Commissioner of Income Tax does not have jurisdiction to set aside and direct enquiry. We also perused the assessment order at page no.53 of the paper book which is cryptic and the Id. Assessing Officer has not made any reference of these voluminous submissions nor recorded any satisfaction note that the disputed issues raised by the Id. CIT were already dealt in assessment order proceedings with due application of mind. No doubt the Id. Authorised Representative appeared on various dates of hearing but the conclusion was made by the Id. Assessing Officer in accepting the Returned Income without reference to the voluminous transactions of mutual fund, rental income, details of HUF and cash withdrawals. We are not in a position to understand whether these facts are bonafidely accepted by the Id. Assessing Officer. The

Id. Departmental Representative submitted that the Id. Assessing Officer has passed stereotyped order and the assessee has filed details which shall be forming part of assessment record and has to be examined. The Id. Departmental Representative could not produce any evidence to prove that the information filed was brought on record. On the other hand, the Id. Authorised Representative supported that the information was filed before Id. Assessing Officer and dates were recorded in assessment order in respect of letters filed. The Id. Commissioner of Income Tax cannot give direction for conducting another investigation. We considering the apparent facts, materials on record, judicial decisions and practical aspects, the assessee is having various sources of income and has categorically maintained and submitted information before Id. Assessing Officer on mutual funds investments, properties and Bank accounts as seen from the letters filed in the paper book. The dispute arises prima facie on the assessment order which does not give a complete picture being a non speaking order. The order passed by the Id. Assessing Officer has to be consistent with rules of natural justice. The Id. Commissioner of Income Tax has directed investigation and examination on investments in mutual funds and disclosure of rental income and cash on hand. We are of the opinion that such direction shall not stop the assessee from submitting the clarifications and should not be put in a worst position. The Id. Commissioner of

Income Tax issued specific directions to the Id. Assessing Officer but set aside of order u/sec. 143(3) of the act with specific directions to conduct further investigation and examination cannot be accepted and in the interest of justice the order has to be consistent with the rules of nature justice. We set aside the order of Commissioner of Income Tax and remit the file to the Id. Assessing Officer to decide afresh and pass speaking order on merits and the assessee should be provided with adequate opportunity of hearing before passing the order.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Thursday, the 15th day of September, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:15.09.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |