

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.1212 to 1218/Chny/2018

(निर्धारण वर्ष / Assessment Years: 2008-09 to 2014-15)

Mr. Dhamodarasamy Ramagopal, C/o.G.Vijaychand Jhabakh, 157, P.M.Swamy Colony, 5 th Street, R.S.Puram, Coimbatore-641 006.	Vs	The Deputy Commissioner of Income Tax, Central Circle-1 Coimbatore-641 018.
PAN:AKGPR3621L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Abani Kanta Nayak, CIT

सुनवाईकीतारीख/Date of hearing	:	10.11.2020
घोषणाकीतारीख /Date of Pronouncement	:	04.12.2020

आदेश / ORDER

PER BENCH:

These seven appeals filed by the assessee are directed against separate, but identical orders of the learned Principal Commissioner of Income Tax, Central-2, Chennai, all dated 23.03.2018 passed under section 263 of the Income Tax Act, 1961(hereinafter referred to as "the Act") and pertain to the assessment years 2008-09 to 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, the appeals were heard together and disposed off by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2008-09 are reproduced as under:-

“1. The Principal Commissioner of Income Tax order u/s.263 is bad in law and against the facts.

2.The basis of passing the 263 orders to set aside the original assessment orders on the basis of audit objection is also bad in law and unsustainable.”

3. Brief facts of the case are that a search under section 132 of the Act was carried out in the case of the assessee on 27.11.2013. As a result of search and post-search enquiries various undisclosed income and investments made by the assessee was found. Consequent to search, notice u/s.153A of the Act was issued requiring the assessee to file return of income for six assessment years immediately preceding the assessment year in which search took place. The assessee initially did not file return in response to notice issued u/s.153A, however, after several reminders and initiation of penalty u/s.271F for not filing the returns, the assessee has filed return of income on 02.01.2016 declaring Nil total income and agricultural income of ₹ 2,70,000/-. Thereafter, the case has

been selected for scrutiny and assessment has been completed u/s.143(3) read with section 153A of the Act on 30.03.2016 and determined total income of ₹ Nil.

4. The case has been subsequently taken up for revision by learned Principal Commissioner of Income Tax, Central- 2, Chennai, and accordingly notice u/s.263 dated 08.03.2018 was issued calling upon the assessee to explain as to why the assessment order passed by the Assessing Officer u/s. 153A read with section 143(3) dated 30.03.2016 shall not be revised for the reasons stated in the said show cause notice. As per the said show cause notice, the PCIT has considered the order passed by the Assessing Officer to be erroneous and prejudicial to the interests of the revenue on two issues. As per the PCIT, assessment order passed by the Assessing Officer is erroneous, insofar as prejudicial to the interests of the revenue on account of non-consideration of unaccounted investments made by the assessee in fixed deposits and unproved agricultural income. According to the PCIT, although the Assessing Officer has rejected the claim of the agricultural income disclosed by the assessee in his return of income, but he has

failed to make any addition to the returned income, which rendered the assessment order erroneous, insofar as it is prejudicial to the interests of the revenue. The PCIT has also questioned unaccounted investments in fixed deposits on the ground that the Assessing Officer has failed to examine the issue in light of the materials gathered during the course of search, although he has called for certain details in respect of unaccounted investments in fixed deposits vide notice u/s.142(1) dated 30.03.2016, which rendered the assessment order erroneous, insofar as it is prejudicial to the interests of the revenue.

5. In response to the show cause notice, assessee vide his letter dated 19.03.2018 submitted that the assessment order passed by the Assessing Officer u/s. 153A r.w.s 143(3) of the Act is neither erroneous nor prejudicial to the interests of the revenue because the two issues questioned by the PCIT in 263 proceedings has already been considered by the Assessing Officer in assessment proceedings which is evident from the fact that Assessing Officer has discussed the disclosure of agricultural income in the light of various evidences filed by the assessee and has rejected the claim,

however, not made any additions to returned income for the simple reason that the assessee has not proved the claim of agricultural income with solid evidences. As regards investments in fixed deposits, the assessee has filed necessary details before the Assessing Officer and has also offered interest income earned on the said fixed deposits, which is evident from the fact that the Assessing Officer has made additions towards accrued interest on fixed deposits in the assessments wherever the assessee has not considered the said interest income in the return of income filed for relevant assessment year. Therefore, the assessment order passed by the Assessing Officer cannot be considered as erroneous insofar as it is prejudicial to the interests of the revenue.

6. The learned PCIT, after considering the submissions of the assessee and also taken note of various facts came to the conclusion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the revenue because the Assessing Officer has not examined the issue of agricultural income and unaccounted investments in fixed deposits, which he ought to have examined in the light of the various

evidences gathered during the search which rendered the assessment order as erroneous, insofar as it is prejudicial to the interests of the revenue. The PCIT further noted that although the Assessing Officer has called for certain details regarding sources for unaccounted investments in fixed deposits vide notice u/s.142(1) dated 30.09.2015, the assessee has furnished his reply on 08.10.2015, but the Assessing Officer had just gathered the information and simply kept on record without application of mind to the relevant facts, which is evident from the fact that although he has rejected the claim of agricultural income, but failed to make any additions to returned income towards bogus claim of agricultural income. As regards unaccounted investments in fixed deposits, although he has called for certain basic details, but failed to examine the source for investments in fixed deposits. The PCIT has discussed the issue in the light of certain judicial precedents and also has taken support from Explanation 2 to Section 263 of the Act, which was inserted by Finance Act, 2015, with effect from 01.04.2015 to come to the conclusion that an order shall be deemed to be erroneous, if it has been passed without making

inquiries or verification which should have been made, hence what is relevant for clause (a) of Explanation 2 to section 263 is whether the Assessing Officer has passed the order after carrying out inquiries or verification which a reasonable and prudent officer would have carried out or not. As discussed above, the Assessing Officer had clearly failed to make any verification or inquiry on the claim made by the assessee. Therefore, the order passed by the Assessing Officer is not only erroneous but also prejudicial to the interests of the revenue. Hence, the PCIT set aside the order passed by the Assessing Officer, with a direction to examine the issue of unaccounted investments in fixed deposits and agricultural income admitted by the assessee.

7. The learned A.R for the assessee submitted that the learned PCIT erred in revising the assessment order u/s.263 of the Act without pointing out how the assessment order passed by the Assessing Officer u/s. 153A r.w.s 143(3) of the Act dated 30.03.2016 is erroneous, insofar as it is prejudicial to the interests of the revenue, which is evident from the fact that PCIT has simply set aside the order for examination of the two issues, which was

subject matter of proceedings before the PCIT u/s.263 of the Act. The learned AR further submitted that PCIT has termed the assessment order passed by the Assessing Officer as erroneous, insofar as it is prejudicial to the interests of the revenue on the ground that Assessing Officer has not examined the claim of agricultural income in right perspective of law and has also not applied his mind to the facts of the case which rendered the assessment order passed by the Assessing Officer as erroneous and prejudicial to the interests of the revenue. But, the fact remains that the Assessing Officer has examined the issue of agricultural income and after considering necessary facts has denied the claim of agricultural income on the ground that assessee has failed to substantiate the claim of agricultural income with solid evidence, however, not made any addition to returned income for the simple reason that assessee has not considered the said agricultural income in the statement of affairs as source of income to explain any investments. The said view taken by the Assessing Officer is one of the possible view. Therefore, even if the view taken by the Assessing Officer is not acceptable to PCIT, the PCIT cannot

term the assessment order as erroneous, unless the view taken by the Assessing Officer is unsustainable in law.

8. The learned A.R further submitted that similarly as regards unaccounted investments in fixed deposits, the Assessing Officer has recorded his categorical findings in the assessment order that the assessee has explained source of income for investments in fixed deposits and further made additions towards accrued interest on the said fixed deposits. Therefore, the PCIT cannot be said that the Assessing Officer had not examined the issue of unaccounted investments in fixed deposits. The learned AR further submitted that assessee has filed all evidences and the Assessing Officer after thoroughly considering the evidences filed by the assessee has accepted the explanation filed by the assessee regarding source for investments in fixed deposits, which is evident from the fact that Assessing Officer has discussed the issue in assessment order and made further additions towards accrued interest on investments. Once the Assessing Officer has examined the issue and taken one of the possible view, then there is no scope for PCIT to assume jurisdiction to revise the assessment order under

the provisions of section 263 on the guise of lack of inquiry or inadequate inquiry. In this context, he relied on the decisions of Hon'ble Supreme Court in CIT Vs. Max India Ltd. (2007) 295 ITR 282(SC) and Malabar Industries Co.Ltd. Vs. CIT (2000) 243 ITR 83(SC).

9. The learned DR, on the other hand, supporting the order of the PCIT submitted that the PCIT has brought out clear facts to the effect that assessment order passed by the Assessing Officer is not only erroneous but also prejudicial to the interests of the revenue because the Assessing Officer has failed to apply his mind to the facts of the case in light of relevant provisions of the Act regarding claim of agricultural income and investments in fixed deposits which rendered the assessment order as erroneous, insofar as it is prejudicial to the interests of the revenue. Therefore, there is no merit in the arguments advanced by the learned counsel for the assessee and hence the order passed by the PCIT should be upheld.

10. We have heard both the parties, perused materials available on record and gone through the orders of the authorities below

along with the case laws cited by the learned counsel for the assessee. The learned PCIT has inherent powers of revision u/s.263 of the Act, in a case where the assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of the revenue. In order to get jurisdiction u/s.263 of the Act, the PCIT has to prove that the order passed by the Assessing Officer is not only erroneous but also prejudicial to the interests of the revenue, this is because twin conditions embedded u/s.263 should be cumulatively satisfied in order to revise the assessment order u/s.263 of the Act. In case an order is erroneous, but it is not prejudicial to the interests of the revenue or vice-versa, then there is no scope for the PCIT to assume jurisdiction to revise the order. In this legal background, we examined the facts of the present case as to whether the order passed by the Assessing Officer is erroneous, insofar as prejudicial to the interests of the revenue. An order to be considered as erroneous, then it should be patently wrong or the Assessing Officer has not examined the issue in light of the relevant provisions of the Act. In case, the Assessing Officer has examined the issue and taken a possible view, then even though view taken

by the Assessing Officer is not acceptable to the PCIT, the PCIT cannot term the assessment order as erroneous. Similarly, if an order is erroneous, but if it is not prejudicial to the interests of revenue, then also there is no power to the PCIT to term the assessment order as erroneous. In this case, the PCIT has termed the assessment order passed by the Assessing Officer as erroneous and prejudicial to the interests of the revenue on two issues. The PCIT has first questioned the issue of agricultural income declared by the assessee and came to the conclusion that although the Assessing Officer has rejected the claim of agricultural income, but failed to make additions to returned income as unaccounted income of the assessee. The second issue questioned by the PCIT is unaccounted investments in fixed deposits and according to him, the assessee has failed to explain source of income for investments in fixed deposits.

11. In the light of the above legal and factual background, on perusal of the order passed by the Assessing Officer u/s.153A r.w.s 143(3), we find that the Assessing Officer has considered the issue of agricultural income declared by the assessee and discussed the

issue in light of various evidences furnished by the assessee during the course of assessment, and came to the conclusion that agricultural income claimed by the assessee is incorrect. However, chose not to make any addition to returned income on the ground that the assessee has not filed statement of affairs considering the agricultural income, as source of income to explain any asset / investments. The said view taken by the Assessing Officer, in our considered view, is one of the possible view. Therefore, we are of the considered view that once an issue has been examined by the Assessing Officer during the course of assessment proceedings and called for necessary details from the assessee, it is presumed that the Assessing Officer has examined the issue and has applied his mind to relevant facts in light of relevant provisions of the Act. Similarly, once the Assessing Officer has taken one of the possible view, which may not be acceptable to PCIT, then also PCIT cannot hold the order to be erroneous, insofar as it is prejudicial to the interests of the revenue, unless the view taken by the Assessing Officer is unsustainable in law. In this case, the view taken by the Assessing Officer, insofar as the claim of agricultural income is one

of the possible view and such view may not be acceptable to the PCIT, but the same cannot be a reason for PCIT to revise the assessment order u/s.263 of the Act .

12. Coming to the second issue questioned by the PCIT. The PCIT has revised the assessment order on the ground that although the Assessing Officer has called for certain evidences regarding investments in fixed deposits, but failed to examine source of income for unaccounted investments in fixed deposits. We have gone through the findings of the PCIT in the light of the assessment order passed by the Assessing Officer on the issue of unaccounted investments in fixed deposits and find that the Assessing Officer has discussed the issue of unaccounted investments in fixed deposits in his assessment order and has recorded categorical finding to the effect that the assessee has explained source of income for investments in FDR. The Assessing Officer after accepting the source of income for investments has verified the fixed deposits and consequent interest on said FDR and has made additions towards accrued interest on the said fixed deposits, wherever the assessee has not offered the accrued interest for

taxation. From the above, it is very clear that the Assessing Officer has examined the issue of investments in fixed deposits and after considering necessary evidences filed by the assessee has accepted the source of income for investments. Therefore, we are of the considered view that the learned PCIT is incorrect in coming to the conclusion that Assessing Officer has not examined the issue and applied his mind insofar as investments in fixed deposits. We further noted that once the Assessing Officer has taken one of the two views permissible in law on which the PCIT does not agree and which resulted in loss of revenue, it cannot be treated as erroneous order prejudicial to the interests of the revenue, unless the view taken by the Assessing Officer is completely unsustainable in law. This view is supported by the decision of the Hon'ble Supreme Court in the case of Max India Ltd.(supra). This view is further supported by the decision of the Hon'ble Supreme Court in the case of Malabar Industries Co.Ltd. Vs. CIT (supra), where a similar view has been taken by the Hon'ble Court.

13. In this case, on perusal of the facts there is no doubt whatsoever with regard to the fact that the Assessing Officer has

considered two issues questioned by the PCIT in the proceedings u/s.263 of the Act at the time of assessment proceedings and after considering the relevant facts has taken one of the possible views. Further, once the Assessing Officer has taken one of the possible views, even though the view taken by him is not acceptable to the PCIT, then there is no scope for PCIT to term the assessment order as erroneous, insofar as it is prejudicial to the interests of revenue, unless the view taken by the Assessing Officer is unsustainable in law. From the facts, we are of the considered view that the view taken by the Assessing Officer as regards the claim of agricultural income is one of the possible view. Similarly, the view taken by the Assessing Officer regarding investments in fixed deposits is also a possible view. Therefore, we are of the considered view that the PCIT has erred in revising the assessment order u/s.263 of the Act as erroneous, insofar as it is prejudicial to the interests of revenue. Hence, we set aside the order passed by the PCIT under section 263 of the Act and restore the assessment order passed by the Assessing Officer u/s.153A r.w.s.143(3) of the

Act. In the result, the appeal filed by the assessee for the assessment year 2008-09 is allowed.

ITA Nos. 1213 to 1218/Chny/2018:

14. The facts and issues involved in these appeals are identical to the facts and issues which we have already considered in ITA No.1212/Chny/2018 for the assessment year 2008-09. The reasons given by us in the preceding paragraphs of ITA No.1212/Chny/2018 shall *mutatis mutandis* apply to these appeals as well. Therefore, for the similar reasons, we set aside order passed by the PCIT u/s.263 of the Act and restore the assessment order passed by the Assessing Officer u/s.153A r.w.s 143(3) of the Act for all assessment years .

15. In the result, appeals filed by the assessee for all the assessment years are allowed.

Order pronounced in the open court on 4th December, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,
दिनांक/Dated 4th December, 2020
DS

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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