

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI,
CAMP AT COIMBATORE

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1360/CHNY/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

Mrs. V. Geethalakshmi,
Legal Heir and Wife of
Sri. G. Vijayakumar,
K.G. House, New No.126,
Arts College Road,
Coimbatore 641 018.

Vs The Deputy Commissioner of
Income Tax,
Corporate Circle,-1,
Coimbatore

(PAN: ABNPV 6659E)

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri Abani kanta Nayak, CIT

सुनवाईकीतारीख/Date of hearing

: 05.02.2020

घोषणाकीतारीख /Date of Pronouncement

: 05.02.2020

आदेश /O R D E R

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

This appeal of the assessee is directed against the order passed by the Principal Commissioner of Income Tax-1 (in short 'the PCIT) Coimbatore dated 06.03.2019 passed u/s.263 of the Income Tax Act, 1961 (in short 'the Act") and pertains to the assessment year 2014-2015.

2. Shri. S. Sridhar, the Ld. Counsel for the assessee submitted that the assessee had expired on 27.08.2017 and show cause notice was issued on 09.08.2018 in the name of dead person. According to the Ld. Counsel the show cause notice is a jurisdictional notice and therefore proceedings initiated against the death person is invalid. Referring to the assessment order, the Ld. Counsel submitted that the AO called for the details of the expenditure claimed by the assessee u/s.57 of the Act and the matter was also discussed with Representative of the assessee. Merely because the AO has not recorded any findings with regard to the details furnished by the assessee, it cannot be considered to be an erroneous order. The Ld. Counsel placed reliance on the judgment of Allahabad High Court in the case of *CIT vs. Krishna Capbox Ltd*, 372 ITR 310. The Ld. Counsel also relied on the decision of Hon'ble Madras High Court in the case of *Alamelu Veerappan vs. ITO*, 304 CTR 512.

3. We heard Shri Abani Kanta Nayak, the Ld. Departmental Representative also. Admittedly, the assessee expired on 27.08.2017 and show cause notice was issued on 9.8.2018. The question arises for consideration is whether the show cause notice issued by the PCIT is a jurisdictional notice or not?. This Tribunal is of the considered opinion that the PCIT is not bound to issue notice u/s.263 of the Act. It is sufficient if the PCIT gives an opportunity of being heard. In this case, it is not the case of the assessee that no opportunity was given to the assessee.

This view of the Tribunal is fortified by the judgment of Apex Court in *CIT vs. Hukumchand Mohanlal (1971) 82 ITR 624* and *Gita Devi Aggarwal vs. CIT, (1970) 76 ITR 496*.

4. Now coming to the merits of the case, the AO admittedly called for the details of the expenditure claimed u/s.57 of the Act. However, there is no discussion in the assessment order. It is not in dispute that the Assessment proceedings are judicial proceedings u/s.136 of the Act. When the AO passes a Quasi-Judicial order, he is bound to bring on record the entire material available on record and record his own reasons. Unless the reasons are recorded, the Appellate or Revisional authorities may not be able to appreciate the assessment order with statutory proceedings. A quasi judicial order has to speak itself without any further material taken on record. The appreciation of the fact shall be reflected in the assessment order. The application of mind by the AO to the material available on record shall be reflected in the assessment order itself. There should be a live link to the material available on record and application of mind by the AO. This is lacking in this case. The Supreme Court in *Toyota Motors Corporation* categorically held that the AO has to record his own reasoning's. The failure of the Assessing Officer, after calling for the details of expenditure in recording his own reasoning is nothing but an error which is prejudicial to the interest of the Revenue. Therefore the PCIT has rightly invoked his jurisdiction u/s.263 of the Act. However, the

Id. PCIT gave some direction to the Assessing Officer. This Tribunal is of the considered opinion that any direction has to be given only after hearing the assessee. Therefore, while confirming the impugned order of the PCIT, we direct the Assessing Officer to reconsider the issue independently without being influenced by any of the observations made by the PCIT. The judgments of Allahabad High Court and Madras High Court in the cases of *Krishna Capbox Ltd and Alamelu Veerappan (supra)* are not applicable to the facts of the present case in view of the judgment of the Apex Court. With the above observations, the appeal of the assessee stands dismissed.

5. In the result, the appeal filed by the assessee in ITA No.1360/Chny/2019 for assessment year 2014-2015 stands dismissed.

Order pronounced in the court on 5th February, 2020 at Camp at Coimbatore.

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखासदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिकसदस्य/Judicial Member

Coimbatore

दिनांक/Dated, the 5th February, 2020.

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |