

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

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **376/CHNY/2021**
निर्धारण वर्ष /Assessment Year: 2015-16

YOUSUFRIYAZ

No. 19/10, TP Buran Street,
Tirupattur.

ITO

v. Ward -2,
Vellore.

PAN: ACJPY-3164-G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. C. Suresh Kumar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 01.06.2022

घोषणा की तारीख/Date of Pronouncement

: 08.06.2022

आदेश /O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order passed by PCIT-8, Chennai u/s. 263 of the Income-tax Act, 1961 (herein after referred to as "the Act") dated 17.03.2020 vide order no ITBA/COM/F/17/2019-20/1026689737(1) for the assessment year 2015-16.

2. The grounds of appeal taken by the assessee are reproduced as here under:

1. *"That having regard to the facts and circumstances of the case, the Id. CIT has erred law and facts in assuming jurisdiction under section 263 further erred in holding the assessment order 26/10/2017 is erroneous so for as it is prejudicial to the interest of the revenue.*
2. *That in any case and in view of the matter, action of the Id. CIT in assuming jurisdiction under section 263 and passing the impugned order under this section is bad in law and against the facts and circumstances of the case.*
3. *The Ld. Assessing officer passed order under section 144 of the income tax Act, 1961 after meticulously analysing the facts of the case in the matter of deposits made in the bank as it was selected under limited scrutiny with a reason that "Cash Deposits in Savings Bank Account(s) is more than turnover" and the AO could not go for further investigation.*
4. *The Appellant craves leave to add, alter and amend any of the above grounds of appeal."*

3. At the outset, we note that there is a delay of 505 days in filing the present appeal. The order of the Pr. Commissioner of Income Tax is dated 17.03.2020 and therefore, this appeal should have been filed by 16.05.2020 whereas, it has been filed by post on 05.10.2021. It is submitted by the assessee that there is a delay from the start of the Covid-19 pandemic in March, 2020. After that, the Hon'ble Supreme Court in its decision in suo moto Writ Petition (Civil) No.3/2020 dated 10.01.2022 had held that the period from 01.03.2020 to 28.02.2022 should be excluded while reckoning limitation period. Further, the

Hon'ble Supreme Court has allowed 90 days from 01.03.2022 to file the belated appeals. Accordingly, the Counsel claimed that this appeal is filed within the time permitted by the Hon'ble Supreme Court and thus, prayed for its admission by condoning the delay. The assessee has put on record an Affidavit explaining the reasons for the delay. We have duly considered the contentions of the Id.Counsel and gone through the record. For the just decision of the controversy, we find it proper to condone the delay, though stated to be of 505 days which relates to Covid-19 pandemic and thus, admit it for adjudication.

4. Before us, Mr. C. Suresh Kumar, CA represented the assessee and Mr. AR V Sreenivasan, Addl. CIT, represented the Department.

5. Brief facts of the case are that assessee filed his return of income on 11.02.2016 reporting a total income of Rs. 1,86,020/-. The case was selected under limited scrutiny for a reason that "cash deposit in savings bank accounts is more than the turnover". Statutory notices were issued and served on the assessee. Ld. AO noted in the course of assessment proceedings that Shri. B. Sundarajan, FCA has filed letter dated 15.09.2016 along with certain documents and power of attorney which in fact were not enclosed with the said letter. In the course of assessment proceedings, the assessee was asked to explain the source

of cash deposits made in his savings bank account with HDFC Bank and Axis Bank with necessary documentary evidence. Ld. AO noted that despite several opportunities, assessee neither came forward to attend the hearing nor he chose to furnish particulars required from him. Ld. AO obtained copies of statement of savings bank account with the above two banks directly from them and completed the assessment *exparte* on the basis of statement of savings bank accounts so obtained. Ld. AO made an addition of Rs. 3.5 lakhs being the value of highest deposit in Axis bank and Rs. 2 lakhs in HDFC bank totaling to Rs. 5.5 lakhs by treating it as undisclosed income under the head income from other sources.

6. Subsequently, Ld PCIT observed from the perusal of records that if the cash deposits of Rs. 37,98,237/- in savings bank account in HDFC bank and Rs. 19,25,300/- in Axis bank totaling to Rs. 57,23,537/- are assessee's business income, the assessee should have shown it as turnover in the profit and loss account. Ld. PCIT thus observed that these cash deposits in savings bank accounts are not out of business transactions and ought to have been treated as unexplained and added to the total income of the assessee. He further noted that nothing was produced before the AO at the time of assessment proceedings nor the assessee appeared on any of the

hearing notices neither responded by letter or e-mail. Ld. PCIT further noted that assessee has done commodity and share trading during the year and these are business transactions as per section 43(5) of the Act and same ought to have been brought to tax as per section 44AD of the Act. On these issues, show cause notice was issued on 20.01.2020 for initiating the revisionary proceedings u/s. 263 of the Act. In the revisionary proceedings also, no one appeared nor filed any details on behalf of the assessee. Ld. PCIT thus completed the revisionary proceedings and passed the order u/s. 263 of the Act by holding that the order passed u/s. 144 dated 26.10.2017 is erroneous in so far as it is prejudicial to the interests of revenue. Ld. PCIT set aside the assessment order with a direction to the AO to call for the details regarding the sources of cash deposits and verify the bank accounts/book of accounts of the assessee and make the fresh assessment after providing due opportunity to the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

7. Before us, Ld. Counsel for the assessee contended that the jurisdiction invoked by Ld. PCIT for the revisionary proceedings and passing the order u/s. 263 of the Act is bad in law. He contended that the AO has applied his mind and dealt with the issue in respect of cash deposits in the savings bank account of the assessee with HDFC bank

and Axis bank, whereby an addition of Rs. 5.5 lakhs was made by taking the value of highest deposits in each bank. He further submitted that it is not a case where AO has not made any enquiry on the issue under consideration and therefore, the impugned order u/s. 263 of the Act ought to be quashed.

8. Ld. Sr. DR strongly opposed and submitted that the assessment order passed u/s. 144 of the Act is out of the reason that despite several opportunities given by the AO, assessee neither came forward to attend the hearing nor chose to furnish particulars required out of him. From the statement of savings bank account of the two banks obtained by the AO directly from the said two banks, Ld. AO has simply taken the value of highest deposit in each bank account and made an addition by treating them as undisclosed income and completed the assessment. The assessment proceedings undertaken by the Ld. AO in respect of the reason for selection of the case under limited scrutiny that "cash deposit in savings bank accounts is more than the turnover" no enquiry, much less proper enquiry has been undertaken by the Ld. AO, as contended by the Ld. Sr. DR. He also referred to the explanation 2 to section 263 of the Act provides for certain circumstances where the order passed by the AO shall be

deemed to be erroneous in so far as it is prejudicial to the interests of revenue which is reproduced as under:

"Revision of orders prejudicial to revenue.

263. (1).....

Explanation 1:

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under [section 119](#); or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

8.1 Ld. Sr. DR further pointed out that even in the revisionary proceedings before the Ld. PCIT, no one appeared on behalf of the assessee nor any details are furnished in respect of the issue of cash deposit in the savings bank accounts of the assessee. It appears that the assessee has nothing much to say on the issue dealt in the impugned proceedings. In the course of hearing before us, attention was also invited of the bench to the consequential assessment order passed by the Ld. AO u/s. 143(3) r.w.s. 263 of the Act dated 16.04.2021 giving effect to the impugned order passed u/s. 263 of the Act by Ld. PCIT, which forms part of the appeal folder.

9. At the outset, we note that the consequential assessment order passed u/s. 143(3) r.w.s. 263 of the Act is a separate and independent appealable order under the Act, over which we do not have any jurisdiction to adjudicate or express any views on the same in the present appeal before us. Accordingly, we refrain ourselves from expressing any views on the observations and findings given in the said order. However, Ld. Sr. DR. pointed out that in these proceedings also the assessee has avoided compliance in respect of providing explanation on the sources of cash deposit in the two savings bank accounts totaling to Rs. 57,23,537/- as against the declared sales of Rs. 5,10,000/- only.

10. We have heard the rival contentions and perused the material on record. The observations that the assessee/his authorized representative have been avoiding the compliance required by the authorities below is evidently coming out from the orders passed both by the Ld. AO and by the Ld. PCIT. It is also observed that in the original assessment u/s. 143(3) of the Act, where it was selected for limited scrutiny for the reason of "cash deposit in savings bank accounts is more than the turnover", the Ld. AO did not make the enquires as required and completed the assessment by merely taking the value of highest deposit in each of the bank, totaling to Rs. 5.5

lakhs by treating it as undisclosed income. Ld. PCIT has noted that the deposit of cash in the two savings bank accounts totaled to Rs. 57,23,537/-, which is far in excess of turnover of Rs. 5.10 lakhs shown by the assessee as turnover in his profit and loss account. Also Ld. PCIT has noted that the assessee has done commodity and share trading during the year in respect of which nothing has been dealt or referred to by the Ld. AO in the assessment order.

11. We find that Ld. AO has completed the assessment without making enquires or verification which should have been made in respect of deposit of cash in the savings bank accounts of the assessee with HDFC bank and Axis bank, more particularly when the case was selected for assessment with limited scrutiny for the reason that "cash deposit in savings bank accounts is more than the turnover". We do not find any reason to interfere with the consideration arrived at by the Ld. PCIT in invoking the revisionary proceedings u/s. 263 of the Act for holding the order passed u/s. 144 dated 26.10.2017 as erroneous in so far as it is prejudicial to the interests of revenue and thereby setting it aside with a direction to the AO to call for all the details in respect of sources for the deposit of cash and verify them to make fresh assessment order by giving adequate opportunity to the assessee. Accordingly, the appeal of the assessee is dismissed.

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

Order pronounced on 08th June, 2022 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 08th June, 2022

JPV

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. |