

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1557 /CHNY/2019

निर्धारण वर्ष /Assessment Year: 2010 - 11

Smt. B. Sujatha,
No.163, Ravindranath Layout,
New Sidhapudur,
Coimbatore - 641 044.

The Income Tax Officer,
v. Non-Corporate Ward-2(5),
Coimbatore.

PAN : ASJPS 3596A
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri T. Banusekar, CA
: Shri D. Manoj Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 23.12.2021

घोषणा की तारीख/Date of Pronouncement : 25.01.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of order revision order of Principal Commissioner of Income Tax (Appeals)-1, Coimbatore in C. No.120(23)/263/PCIT-1/CBE/2018-19, vide order dated 22.03.2019 u/s.263 of the Income Tax Act, 1961 (hereinafter the 'Act'). The original assessment was framed by the

Income Tax Officer, Non-Corporate Ward-2(5), Coimbatore for the assessment year 2010-11 vide order dated 29.12.2016 u/s.143(3) r.w.s. 147 of the Act.

2. The only issue in this appeal of assessee is as regards to the PCIT revising the assessment framed by the AO for verification of agricultural income accepted without considering the nature and extent of crops raised. For this assessee has raised various grounds which need not be reproduced.

3. Brief facts are that the assessee has filed her return of income for the relevant assessment year 2010-11 declaring agricultural income at Rs.2,69,75,426/-. This return was processed and subsequently reopened u/s.147 of the Act. The AO noted in his assessment order that the assessee submitted land purchased documents, affidavits from lessors regarding oral lease of their lands for cultivation, sale bills of medicinal plants and other agricultural produce. The assessee also submitted chittiadangal details of agricultural cultivation of 12 acres of own land and 150 acres of leased lands along with details of agricultural income and agricultural produce sold such as jasmine, gloriosa, coliuces roots,

drumstick, chilli, onion, groundnut, news paper cutting depicting medicinal plant cultivation, letters from Horticulture, Asst. Director of Aravankurichi and Karur certifying the yield. The AO noted that the receipts from agricultural income are substantiated by assessee with documents but expense claimed does not appear to be sufficient. Hence the AO estimated the expenses at Rs.5,00,000/- and accepted the agricultural income at Rs.2,64,75,426/-. Subsequently, the PCIT after going through the case records issued show-cause notice in C.No.120(23)/PCIT-1/CBE/2018-19, dated 24.01.2019 giving explanation as to why the assessment framed by the AO be not revised u/s.263(3) of the Act. The assessee before AO argued that the assessee has filed complete details as required by the AO as per the noting in record sheet and submitted all the required details as required by the AO. The Id.AR for the assessee drew our attention to the copies of order sheet entries obtained through RTI application and now enclosed to page 2 to 7 of assessee's paper-book. As per the order sheet notings, the AO required the details of agricultural income and the Id.AR drew our attention to the relevant noting of the AO in the order sheet entries and the relevant order sheet entry reads as under:-

ITO N.C.W — 2(5)

Shri.R.Sugumaran, FCA appeared today, he is issued with the copy of the letter dated 24.11.2016 calling for details of agricultural land holding, source sales <details for agricultural products with mode of payment, details of deposits and details of P&L balances of other concerns dealing the assessee. Case adjourned to 30.11.2015.

-/Sd/-

R.Sugumaran

25.11.2016

25.11.2016

In response to query letter dated 24.11.2016 Smt. Sujatha appeared along with her husband Mr.A.Balaguru and the AR Shri.R.Sugumaran, FCA filed reply dated 08.12.2016 along with return copies of 5 concerns.

-/True Copy/-

K.S.Narayanan Income Tax Officer

Non Corporate Ward-2(5)

Produced labour cdv and attendance for perusal. Case discussed. The assessee was asked to further to submit detailed write up along with proof for agricultural income document copies in support of land and other clarifications of mode of payment.

-/Sd/-

08.12.2016

-/Sd/-

B.Sujatha

08.12.2016

-/Sd/-

A.Balaguru

08.12.2016

-/Sd/-

R.Sugumaran

08.12.2016

The Id.AR stated that the AO framed assessment after making complete enquiry and verification and after applying his mind. He even disallowed expenses relating to agricultural income which was claimed less. He reduced the agricultural income from Rs.2,69,75,426/- as claimed by assessee and assessed at Rs.2,64,75,426/-. The Id.counsel stated that now the PCIT simply

for another round of verification has set aside the assessment under the revision order passed u/s.263 of the Act. Hence, he asked the Bench to set aside the revision order. On the other hand, the Id.CIT-DR heavily relied on revision order.

4. We have heard rival contentions and gone through facts of the case. Before us, the Id.AR relied on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. vs. CIT, [2000] 243 ITR 83 and stated that the order of AO is neither erroneous nor prejudicial to the interest of Revenue because CIT has to record how the order of AO is erroneous. According to him, the precondition of revision u/s.263 of the Act is that he has to hold the assessment order as erroneous as well as prejudicial to the interest of Revenue and he can make such enquiries as he deems necessary. He further argued that PCIT has not made any enquiry and simpliciter for re-verification of entire documents revised the assessment and directed the AO to reframe the assessment. The Id.AR drew our attention to para 7 of the judgment of Hon'ble Supreme Court in the case of Malabar Industrial Co. *supra*, and argued that the AO has taken one of the possible view and PCIT is unable to uphold how the order of AO is not sustainable in law. We noted from the case law

cited by Id.AR for the assessee of Hon'ble Supreme Court in the case of CIT vs. Max India Ltd., [2007] 295 ITR 282, wherein the Hon'ble Supreme Court has affirmed the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Max India Ltd., [2004] 268 ITR 128, wherein the Hon'ble Punjab & Haryana High Court has categorically held that once the AO has taken a possible view, CIT has no jurisdiction to interfere with the jurisdiction of AO. The Id.AR drew our attention to para 5 of the judgment which reads as under:-

5. We find no merit in this contention. For expressing a View, it is not necessary that it should be based on a judicial pronouncement. A view has to be expressed on the basis of the provisions of law as applicable to the facts of a case. It is not in dispute that the view expressed by the Assessing Officer is in conformity with the view subsequently expressed by the various Benches of the Tribunal. We are, therefore, satisfied that the Tribunal was justified in holding that the view expressed by the Assessing Officer was a possible view and since the Assessing Officer has taken a possible view, the Commissioner had no jurisdiction to interfere by exercising his powers under Section 263 of the Act. In this behalf, we may refer to the decision of the Supreme Court in Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83, wherein at page 88 it has been held as under (page 88) :

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an

erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. . . ."

5. The Id.DR has relied on the decision of Hon'ble Bombay High Court in the case of PCIT vs. Zuari Maroc Phosphates Ltd., 432 ITR 316, wherein the Hon'ble Bombay High Court has justified the action of PCIT that without a thorough inquiry and merely based on vague premise that assessee might have incurred certain expenses which might be relevant to keep the assessee in operation, the AO was not justified in allowing the business loss to the extent of Rs.1.78 crores. But the facts before Hon'ble Bombay High Court and before us are distinguishable for the reason that the AO has conducted complete enquiry in regard to agricultural income and verified each and every detail during scrutiny assessment proceedings and then reached to a definite conclusion that the receipts of agricultural income are substantiated but expenses claimed does not appear to be sufficient for claiming the income reported compared to subsequent years. The AO has applied his mind to the facts of the case and also examined each and every aspect relating to receipts of agricultural income including agricultural land holding, produce sold and amount received. The PCIT in his revision order nowhere owes that the view taken by the AO is not sustainable in law. Once

this is the position, we are of the view that revision order passed by PCIT is not sustainable in law. Hence, we quash the revision order and allow the appeal of the assessee.

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

Order pronounced in the court on 25th January, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th January, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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