

आयकर अपीलीय अधिकरण, 'सी' न्यायापीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखासदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.3345/Chny/2019
निर्धारण वर्ष/Assessment Year: 2016-17

Shri Chandrasekaran Joseph Vijay,
17/9, Vijay Shanthi Four Seasons,
7th Cross Street, Shastri Nagar,
Adyar, Chennai 600 020.
[PAN:AABPV3488N]

Vs. The Assistant Commissioner of
Income Tax,
Central Circle 2(2),
Chennai.

(अपीलकर्ता/Appellant)

(प्रत्यर्थी/Respondent)

अपीलकर्ता की ओर से / Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri M. Rajan, CIT
सुनवाई की तारीख/ Date of hearing : 29.03.2022
घोषणा की तारीख /Date of Pronouncement : 13.05.2022

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. Principal Commissioner of Income Tax, Chennai dated 30.10.2019 relevant to the assessment year 2016-17 passed under section 263 of the Income Tax Act, 1961 ["Act" in short].

2. Facts are, in brief, that a search action under section 132 of the Act was conducted in the assessee's case along with Shri P.T. Selvakumar and Shri Shivu on 30.09.2015. During the course of search, certain

incriminating materials were seized and a sworn statement was also recorded from the assessee under section 132(4) of the Act. The assessee has admitted ₹.5 crores in cash as a part of remuneration from M/s. SKT Studios and another ₹.10 crores for other infirmities. The assessee has filed his return of income for the assessment year 2016-17 admitting total income of ₹.35,42,91,890/-, which includes unaccounted income of ₹.15,00,00,000/- admitted during the course of search. The Assessing Officer has completed the assessment under section 143(3) of the Act on 30.12.2017. In the assessment order, the Assessing Officer made certain additions apart from the additional income disclosed by the assessee during the course of search. In the assessment order at para 10, the Assessing Officer has stated that penalty proceedings under section 271(1)(c)/ 271AAB of the Act will be initiated separately.

2.1 Subsequently, the Id. PCIT, by issuing show-cause notice on 30.07.2019, asked the assessee to explain as to why the order passed by the Assessing Officer dated 30.12.2017 should not be revised under section 263 of the Act. The assessee has filed a detailed reply dated 13.08.2019. After considering the reply of the assessee, the Id. PCIT has noted that the Assessing Officer ought to have been initiated penalty

proceedings under section 271AAB of the Act, but while issuing the notice under section 274 of the Act, the Assessing Officer has mentioned the notice was issued in relation to section 271(1)(c) of the Act and not under section 271AAB of the Act. Therefore, that to that extent the Assessing Officer has committed an error which is prejudicial to the interest of Revenue. Accordingly, under section 263 of the Act, the Id. PCIT set aside the assessment order passed under section 143(3) of the Act dated 30.12.2017 with a specific direction to make the assessment order *de novo* by initiating penalty under section 271AAB of the Act.

3. The assessee carried the matter in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Assessing Officer passed the assessment under section 143(3) of the Act dated 30.12.2017 and also stated that penalty proceedings under section 271(1)(c)/271AAB of the Act will be initiated separately. The Assessing Officer has mentioned the above for the reason that there are certain regular additions made by the Assessing Officer apart from the undisclosed income declared during the course of search proceedings. Therefore, penalty proceedings has to be initiated separately for the regular addition and undisclosed income declared during the course of search. Therefore the Assessing Officer has rightly noted that the penalty proceedings has

to be initiated under section 271(1)(c) /271AAB of the Act. He has also submitted that the Assessing Officer has issued penalty notice to the assessee on 30.12.2017 under section 271(1)(c) of the Act. Subsequently, when the assessee has submitted that the penalty cannot be initiated under section 271(1)(c) of the Act, the Assessing Officer has issued another notice dated 11.12.2018 under section 274 r.w.s. 271AAB of the Act. He further submitted that the show cause notice was issued on 30.07.2019 by the Id. PCIT. When the Assessing Officer has already initiated penalty proceedings under section 271AAB of the Act on 11.12.2018, the Id. Counsel for the assessee has submitted that the Id. PCIT, without examining the facts of the case, simply set aside the order passed by the Assessing Officer under section 143(3) of the Act dated 30.12.2017 is not correct and submitted that the order passed under section 263 of the Act may be quashed.

4. On the other hand, the Id. DR has submitted that the Assessing Officer passed the assessment order without making any enquiry and relied the decisions in the case of Malabar Industrial Co. v CIT[2000] 243 ITR 83 (SC), Swarup Vegetable Products v. CIT (187 ITR 412)(All), PCIT v. Venus Woolen Mills [2019] 105 taxmann.com 287 (P&H), Lakshmi Vilas Bank v. JCIT in TCA No. 1370/2008 & Vedanta Ltd. v. CIT in Tax

Appeal No. 1/2016 with C. A. No. 17/2016 and submitted that the order passed by A.O is erroneous and prejudicial to the interest of Revenue and the order passed by Ld. Pr. CIT may be confirmed.

5. We have heard both the sides, perused the materials available on record and gone through the orders of the Assessing Officer as well as Id. PCIT. A search was conducted in the case of the assessee. During the course of search, the assessee has declared an amount of ₹.15 crores and the return of income was filed subsequently including the amount declared during the course of search in the return of income. The Assessing Officer has completed the assessment order by making certain additions and also he added the income declared by the assessee during the course of search and completed the assessment. In the assessment order, the Assessing Officer has stated in para 10 that the penalty proceedings under section 271(1)(c)/271AAB of the Act will be initiated separately. We find that the Assessing Officer has correctly passed the assessment order and also stated that penalty proceedings will be initiated under section 271(1)(c) / 271AAB of the Act separately for the reason that the Assessing Officer has made certain additions apart from the income declared by the assessee during the course of search. Therefore, if at all the Assessing Officer has to initiate penalty in respect

of regular additions, the Assessing Officer has to initiate penalty proceedings under section 271(1)(c) of the Act. In so far as income declared during the course of search, the Assessing Officer has to initiate penalty proceedings under section 271AAB of the Act. The Assessing Officer has initially initiated penalty proceedings under section 271(1)(c) of the Act dated 30.12.2017. Subsequently, the Assessing Officer has issued notice under section 271AAB of the Act dated 11.12.2018.

6. Subsequent to the issuance of notice by the Assessing Officer under section 271AAB of the Act, the Id. PCIT, by exercising power conferred under section 263 of the Act, issued show-cause notice to the assessee dated 30.07.2019 on the ground that the Assessing Officer ought to have been initiated penalty proceedings under section 271AAB of the Act and not under section 271(1)(c) of the Act. By the time, the Id. PCIT issued notice, the Assessing Officer has already initiated penalty proceedings under section 271AAB of the Act. The basic assumption of jurisdiction by the Id. PCIT under section 263 of the Act that the notice has to be issued under section 271AAB of the Act is not correct for the reason that the Id. PCIT, without examining the records, he has exercised the jurisdiction and therefore, on that count alone, the order of the Id. PCIT that the assessment order passed by the Assessing Officer is

erroneous and prejudicial to the interest of Revenue, is not correct. In our opinion, the assessment order passed by the Assessing Officer under section 143(3) of the Act is after making detailed enquiry and thereafter initiated penalty proceedings under section 271(1)(c) of the Act as well as under section 271AAB of the Act is in accordance with law. Therefore, the order passed by the Id. PCIT has to be quashed and accordingly, the revision order passed under section 263 of the Act is quashed. The case law relied on by the Id. DR has no application to the facts of the present case. Therefore, no adjudication is required.

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

Order pronounced on 13th May, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 13.05.2022

Vm/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy to: 1. ँ पीलर्षी/Appellant, 2. प्रत्यर्षी/ Respondent, 3. आयकर आयुक्त (ं पील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभर्षीय प्रतिनिधि/DR & 6. गार्ड फार्डल/GF.