

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.265/Chny/2022

(निर्धारणवर्ष / Assessment Year: 2017-18)

Mohan Gardens Kalyana Mandapam 61, Anna Nagar, Korattur, Chennai-600 076	Vs	The Income Tax Officer, Non-Corporate Ward-7(4) Chennai.
PAN: AAKFM 2525J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mrs.T.V.Muthu Abirami, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Guru Bashyam. CIT DR

सुनवाईकीतारीख/Date of hearing	:	27.07.2022
घोषणाकीतारीख /Date of Pronouncement	:	29 .07.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the Principal Commissioner of Income Tax, Chennai-1 dated 24.03.2022 under section 263 of the Income Tax Act, 1961 and pertains to assessment year 2017-18.

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

"1. For that the order of the Principal Commissioner of Income Tax is without jurisdiction, contrary to law, facts and circumstances of the case and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the order of the Principal Commissioner of Income Tax passed u/s.263 is barred by limitation.

3. For that the Principal Commissioner of Income Tax failed to appreciate that there was no error or prejudice much less both to warrant the invocation of the powers conferred u/s.263.

4. For that the Principal Commissioner of Income Tax failed to appreciate that no details of expenditure can be called for in respect of income offered under presumptive basis.

5. For that the Principal Commissioner of Income Tax failed to appreciate that the Assessing Officer has applied his mind in completing the assessment for the impugned assessment year and that no addition was warranted in the facts and circumstances of the case.

6. For that the Principal Commissioner of Income Tax cannot invoke the provisions of section 263 to substitute his view on the issue which has already been considered by the Assessing Officer.

7. For that without prejudice, the Principal Commissioner of Income Tax erred in invoking the provisions of section 263 in respect the assessment order passed u/s. 147 r.w.s.143(3), where the tax effect is nil.”

3. Brief facts of the case are that the assessee is a partnership firm running a kalyana mandapam filed its return of income u/s.139(4) of the Income Tax Act, 1961, on 07.12.2017 disclosing total income of Rs.1,10,620/- and such income has been determined on presumptive basis u/s.44AD of the Income Tax Act, 1961 @ 8% of gross receipts of Rs.13,82,700/-. A survey u/s.133A of the Income Tax Act, 1961, was conducted on 19.09.2019 in the premises of the assessee and during the course of survey suppression of receipts to the tune of Rs.75 lakhs was noticed. Consequent to survey, case has been reopened u/s.147 of the Income Tax Act, 1961, and in

response to notice issued u/s.148 of the Act, the assessee has filed its return of income on 05.03.2019 and declared total income of Rs.18,03,840/- and said income has been determined u/s.44AD of the Act on presumptive basis. The assessment has been completed u/s.143(3) r.w.s. 147 of the Act, on 28.12.2019 and determined total income at Rs.18,03,840/- without making any additions.

4. The case has been subsequently taken up for revision proceedings u/s.263 of the Income Tax Act, 1961, and consequently, show-cause notice dated 14.03.2022 was issued and called upon the assessee to explain as to why assessment order passed by the Assessing Officer dated 28.12.2019 should not be set aside. The PCIT, in the said show-cause notice observed that although, the assessee has admitted suppression of receipts during the course of survey, but has claimed various expenses and declared net profit of Rs.18,03,840/-, however, could not substantiate necessary expenses with evidences. However, the Assessing Officer has accepted explanation furnished by the assessee without application of mind to the relevant provisions of the Act, which rendered assessment order erroneous, insofar as it is

prejudicial to the interests of revenue. In response to notice, the assessee submitted that it has filed return of income in response to notice u/s.148 of the Act, on presumptive basis in terms of section 44AD of the Act and estimated 8% net profit of gross receipts, including gross receipts found during the course of survey and thus, question of maintenance of books of account and production of evidences for expenses does not arise. Therefore, the Assessing Officer has accepted return of income filed by the assessee without making adjustment and thus, when the Assessing Officer himself does not have any power to call for books of account and evidences for expenses, then the PCIT cannot exercise his powers u/s.263 of the Act on the very same issue and set aside the assessment order. The Principal CIT, however was not convinced with explanation furnished by the assessee and according to the PCIT, the assessment order passed by the Assessing Officer dated 28.12.2019 is erroneous, insofar as it is prejudicial to the interests of revenue, because the Assessing Officer has failed to examine the issue in right perspective of law, even though, the assessee and his Auditor claimed that firm does not have any evidences in support of expenses and hence, set aside the

assessment order and directed the Assessing Officer to redo the assessment to examine aspects as discussed in the 263 order. Aggrieved by the PCIT order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the PCIT erred in not appreciating fact that the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue, because the assessee has adopted presumptive taxation in terms of section 44AD of the Act, and declared 8% profits on gross receipts, including suppression of receipts found during the course of survey. The Assessing Officer, after considering relevant facts has rightly concluded the assessment without making any adjustment. However, the PCIT without any valid reasons set aside the assessment order on very same issue, even though there is no provision in law to maintain books of account and produce necessary evidences for expenses, when the assessee has adopted presumptive taxation in terms of section 44AD of the Income Tax Act, 1961.

6. The learned DR, on the other hand, supporting order of the learned PCIT submitted that the PCIT has made out a case of erroneous order passed by the Assessing Officer, which caused prejudice to the interests of the Revenue and thus, there is no error in the reasons given by the PCIT to set aside the assessment order and their order should be upheld.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The facts borne out from records indicate that the assessee has originally filed its return of income and estimated profit in terms of section 44AD of the Income Tax Act, 1961, on gross receipts of Rs.13,82,700/-. During the course of survey u/s.133A of the Act, suppression of receipts to the tune of Rs.75 lakhs was found and the assessee in response to 148 notice has filed return of income and declared gross receipts of Rs.88,82,700/- and estimated 8% profit in terms of section 44AD of the Income Tax Act, 1961, and declared net profit of Rs.18,03,842/-. The Assessing Officer has accepted income returned by the assessee in the course of assessment proceedings without making any further addition. The PCIT

was of the opinion that the Assessing Officer ought to have carried out necessary verification with regard to expenses claimed by the assessee against suppressed turnover and thus, opined that the assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue.

8. In light of above factual background, if you examine the case of the assessee, one has to understand whether the assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue. Admittedly, the assessee has declared net profit @ 8% in terms of provisions of section 44AD of the Act, on gross receipts, including receipts found during the course of survey amounting to Rs.75 lakhs. The law is very clear inasmuch as when the assessee has adopted presumptive taxation in terms of section 44AD of the Act, and declared profit @ 8% on gross receipts, then the assessee need not to maintain books of account and also does not require to get its accounts audited in terms of provisions of section 44AB of the Act. Further, the Assessing Officer cannot question expenses deemed to have been incurred while arriving at net profit @ 8% on gross receipts.

Therefore, in our considered view, when the Assessing Officer himself does not have any power to call for books of account and evidence for expenses deemed to have been incurred while arriving at net profit at 8% on gross receipts, when the assessee has adopted presumptive taxation in terms of section 44AD of the Act, then in our considered view, the learned PCIT also does not have any power to exercise his jurisdiction u/s.263 of the Act, on very same issue and set aside the assessment order. Therefore, we are of the considered view that that the Principal CIT has completely erred in set aside the assessment order passed by the Assessing Officer dated 28.12.2019. Hence, we quash the order passed by the PCIT u/s.263 of the Act.

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

Order pronounced in the open court on 29th July, 2022

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,

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

दिनांक/Dated 29th July, 2022

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

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