

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1398/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Mother India City Shelters  
Pvt. Ltd.,  
C/o Shri S. Ramachandran, FCA,  
Chartered Accountant,  
"Sethuram", No.15, Sundaesa Iyer  
Layout, Trichy Road,  
Coimbatore – 641 018.

v. The Principal Commissioner of  
Income Tax-1,  
Coimbatore.

PAN : AAKCS 6946 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Ramachandran, FCA

प्रत्यर्थी की ओर से/Respondent by : Smt. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 03.08.2017

घोषणा की तारीख/Date of Pronouncement : 23.08.2017

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Principal Commissioner of Income Tax-1, Coimbatore, dated 31.03.2017 and pertains to assessment year 2012-13.

2. Shri S. Ramachandran, the Ld. representative for the assessee, submitted that the Assessing Officer completed the assessment after considering the material available on record. Subsequently, based upon the audit objection, the Principal Commissioner revised the order of the Assessing Officer under Section 263 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, since the jurisdiction under Section 263 of the Act was exercised on the basis of audit objection, the same has to be quashed. According to the Ld. representative, the Assessing Officer made proper enquiry and thereafter passed the order, hence, the Principal Commissioner is not justified in revising the order of the Assessing Officer. On a query from the Bench, whether the Assessing Officer considered the provisions of Section 40A(3) of the Act, the Ld. representative submitted that the Assessing Officer has not discussed in the assessment order about the provisions of Section 40A(3) of the Act.

3. We have heard Smt. Ruby George, the Ld. Departmental Representative also. The Principal Commissioner found that in respect of cash payment made for purchase of land at Coimbatore Maharaja Town, the Assessing Officer failed to consider the

provisions of Section 40A(3) of the Act. Therefore, the Principal Commissioner found that there was error in the order of the Assessing Officer. Now the assessee contends that there was audit objection. According to the Ld. D.R., the audit party can always bring to the notice of the Assessing Officer and the Principal Commissioner the facts of the case. When the Assessing Officer has not considered the provisions of Section 40A(3) of the Act, it would not prevent the Principal Commissioner to exercise his power under Section 263 of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. From the material available on record it appears that the assessee has made payment by cash and cheque also. In respect of payment made by cash, the Assessing Officer has not considered the provisions of Section 40A(3) of the Act. The non-consideration of statutory provision amounts to an error within the meaning of Section 263 of the Act. Naturally, there is loss of revenue. Hence, the Principal Commissioner has rightly exercised his jurisdiction under Section 263 of the Act. Therefore, this Tribunal do not find any reason to

interfere with the order of the lower authority and accordingly the same is confirmed.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 23<sup>rd</sup> August, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> August, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. Principal CIT-1, Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.