

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.601/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2016-17)

M/s. Mahasemam Trust Plot No.519, 16 th Main Road, Karpaga Nagar, K.Pudur, Madurai-625 007.	Vs	The Principal Commissioner of Income Tax, Central-2, Chennai.
PAN: AAATM 7040C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Mrs. K.Hemalatha, C.A.
प्रत्यर्थीकी ओरसे/Respondent by	:	Mr. S.Bharath, CIT

सुनवाईकीतारीख/Date of hearing	:	22.04.2021
घोषणाकीतारीख /Date of Pronouncement	:	16.07.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned PCIT, Central-2, Chennai dated 17.03.2020 u/s.263 of the Income Tax Act, 1961 and pertains to assessment year 2016-17.

2. The assessee has raised following grounds of appeal:-

1. For that the order of the Learned Principal Commissioner of Income Tax, Central-2, Chennai u/s.263 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case.
2. For that the Learned Principal Commissioner of Income Tax, Central -2, Chennai erred in acquiring jurisdiction under section 263 of the Act, when the impugned Assessment made under section 143(3) is not 'erroneous and prejudicial to the interest of the revenue'.

3. *Without Prejudice to the Ground to 2 and 3, the Learned Principal Commissioner of Income Tax, Central -2, Chennai erred in stating that the activities of the Trust are not genuine.*

4. *Without prejudice to Ground No 2, the Learned Principal Commissioner of Income Tax, Central-2, Chennai erred in exercising his jurisdiction under section 263 on the impugned Assessment Order u/s 143(3) merely because the AD has completed by Assessment for the subject AY based on the directions of the Hon'ble Tribunal in the appellant's own case for AY 2011-12 and 2012-13, which was challenged by the Department of Revenue and the Assessment for AY 2011-12 and 2012-13 has not reached finality.*

5. *Without Prejudice to the Ground to 2 and 3, the Learned Principal Commissioner of Income Tax, Central -2, Chennai erred in setting aside the Order of AO and directing the Assessing Officer to re-do the assessment afresh after issuance of proposal to cancel the registration u/s 1 2AA of the Act.*

6. *Without Prejudice to the Ground to 2 and 3, the Learned Principal Commissioner of Income Tax, Central -2, Chennai erred in setting aside the Order of AO and directing the Assessing Officer to re-do the assessment afresh after verification of lending of money to poor people at an exorbitant rate of interest.*

7. *Without Prejudice to the Ground to 2 and 3, the Learned Principal Commissioner of Income Tax, Central -2, Chennai erred in setting aside the Order of AO and directing the Assessing Officer to re-do the assessment afresh after examining the payment of consultation charges.*

8. *Without Prejudice to the Ground to 2 and 3, the Learned Principal Commissioner of Income Tax, Central -2, Chennai erred in setting aside the Order of AO and directing the Assessing Officer to re-do the assessment afresh after scrutinizing the issue of loan given to Shri. Seetharaman, Director of M/s. Viswas Promoters Ltd. and receipt of interest, thereon.*

9. For that the Learned Principal Commissioner of Income Tax, Central -2, Chennai failed to appreciate that the Assessment Order was completed by the Assessing Officer after taking into consideration the entire supporting evidence produced, filed and placed upon records by the Appellant Company during assessment proceedings, which was extracted in the impugned assessment order u/s 143(3) of the Act.”

3. Brief facts of the case are that the assessee M/s. Mahasemam Trust registered u/s.12A(a) of the Income Tax Act, 1961 and also u/s.18G of the Act, is engaged in providing micro financing activity filed its return of income for assessment year 2016-17 declaring total income as Nil after availing exemption u/s.11 of the Income Tax Act, 1961. The assessment for impugned assessment year has been completed u/s.143(3) of the Act, on 31.12.2018 and accepted returned income after allowing benefit of exemption u/s.11 of the Act. The case has been subsequently taken up for revision proceedings u/s.263 of the Act, and hence show cause notice dated 20.06.2019 was issued u/s.263 of the Act and called upon the assessee to explain as to why assessment order passed by Assessing Officer u/s.143(3) dated 31.12.2018 shall not be revised for reasons stated in the show cause

notice. The learned PCIT in the show cause notice has alleged that assessment order passed by the Assessing Officer is erroneous, insofar as it is pre-judicial to the interests of revenue, because the Assessing Officer has allowed benefit of section 11 & 12 of the Act to the trust, without appreciating fact that activity carried out by the assessee i.e micro financing is hit by proviso to section 2(15) of the Income Tax Act, 1961 and hence, entire income should be taxed as an AOP. In response to show-cause notice, the assessee vide its letter submitted that assessment order passed by the Assessing Officer is neither erroneous nor pre-judicial to the interests of revenue, because the Assessing Officer has completed assessment, after having considered various materials placed by the assessee during the assessment proceedings, including decision of ITAT, Chennai in assessee's own case for earlier years, where the Tribunal has held that activity carried out by the assessee is charitable in nature, which is not hit by proviso to section 2(15) of the Act. Since the Assessing Officer has examined issue and taken one of the possible view on the issue and allowed benefit of exemption to the assessee u/s.11 & 12

of the Act, the PCIT cannot say that assessment order passed by the Assessing Officer is erroneous, insofar as it is pre-judicial to the interests of revenue.

4. The learned PCIT, after considering relevant submissions of the assessee and also by relied upon certain judicial precedents held that assessment order passed by the Assessing Officer is erroneous, insofar as it is pre-judicial to the interests of revenue, because the Assessing Officer has completed assessment without verifying facts in right perspective of law, before allowing benefit of exemption u/s.11 & 12 of the Act, even though activity carried out by assessee of micro financing to self-help groups is nothing but an adventure in the nature of trade and commerce, which is hit by proviso to section 2(15) of the Act. The learned PCIT has discussed issue at length in light of modus operandi of the assessee trust in advancing loans to self-help groups and charging of interest on such loans and came to the conclusion that the assessee is advancing loans to self-help groups and charging interest @ 24% on said loans, which is exorbitantly higher than the rates

charged by commercial banks and hence, activity carried out by the assessee cannot be said that it is charitable in nature and covered under the definition of section 2(15) of the Act. The learned PCIT has also discussed the issue in light of consultation charges paid by the Trust to their relatives and opined that the assessee is paying consultation charges which is not commensurate with professional services provided to the Trust and hence, opined that it is nothing but allowing benefit of trust funds/property to the interested persons. The learned PCIT has also discussed the issue in light of one loan transaction of trust with M/s.Viswas Promoters Pvt.Ltd., Madurai and held that although the trust has given loans in cash to said borrower, but there is no whisper either in the assessment order or on record to show that the Assessing Officer had made any inquiry on the issue to ascertain nature of transaction, therefore, he opined that the Assessing Officer has completed the assessment without conducting required inquiry, he ought to have carried out, in accordance with Explanation 2 to section 263 of the Act, which was inserted by Finance Act, 2015 w.e.f 01.04.2015, which rendered the

assessment order erroneous, insofar as it is pre-judicial to the interests of revenue. Hence, the learned PCIT set aside assessment order passed by the Assessing Officer and direct the Assessing Officer to redo assessment de novo and also direct him to send proposal for cancellation of registration already granted to the assessee trust. Aggrieved by the PCIT order, the assessee is in appeal before us.

5. The learned AR for the assessee submitted that the learned PCIT has erred in revising assessment order u/s.263 of the Act, without appreciating fact that impugned assessment order is neither erroneous nor pre-judicial to the interests of revenue. The AR further submitted that the Assessing Officer has examined the issue at length in light of decision of ITAT., Chennai in assessee's own case for earlier assessment years and by following judicial precedents has allowed benefit of exemption to the assessee u/s.11 & 12 of the Act, after considering the fact that activity carried out by the assessee is in the nature of charitable activity as defined u/s.2(15) of the Act. The AR further submitted that once issue has been considered by the Assessing Officer in assessment

proceedings and has adopted one of the possible view, then there is no scope for PCIT to revise said order on the ground that the Assessing Officer has not carried out inquiry ought to have been carried out in accordance with Explanation 2 to section 263 of the Act.

6. The learned DR, on the other hand, supporting order of the learned PCIT, submitted that activity carried out by the assessee of providing micro financing to self-help groups with higher rate of interest cannot be considered as charitable activity as defined u/s.2(15) of the Act. The learned DR further submitted that activity carried out by the assessee is in the nature of adventure in the nature of trade and commerce, which is hit by proviso to section 2(15) of the Act. Further, various judicial forums has repeatedly held that micro financing activity carried out in commercial line is not a charitable activity, including ITAT., Chennai in the case of ACIT Vs.Grama Vidiyal Trust (71 taxmann.com.88 (2016)). He further submitted that the learned PCIT has brought out clear facts to the effect that assessee is carrying out commercial

activity in line with any other commercial banks / financial institutions and charging very high rate of interest, which is almost double the rate of interest charged by commercial banks. Therefore, at any stretch of imagination, it cannot be held that activity carried out by the assessee is charitable in nature and assessee is entitled for benefit of exemption u/s.11 & 12 of the Act.

7. We have heard both the parties, perused materials available on record and gone through the orders of the authorities below. The provisions of section 263 of the Act empowers the PCIT to revise assessment order passed by the Assessing Officer, if he feels that assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of the revenue. From a plain reading of section 263 of the Act, it is very clear that before exercising his jurisdiction u/s.263 of the Act, the PCIT should satisfy himself that the Assessing Officer has passed order which is erroneous and prejudicial to the interests of revenue. Unless the PCIT proves that order passed by the Assessing Officer is erroneous

or which is not passed in accordance with law in right perspective of facts, the PCIT cannot revise assessment order passed by the Assessing Officer. Further, to invoke jurisdiction u/s.263 of the Act, twin conditions embedded u/s.263 of the Act must co-exist. In other words, if the assessment order passed by the Assessing Officer is erroneous, but it is not prejudicial to the interests of revenue, or vice-versa, then the PCIT does not have any power to revise the assessment order passed by the Assessing Officer. This legal proposition is supported by plethora of judicial decisions including the decision of Hon'ble Supreme Court including the case of M/s.Malabar Industries Co.Ltd. Vs. CIT (2000) 243 ITR 83(SC).

8. In this legal background, if you examine the facts of the present case one has to understand as to whether the assessment order passed by the Assessing Officer is erroneous, insofar as prejudicial to the interests of the revenue. In order to consider any order to be erroneous, then it should be passed without considering facts of the case in light of the

relevant provisions of the Act. In this case, issue before the Assessing Officer was whether activity carried out by the assessee is charitable in nature and assessee is entitled for benefit of exemption u/s.11 & 12 of the Act. Under the given facts and circumstances of the case, the Assessing Officer has come to the conclusion that micro financing activity carried out by the assessee is in the nature of charitable activity, which is not hit by proviso to section 2(15) of the Act. The said findings of the Assessing Officer was supported by decision of the Tribunal in assessee's own case for assessment year 2011-12 & 2013-14, where the Tribunal has categorically held that trust has rendered service in the nature of providing relief to poor as envisaged under the Act and therefore, benefit of exemption u/s.11 & 12 cannot be denied to the trust. The Assessing Officer, after considering relevant facts including activity carried out by the assessee and also by following decision of the Tribunal in assessee's own case has taken one of the possible view and has allowed benefit of exemption u/s.11 to the assessee. Therefore, we are of the considered view that view taken by the Assessing Officer is one of the possible view,

which is duly supported by the decision of the Tribunal in assessee's own case for earlier years and hence, the PCIT, although he may not agree with the view taken by the Assessing Officer, cannot hold assessment order is erroneous, insofar as it is prejudicial to the interests of revenue.

9. As regards, case laws relied upon by the PCIT of other Tribunals, we find that although there is divergent views on the issue of micro financing, whether it is charitable in nature or commercial activity, but because the Tribunal has taken a view that activity carried out by the assessee is charitable in nature in assessee's own case for earlier assessment years, we prefer to follow the decision of the Tribunal in assessee's own case for earlier years. Moreover, the issue before us is whether assessment order passed by the Assessing Officer is erroneous, insofar as prejudicial to the interests of revenue in light of the provisions of section 263 of the Act. Therefore, our examination is limited only to the extent whether order passed by the Assessing Officer is hit by provisions to section 263 of the Act or not. In our considered view, the assessment order

passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue, because the Assessing Officer has examined the issue at the time of assessment proceedings and has taken one of the possible view, which is supported by higher judicial forum and hence, the view taken by the Assessing Officer cannot be held to be erroneous and prejudicial to the interests of revenue. Unless the view taken by the Assessing Officer is unsustainable in law, there is no scope for the PCIT to term the assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue.

10. As regards other two points questioned by the PCIT including consultation charges paid to trustees and also loan given to M/s. Viswas Promoters Ltd., Madurai, we are of the considered view that these two issues were not part of show cause notice issued by PCIT and hence, he does not have any power to examine issues other than those find place in show cause notice. Be that as it may, even otherwise, two issues questioned by the PCIT has already been examined by the

Assessing Officer, which is evident from fact that the Assessing Officer has issued detailed questionnaire along with notice issued u/s.142(1) dated 13.07.2018, where he has called for details about payments made to related parties and also list of advances made to members. In response, the assessee has filed relevant details. The Assessing Officer, after examining details filed by assessee, has accepted fact that activities carried out by the assessee are charitable in nature, which is not hit by proviso to section 2(15) of the Act. Therefore, we are of the considered opinion that the learned PCIT has erred in revising assessment order u/s. 263 of the Act.

11. In this view of the matter and considering facts and circumstances of the case and also by following decision of Chennai Bench of the Tribunal in assessee's own case in ITA No.2919 & 2920/Mds/2016 dated 09.08.2017 for assessment year 2011-12 & 2012-13, we are of the considered view that assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue and hence, learned PCIT has erred in revising assessment order

passed by the Assessing Officer u/s.263 of the Act. Hence, we quash revision order passed by PCIT u/s.263 of the Act and restore assessment order passed by the Assessing Officer u/s.143(3) of the Act dated 31.12.2018.

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

Order pronounced in the open court on 16th July, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

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

चेन्नई/Chennai,
दिनांक/Dated 16th July, 2021
DS

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.