

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.1794/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2009-10

Shri S.R. Nandakishore,  
No. 32, Ramachandra Road,  
Nehru Nagar, Chrompet,  
Chennai 600 044.  
**[PAN:ACLPN7232N]**

The Assistant Commissioner of  
Income Tax,  
Non Corporate Circle 23,  
Tambaram.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri B. Ramakrishna, CA  
प्रत्यर्थी की ओर से/Respondent by : Shri V. Justin, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 08.12.2021  
घोषणा की तारीख /Date of Pronouncement : 15.12.2021

**आदेश / O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-10, Chennai dated 27.03.2018 relevant to the assessment year 2009-10.

2. Brief facts of the case are that the assessee has filed his return of income for the assessment year 2009-10 on 31.10.2009 by declaring total income of ₹.1,07,35,030/-. The Assessing Officer accepted the income returned by the assessee. Subsequently, the Id. CIT, by exercising power conferred under section 263 of the Income Tax Act, 1961 ["Act" in short], directed the

Assessing Officer to redo the assessment in accordance with law on the ground that no proper enquiry was made by revision order dated 21.03.2014. Against the order passed by the Id. CIT under section 263 of the Act, the assessee filed an appeal before the ITAT and vide order dated 19.08.2015 in I.T.A. No. 984/Mds/2014, the ITAT dismissed the appeal of the assessee on the ground that the Id. CIT by order dated 21.03.2014 only directed the Assessing Officer to redo the assessment in accordance with law and therefore, there was no error in the order passed by the Id. CIT. Subsequently, the Assessing Officer completed the assessment under section 143(3) r.w.s. 263 of the Act vide order dated 31.03.2015 by taxing the income under the head of business as against the claim of income from capital gains. The assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A), by order dated 27.03.2018, dismissed the appeal of the assessee by observing as under:

*“5.3 CIT(A)’s remarks and decision:*

*I have gone through the facts of the case, observation of the AO and the AR’s contentions. It is also brought on the record that the Hon’ble ITAT, Chennai vide its order dated 19/8/2015 has confirmed the order passed u/s. 263 of the IT Act by the Commissioner of Income Tax-VII, Chennai on 21/3/2014 for the relevant Assessment Year 2009-10.*

*4.3.1 In the light of the above, the AO’s action in passing the order u/s. 143(3) r.w.s. 263 dated 31/3/2015 is in order and needs no interference.”*

3. On being aggrieved, the assessee carried the matter in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the ITAT has not given any findings consequent to the order passed by the Id. CIT and the Id. CIT also directed the Assessing Officer to redo the assessment. When the

Assessing Officer completed the assessment consequent to the order passed by the Id. CIT, it is open to the assessee to challenge that order before the Id. CIT(A) and the Id. CIT(A) has to pass order on merits. Without passing order on merits, the Id. CIT(A) simply dismissed the appeal of the assessee on the ground that the ITAT has confirmed the order of the Id. CIT under section 263 of the Act is not valid. On the other hand, the Id. DR dutifully relied on the order passed by the authorities below.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has filed his return of income by declaring capital gains. The Assessing Officer completed the assessment under section 143(3) of the Act by accepting the return filed by the assessee. Subsequently, the Id. CIT, by exercising the power conferred under section 263 of the Act was of the opinion that the Assessing Officer, without making necessary enquiry, accepted the return filed by the assessee and thus, directed the Assessing Officer to redo the assessment in accordance with law. The same was challenged by the assessee before the ITAT and the ITAT dismissed the appeal of the assessee on the ground that the Id. CIT has only directed to redo the assessment and therefore, no injustice was caused to the assessee. Subsequently, the Assessing Officer, by order dated 31.03.2015 passed an order under section 143(3) r.w.s. 263 of the Act and taxed the entire income of the assessee under business income as against the claim of the assessee under income from capital gains. On appeal, the Id.

CIT(A) simply dismissed the appeal without considering merits of the case on the ground that the appeal carried by the assessee against the order passed by the Id. CIT was confirmed by the ITAT. The Id. CIT(A) misunderstood the order passed by the ITAT in I.T.A. No. 984/Mds/2014 dated 19.08.2015. Once the Id. CIT directed the Assessing Officer to redo the assessment means, it is open to the assessee to challenge the order before any appellate authority. Thus, the Id. CIT(A) is under obligation to pass order by considering merits of the case. In view of the above, the order passed by the Id. CIT(A) is set aside and remit the matter back to the file of the Id. CIT(A) to adjudicate the appeal on merits in accordance with law by affording an opportunity of being heard to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 15<sup>th</sup> December, 2021.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 15.12.2021

Vm/-

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.