

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' A' BENCH : CHENNAI

**श्री अब्राहमपी.जॉर्ज, लेखा सदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
AND SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1211/Chny/2017

निर्धारण वर्ष /Assessment year : 2009-10

M/s.Anjali Foundations,
25,Barnaby road,Kilpauk,
Chennai 600 010.

Vs. The Income Tax officer,
Non-corporate Ward-10(1),
Chennai.

[PAN AANFA 8459 L]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar,Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.S.Bharath,CIT,D.R

सुनवाई की तारीख/Date of Hearing : 26-09-2018
घोषणा की तारीख /Date of Pronouncement : 08-10-2018

आदेश / O R D E R

PER GEORGE MATHAN , JUDICIAL MEMBER

This is an appeal filed by the assessee against the Order passed u/s.263 of the Income Tax Act, 1961, by the Principal Commissioner of Income-tax-3, Chennai in C. No.3033/263/PCIT-3/2016-17, dated 29.03.2017 for the assessment year 2009-10.

2. Mr.S.Sridhar represented on behalf of the Assessee, and Mr.S.Bharath represented on behalf of the Revenue.

3. It was submitted by the Ld.AR that the assessee is a partnership firm, which is doing business of Real Estate and Construction. It was a submission that assessee had filed its return of income for the impugned assessment year on 08.09.2009 admitting 'Nil' income after claiming deduction u/s.80-IB of the Act. It was a submission that the assessment u/s.143(3) of the Act was originally completed on 29.12.2011, which was subject to a revision u/s.263 of the Act vide order dated 28.03.2014 wherein the Commissioner of Income Tax-III Chennai had directed the Id. Assessing Officer to complete the fresh assessment in accordance with law after obtaining and examining all documents and records relating to the claim of deduction u/s.80-IB of the Act including those materials, which have been called for during the course of regular scrutiny assessment proceedings from the assessee as well as from M/s.Narendra Properties Ltd. The assessment Order giving effect to the revision passed u/s.263 of the Act was passed u/s.143(3) r.w.s 263 of the Act on 30.03.2015 wherein after examining called documents on records relating to the claim of deduction u/s.80-IB(10) of the Act. It was a submission that subsequently a notice u/s.263 of the Act dated

07.11.2016 came to be issued on the assessee, again questioning the deduction granted to the assessee u/s.80-IB of the Act. It was a submission that the in response to the notice dt.7.11.2016, assessee had replied that the issue u/s.80-IB(10) of the Act has been examined by the Id. Assessing Officer, first in the original assessment passed u/s.143(3) of the Act on 29.12.2011, and second time, the order passed u/s.143(3) r.w.s.263 of the Act dated 30.03.2015, on account of revision order passed u/s.263 of the Act, by the Commissioner of Income Tax, and all the issues having been considered by the Id. Assessing Officer, Sec.263 proposal was clearly based on change of opinion and was not permissible. The reply of the assessee was not considered by the Id. Commissioner of Income Tax. It was a submission that Id. Commissioner of Income Tax again directed fresh re-assessment by setting aside order passed u/s.143(3) r.w.s.263 of the Act dated 30.03.2015. It was a submission that the revision u/s.263 as proposed by the Commissioner of Income Tax, Chennai, was clearly on the basis of a change of opinion and re-appraisal of the same facts, which had been considered by the Id. Assessing Officer on two separate occasions, of which one was on account of revision u/s.263 on identical issues, revision order passed u/s.263 of the Act is liable to be quashed.

4. In reply, the Id.D.R vehemently supported the order of the Principal Commissioner of Income Tax, Chennai-5. It was a submission that Principal Commissioner of Income Tax had the powers to revise any order u/s.263 of the Act, if the same was found to be erroneous and prejudicial to the interests of the Revenue. It was a prayer that the order of the Principal Commissioner of Income Tax was liable to be sustained.

5. We have considered the rival submissions. At the outset, it is to be appreciated that the order of assessment can be revised when both the conditions are met, first being the order is erroneous, and the second being the order is prejudicial to the interests of the Revenue. The view of the Revenue seems to be any order granting deduction to an assessee is prejudicial to the interests of the Revenue. We are not in agreement with this view, in so far as, if the Act provides for granting a particular benefit or deduction to an assessee, the granting of such deduction or benefit to the assessee cannot be deemed as prejudicial to the interest of the Revenue. One has to take out of one's mind that the granting of statutory deduction is an erroneous order prejudicial to the interests of the Revenue. The issue of the order being erroneous however needs to be shown. Just a claim that the

order is an erroneous would not make an order erroneous. What is the error would have to be specifically pointed out. In the present case, the Principal Commissioner of Income Tax has raised the issues that the claim of deduction u/s.80-IB(10) has been made by both the land owner, being the assessee herein and the Joint Venture Partner, being M/s.Narendra Properties Ltd. The assessee has categorically brought to the attention of the Principal Commissioner of Income Tax, in response to show-cause notice that the decision of the Tribunal vide order dated 22.11.2012 in the case of SriLakshmi Brick Industries has dealt with this issue proposed in the revision order and the Bench has categorically concluded in paras 9 & 10 that the land owner under similar circumstances would be entitled for the benefit of deduction u/s.80-IB(10) of the Act in the computation of the taxable total income. This view has been clearly expressed by the Appellate Authority and the Id. Assessing Officer has in the course of assessment followed such view expressed by the Appellate Authority, when granting the assessee benefit of deduction u/s.80-IB of the Act. Thus clearly the revision as done by the Commissioner of Income Tax u/s.263 of the Act is based exclusively on change of opinion, which is not permissible, when passing a revision u/s.263 of the Act. The Order u/s.263 of the Act is based purely on change of opinion and the same being impermissible under the provisions of the section 263, the order

dated 29/03/2017 passed by the Principal Commissioner of Income Tax u/s.263 of the Act in the case of the assessee herein stands quashed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced on 08th October, 2018, at Chennai.

Sd/-

(अब्राहमपी.जॉर्ज)

(ABRAHAM P GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 08th October, 2018.

K S Sundaram

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 |