

आयकर अपीलिय अधिकरण , 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.2631/Chny/2019

निर्धारणवर्ष/Assessment Year: 2014-15

M/s. JenirichAgro Products P Ltd.,  
139, C.G.E. Colony,  
Tuticorin – 628 003.

The Deputy Commissioner of  
Income Tax,  
Circle -1,  
Tuticorin.

**Vs.**

**[PAN: AACCCJ 4199G]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे /Respondent by

: Shri S. Bharath, CIT

सुनवाईकीतारीख/Date of Hearing

: 31.03.2021

घोषणाकीतारीख /Date of Pronouncement

: 14.06.2021

**आदेश / O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Principle Commissioner of Income Tax-1, Madurai, passed u/s 263 in C. No. 401/10/PCIT/MDU-1/2018-19 dated 28.03.2019 for the assessment year 2014-15.

2. The assessee filed this appeal 95 days belatedly and it was submitted that the delay in filing the appeal was on account of understanding the complexities in the order of the PCIT by the assessee's Chartered Accountant and it was neither wilful nor deliberate but due to the circumstances beyond the control of the assessee. Therefore, it was pleaded that the delay be condoned in the interests of justice and for adjudicating the issues on merits .

3. We heard the rival contentions and condone the delay.

4. The PCIT, Madurai-1 in his order passed u/s. 263 dated 28.03.2019 set aside the assessment order passed by the AO u/s. 143(3) dated 27.12.2016 in the case of M/s. Jenirich Agro Products P Ltd., the assessee , for the assessment year 2014-15, holding , inter alia, that it is erroneous in so far it is prejudicial to the interest of revenue and directed the AO, to reframe the assessment after making addition as discussed in Para 5.1 of his order. Aggrieved against that order, the assessee filed this appeal.

5. The case was heard through video conferencing. The Id. AR submitted that the PCIT initiated proceedings u/s. 263, pointing out various aspects. In response, the assessee explained all the transactions. The Id PCIT has accepted the assessee's explanations and dropped them but for one, which is in respect of transport charges claimed at Rs. 1,15,51,643/- without deducting TDS. The assessee has submitted before the Id PCIT that for this amount it has complied with the provisions of section 194C (6) by obtaining PAN from

the transporters which has been furnished to the AO. On due satisfaction, the Assessing Officer accepted the assessee's claim and completed the assessment. In this regard, the assessee relied on before the PCIT that as per the recent case law in the case of ITO vs M/s. Sugarchemin ITA No. 2071/Mumbai/2016 , wherein the Tribunal held that "Section 194C(6) &194C(7) are independent of each other, and cannot be read together to attract the disallowance u/s. 40(a)(ia) r.w.s. 194C of the Act and if the assessee complies with the provisions of section 194C(6), no disallowance u/s. 40(a)(ia) of the Act is permissible, even there is violation of the provisions of section 194C(7) of the Act." In the assessee's case also , it has complied with the provisions of section 194C(6) but not complied with the provisions of section 194C(7). Hence, disallowance u/s. 40(a)(ia) will not attract. However, the Id PCIT without appreciating the fact that the twin conditions of error in the original assessment order and prejudice causing to the Revenue in passing the said original assessment order were not concurrently satisfied, wrongly assumed the jurisdiction u/s. 263 of the Act and also passed the impugned order. The Ld. PCIT failed to appreciate that having noticed the objections of the appellant for invoking the powers of revision both on technical grounds and on merits/facts, mechanically set aside the original assessment order with a direction to the Assessing Officer to make addition as per Para 5.1 r.w. para 7 of the impugned order without considering assessee's objections and further without conducting the requisite enquiry on the facts. Therefore, the Ld AR submitted that order of the Id PCIT was erroneous , unjustified, not

sustainable in law and hence it should be set aside as it is bad in law. In this regard, the Ld. AR relied on the decisions in the case of ITO vs Sugarchem in ITA No. 2071/Mumbai/2016, which was also relied on before the PCIT , ACIT vs Arihant Trading Co. Bharatpur (2019) 104 taxmann.com 336(Jaipur-Trib)-176ITD 307 (Jaipur-Trib) dt 19.3.2019, and further relied on the Jurisdictional High Court decision in the case of M/s. Agasthiya Granite P Ltd vs ACIT in TCA No. 450 of 2007 dated 16.04.2018. Per contra, the Ld. DR supported the order of the PCIT.

6. We heard the rival submissions and gone through the relevant material. The only issue in this appeal is in respect of the fact that the assessee paid transport charges of Rs. 1,15,51,643/- without deducting tax at source as it has obtained PAN of the transporters and furnished the same to the AO for allowing its claim and the AO has accepted such explanation and allowed the claim in the assessment order. The PCIT invoked the proceedings u/s. 263 for the reason that it won't be sufficient if the assessee complies with the provisions of section 194C(6) alone, unless otherwise the assessee furnished the details of compliances made u/s 194C(7) before the Assessing Officer at the time of assessment. Therefore, the PCIT is of the view that since the assessee has not furnished the details as stipulated in sub section 7 of section 194C before the Assessing Officer at the time of assessment, the assessment order passed by the Assessing Officer without disallowing such a claim u/s. 40(a)(ia) is erroneous and prejudicial to the interest of revenue. However,

before the PCIT the assessee relying on the ITAT decision in the case of ITO vs Sugarchem, supra, pleaded that when two views are possible, the view taken by the AO cannot be treated as erroneous and prejudicial to the interest of the revenue. Thereafter, the Ld. PCIT held that the provisions of section 194C(7) are in continuation of 194C(6) and non compliance to section 194C(7) does not serve the intended purpose of providing exemption from TDS merely on furnishing of PAN. The assessee had not furnished the details before the competent authority as stipulated in sub-section (7) of section 194C. Before the assessing officer also, the assessee has not furnished the details for having complied with the provisions of section 194C(7). It shall be sufficient compliance if the assessee furnished the copies of declaration u/s. 194C(7) before the assessing officer so as to avoid applicability of section 40(a)(ia) of the Act. On this reason, he set aside the assessment order u/s. 263. It is clear from the above that although the assessee has brought to the notice of the Id. PCIT that as per the Hon'ble ITAT decision ,supra, no disallowance can be made u/s. 40(a)(ia) even if there is a violation under section 194C(7) of the Act and when two views are possible on this issue ,proceedings u/s. 263 cannot be initiated etc., the Id PCIT set aside the assessment order u/s. 263 without meeting the assessee's objections legally. Before us, the assessee relied on the ITAT Jaipur bench decision in the case of ACIT vs Arihant Trading Co., supra, the head note of which is extracted as under:

*“Where assessee made payments to transporters towards freight without deducting TDS on such payments, since assessee was in receipt of details about PAN of transporters at time of payment of freights and, thus, complied with provisions of section 194C(6), no disallowance could be made u/s. 40(a)(ia).”*

Further the assessee relied on the Jurisdictional High Court decision, supra , and pleaded that when two views are possible on an issue, if the AO has taken one view with which the CIT does not agree, it cannot be treated that the order passed by the AO is erroneous and prejudicial to the interest of revenue. Thus, in this case, the decision of the A O has been subsequently upheld by two different decisions of the Hon'ble ITAT, therefore , the decision taken by the assessing officer does not fall within the scope of section 263 of the Act and hence order of the PCIT is unsustainable in law. Therefore, we hold that the order passed u/s. 263 is not sustainable in law and hence we set aside the impugned order and allow the assessee's appeal.

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

Order pronounced on 14<sup>th</sup> June , 2021 in Chennai.

**Sd/-**

(धुव्वुरु आर. एल रेड्डी)  
**(DUVVURU RL REDDY)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एस जयरामन)  
**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 14<sup>th</sup> June, 2021

**JPV, Sr. PS**

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

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