

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1745/Chny/2018
निर्धारण वर्ष /Assessment Year: 2011-12

Shri A.R.Rahman,
C/o.M/s.PASS Associates,
No.90, Armenian Street, 4th Floor,
"Orient Chambers",
Chennai-600 001.

Vs. The Asst. Commissioner Of
Income Tax,
Central Circle-2(4),
Chennai.

[PAN: ADMPR 0060 J]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.D.Anand, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Mr.Sridhar Dora, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.07.2019

घोषणा की तारीख /Date of Pronouncement

: 18.09.2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee directed against the Order of the Principal Commissioner of Income Tax, Central-2, Chennai, passed u/s.263 of the Income Tax Act, dated 28.03.2018, for the AY 2011-12.

2. The assessee raised the following grounds of appeal:

- 1) *The order of the learned Principal Commissioner of Income tax, Central-2, Chennai is Wrong, illegal and is opposed to law and facts of the case.*
- 2) *The learned Principal Commissioner of Income Tax, Central-2 Chennai ought to have seen that the order of assessment is not erroneous and that the learned CIT can assume jurisdiction under section 263 only if the twin condition of the assessment order being erroneous and pre-judicial to the interest of the revenue is satisfied.*
- 3) *The learned Principal Commissioner of Income Tax, Central-2 while passing orders under section 263 erred in giving a specific direction of Rs.3,44,77,220/- in the hands of the appellant in a preconceived manner even while the assessing officer has specifically dealt with the issue while proceeding under section 148. The assessment is set aside not for the purpose of making enquiry but with a purpose of making and addition in a predetermined manner even without enquiry.*
- 4) *The Principal Commissioner of Income Tax, Central-2 failed to see that the appellant had only come forward and as a means of quid-pro-quo, rendered free service to Lebara Mobile in turn for the generous contribution given by Lebara Mobile to A.R.Rahman Foundation. The learned Principal Commissioner of Income tax, Central-2 failed to appreciate the Duke of Westminster principles and the dictum laid down by the Apex court in Calcutta Discount case.*
- 5) *The learned Principal Commissioner of Income Tax, Central-2 ought to have seen that the Assessing Officer in its reassessment proceedings, after due enquiry has consciously not assessed the impugned sum as the income of the appellant. The learned Principal Commissioner of Income Tax, Central-2 erred in setting aside the assessment by observing that the Assessing Officer had not applied its mind while completing the assessment.*

For these and other grounds that may be raised at the time of hearing it is most humbly prayed that the hon'ble tribunal may be please to quash the order of revision passes by the learned Principal Commissioner of Income tax, Central-2 under section 263 of the Income Tax Act and thus render justice.

3. Briefly the facts of the case are that the assessee is an individual.

The return of income for the AY 2011-12 was filed on 25.09.2011 declaring total income of Rs.15,98,04,415/-. Against the said return of income, the assessment was completed by the AO vide an order dated 30.03.2014 passed u/s.143(3) of the IT Act. Subsequently, the assessment was reopened u/s.148 of the IT Act stating that the amount of

Rs.3,47,77,200/- received from Lebara Mobile, UK, and (an amount of Rs.54.00 lakhs received from M/s.Photon Kathas Production Pvt. Ltd.,) had escaped assessment of tax, thereafter, proposed to re-assess the same. During the course of re-assessment proceedings, the assessee made detailed submissions before the AO stating that the contributions were received by M/s.A.R.Rahaman Foundation, Chennai, after receiving the post facto approval from Ministry of Home Affairs, Government of India. The AO considered the explanation of the assessee and considered the fact that the contributions were assessed in the hands of M/s.A.R.Rahaman Foundation, the AO had chosen not to make any addition. Subsequently, the Principal CIT, Chennai-2, issued a show cause notice dated 13.02.2018 u/s.263 of the IT Act calling upon the assessee to show cause as to why the re-assessment order dated 28.03.2016 cannot be set aside as the AO had failed to consider and examine the relevant clauses of the agreement between the M/s.A.R.Rahaman Foundation and M/s.LEBARA Ltd., which clearly establishes that the assessee had received the remuneration towards his professional services. Accordingly, the Ld.CIT(A) has set aside the re-assessment order dated 28.03.2016 by holding that the Assessment Order passed by the AO is erroneous and prejudicial to the interest of Revenue vide order dated 28.03.2016.

4. Being aggrieved the assessee is in appeal before us. It is contented before us that the very same issue was examined by the AO during the course of re-assessment proceedings, inadequate enquiry does not enable

the Ld.CIT(A) to revise the assessment and reliance was placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd., reported in [2011] 332 ITR 0167 and similarly the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. On the other hand, the Principal CIT placed reliance on the order of the ACIT.

5. We have considered the rival submissions and perused the materials placed on record.

6. The short issue that arises for consideration is whether or not the Principal Commissioner of Income Tax had justified in exercising the jurisdiction of revision u/s.263 of the IT Act. Admittedly, this issue was examined by the AO during the course of the re-assessment proceedings and took a view that the contributions made by M/s.LEBARA Ltd., are not taxable in the hands of the assessee since the same were assessed to tax in the hands of M/s.A.R.Rahaman Foundation. It is a matter of record that even the Ministry of Home Affairs, Government of India, had accorded post facto approval in respect of this contribution. Therefore, there is nothing on the record suggesting that it is taxable in the hands of the assessee. In these circumstances, we are of the considered opinion that the re-assessment order cannot be held to be erroneous and prejudicial to the interest of Revenue so as to enable the Ld.CIT(A) to exercise the power of revision u/s.263. Therefore, the Principal CIT was not justified in exercising the power of revision u/s.263.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 18th September, 2019 in Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 18th September, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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