

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.Nos.2167 & 2168/CHNY/2017
(निर्धारणवर्ष / Assessment Years: 2009-10 & 2010-11)

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| M/s. Chennai Central Co-operative Bank Limited, C/o. M/s. Ramesh and Ramachandran, Chartered Accountants, New No.39, Old No.29/3, Viswanathapuram Main Road, Kodambakkam, Chennai – 600 024 | Vs | The ACIT, Non Corporate Circle -11, Chennai |
| PAN: AAAAC0982C | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थी की ओर से/ Appellant by | : | Shri Y. Sridhar, CA |
| प्रत्यर्थी की ओर से/Respondent by | : | Smt. Ruby George, CIT |

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| सुनवाई की तारीख/Date of hearing | : | 08.03.2018 |
| घोषणा की तारीख /Date of Pronouncement | : | 15.05.2018 |

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the assessee are directed against the orders passed by the Principal Commissioner of Income Tax (Appeals), Chennai both dated 22.08.2017 in C.No.852(14)/PCIT-8/2017-18 & 852(15)/PCIT-8/2017-18 for the assessment years 2009-10 & 2010-11 respectively passed U/s.263 of the Act.

2. The assessee has raised several identical grounds in its appeals however the crux of the issue is that the Ld.PCIT has erred in invoking his jurisdiction U/s.263 of the Act.

3. The brief facts of the case are that the assessee is a co-operative bank, filed its return of income for the assessment year 2009-10 electronically on 30.09.2009 admitting total income of Rs.31,45,31,341/- and subsequently filed revised return on 10.02.2010 admitting total income of Rs.38,55,67,390/- and for the assessment year 2010-11 the assessee filed its return of income electronically on 01.10.2010 admitting total income of Rs.47,42,79,440/-. Initially the returns were processed U/s.143(1) of the Act on 30.03.2011 & 19.04.2011 for the assessment years 2009-10 & 2010-11 respectively. Subsequently the cases were selected for scrutiny under CASS and finally assessment orders for both the assessment years were passed U/s.143(3) r.w.s. 147 of the Act on 26.03.2016 wherein the Ld.AO made addition of Rs.12,40,67,151/- & Rs.13,18,75,435/- for the assessment years 2009-10 & 2010-11 respectively towards non-deduction of tax at source towards interest payments above Rs.10,000/-.

4. Thereafter the Ld.PCIT invoked his jurisdiction U/s.263 of the Act for both the assessment years for the following reasons:

- (i) Interest U/s.234A(3) of the Act, was omitted to be charged by the Ld.AO.
- (ii) The assessee had claimed deduction towards provision for wage arrears amounting to Rs.5 crores which is a contractual liability between the assessee and its employees and therefore are contingent in nature and has not crystalized as on 31.03.2009.

5. The Ld.AR submitted before us that the two conditions which must be satisfied for invoking the provisions of Section 263 of the Act, by the Ld.PCIT is absent in the case of the assessee such as:-

- a) The order of the Assessing Officer sought to be revised is erroneous.
- b) The order of the Assessing Officer is prejudicial to the interest of the Revenue

Reliance was placed in the following decisions:-

- (i) *The Hon'ble Apex Court in Malabar Industrial Co. Ltd., reported in 243 ITR 83 (SC)*

- (ii) *The Hon'ble Madras High Court in CIT Vs/ Mepco Industries (2007) 297 ITR 121 (Mds)*
- (iii) *The Hon'ble Apex Court in Max India Ltd., reported in 295 ITR 282(SC), CIT vs. Green World Corporation reported in (2009) 181 Taxman 111 (SC)*
- (iv) *The Hon'ble Karnataka High Court n CIT Vs. Gokuldas Exports reported in (2011) 333 ITR (Kar)*
- (v) *The Hon'ble Bangalore High Court in Infosys Technologies Vs. JCIT reported in (2006) 286 ITR (AT) 211.*
- (vi) *The Hon'ble Bombay High Court in CIT Vs. Fine Jewellery (India) Ltd. reported in (2015) 230 ITR 641 and CIT Vs. Nirav Modi reported in (2016) 390 ITR 292 (Bom)*
- (vii) *The Hon'ble Madras High Court in CIT Vs. Valliammal (D) reported in 19998 230 ITR (Mds)*
- (viii) *The Hon'ble Apex Court in Metal Box Company of India Ltd., Vs. Their Worked reported in 73 ITR 53 (1969)*

The Ld.AR further argued stating that in the case of the assessee provision for wage arrears had crystalized during the relevant assessment years and therefore there was no error in the order of the Ld.AO which is prejudicial to the interest of the assessee.

6. The Ld.DR on the other hand argued stating that both the issues were not discussed by the Ld.AO in the respective orders which the Ld.PCIT has pointed out. He further argued stating that

the Ld.PCIT has only directed the Ld.AO to verify the aspects discussed in his Order and pass appropriate order in accordance with merits and law. Hence it was pleaded that the order of the Ld.PCIT is appropriate and hence may be confirmed.

7. We have heard the rival submissions and carefully perused the materials available on record. From the facts of the case it is apparent from the order of the Ld.AO, that he has not discussed the issue with respect to levy of interest U/s.234A(3) of the Act and the issue with respect to crystallization of the expense incurred towards wage arrears. It also appears that the Ld.AO has not examined the agreement between the assessee and its employees with respect to the wage arrears, the terms & conditions of the employment of the assessee's employees etc. In these circumstances, we are of the considered view that the Ld.PCIT was very much right in his realm to invoke his jurisdiction U/s.263 of the Act by relying on the decisions cited in his order. It is pertinent to mention that the decisions relied by the Ld.AR is not applicable to the facts of the case of the assessee because in the case of the assessee, the Ld.AO has omitted to examine certain material facts which might influence while deciding the issues. Therefore we

hereby sustain the order of the Ld.PCIT U/s.263 of the Act. However we also hereby direct the Ld.AO to examine the issues without being prejudiced by the order of the Ld.PCIT and pass appropriate order based on merits and law after affording sufficient opportunity to the assessee of being heard.

8. In the result the appeals filed by the assessee are dismissed.

Order pronounced on 15th May, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 15th May, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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