

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्रीमहावीर 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. 340/Chny/2022
(निर्धारणवर्ष / Assessment Years: 2018-19)

Kathiravan Ananthalakshmi No. 274C, Thuraiyur Road, Perambalur, Tamil Nadu - 621 212.	बनाम/ Vs.	ACIT Central Circle -1, Trichy.
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No. ASMPA-6568-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ ITA No. 341/Chny/2022
(निर्धारणवर्ष / Assessment Years: 2017-18)

Kathiravan Srinivasan No. 274C, Thuraiyur Road, Perambalur, Tamil Nadu - 621 212.	बनाम/ Vs.	ACIT Central Circle -1, Trichy.
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No. AJSPK-6687-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Guru Bashyam, CIT(DR)

सुनवाई की तारीख/ Date of Hearing	:	21.07.2022
घोषणा की तारीख / Date of Pronouncement	:	03.08.2022

आदेश / ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

These two appeals by two different assesseees are arising out of revision orders of Principal Commissioner of Income Tax (Central), Chennai-

2 passed u/s. 263 of the Income-tax Act, 1961 (herein after referred to as 'the Act') vide dated 29.03.2022. In ITA Nos. 340 & 341/Chny/2022, in the cases of Kathiravan Ananthalakshmi and Kathiravan Srinivasan, the assessments were framed by ACIT, Central Circle-1, Trichy for AYs 2018-19 and 2017-18 u/s. 144 of the Act vide order dated 21.12.2019 and u/s 143(3) of the Act vide order dated 25.12.2019 respectively.

2. The only common issue for these two appeals of assesseees is as regards to the revision orders passed by PCIT, in both the appeals, holding the original assessment framed as erroneous and prejudicial to the Revenue for the reason that the Assessing Officer has not applied higher rate of tax u/s 115BBE of the Act on income assessed by the AO as unexplained but declared by assesseees as agricultural income. The facts and circumstances are exactly identical in both the cases and even the grounds are also identically worded and hence will take the facts from ITA No. 340/Chny/2022 and will decide the issue.

3. The assessee has raised the following grounds of appeal:

"1.1 The order of the Principal Commissioner of Income Tax is contrary to law, facts and circumstances of the case.

1.2 The PCIT went wrong in not at all considering the reply filed and erred in setting aside the assessment in a mechanical manner and the order is therefore unsustainable in law.

2.1 The PCIT grossly erred in treating the order of assessment as erroneous in so far as it is prejudicial to the interests of the revenue vide his impugned order.

2.2 The addition of agricultural income as the appellant's income from other sources being one possible view, the PCIT's observation that the same resulted in the assessment order being erroneous is legally unsustainable.

2.3 The order of assessment having treated the exempt income of the

appellant as his taxable income is prejudicial only to the appellant and not to the revenue. Further, it being settled law that an order cannot be treated as prejudicial due to mere loss of revenue, the PCIT erred in acting contrarily.

2.4 Thus, the order of assessment being neither erroneous nor prejudicial to the interest of the revenue, the impugned order is to be quashed.

3.1 The PCIT has violated the provisions of the Act in exercising their jurisdiction over an issue in the order of assessment which is being challenged in appeal by the appellant before the Commissioner of Income Tax (Appeals).

3.2 The PCIT failed to consider explanation 1 to section 263 of the Act and therefore the impugned order is liable to be set aside.

4.1 The PCIT has grossly erred in directing the AO to add the agricultural income of the appellant u/s. 68 of the Act in the impugned order when there was no such proposal in his show-cause notice."

4. Brief facts are that the Income Tax Department conducted search u/s. 132 of the Act in M/s. Dhanalakshmi Srinivasan Charitable and Educational Trust on 15.02.2018. During the search on this group, the assessee was also covered being Vice Chairman of the group along with his wife also present assessee before us. During the course of search u/s. 132 of the Act several incriminating materials were found and seized from the residence of one of the employee of the group Shri. K. Muralidharan. Accordingly, assessee's case was selected for scrutiny by issuing notice u/s. 143(2) of the Act and subsequently information was called u/s. 142(1) of the Act regarding the claim of agricultural income. The assessee claimed to have earned agricultural income of Rs. 81,85,000/- in her return of income but the assessee could not provide any information or could not filed any evidence that the assessee has earned agricultural income and accordingly, the AO assessed the entire agricultural income of Rs. 81,85,000/- as unexplained income. The assessee has challenged this addition before CIT(A) by filing an appeal on 31.01.2020 i.e., challenging the very addition

of agricultural income. This appeal filed by assessee before CIT(A) is pending adjudication as informed by Ld Counsel for the assessee.

5. In the meantime, PCIT issued show cause notice vide No.ITBA/REV/F/REV1/2021-22/1041002488(1) dated 18.03.2022, as to why the income disallowed, declared being agricultural income, be not taxed u/s. 69 r.w.s. 115BBE of the Act amounting to Rs. 81.85 Lacs. The assessee replied this notice and in this reply first the assessee took up the issue on jurisdiction that the order is neither erroneous nor prejudicial to the interest of the Revenue and assessee contested the revision order. The assessee also raised objection that the rate of tax for agricultural income was to be revised is the matter that has been contested before CIT(A) and this being so, the Proviso to clause (c) of Explanation (1) to section 263 of the Act will come into play and the doctrine of merger will apply. Ld. Counsel for the assessee relied on the decision of the Hon'ble Madras High Court in the case of Smt. Renuka Philip vs ITO, Business Ward-XV(2) [2019] 409 ITR 567 (Madras) and also the decision of Hon'ble Allahabad High Court in the case of CIT vs Vam Resorts & Hotels (P) Ltd [2019] 418 ITR 723 (All).

6. On the other hand, Ld. CIT(DR) heavily relied on the revision order and stated that the Assessing Officer while framing assessment u/s 143(3) of the Act has not examined the issue of applicability of rate of tax as prescribed u/s. 115BBE of the Act and assessee declared agricultural income

but assessed by the AO as unexplained income is always subject to higher rate of tax in view of the provisions of section 115BBE of the Act and therefore, the revision order passed by PCIT is within the four corners of law as the assessment order is erroneous as well as prejudicial to the interest of Revenue for the reason that the lower rate of tax is charged on the income despite of specific provisions of section 115BBE of the Act. In view of this arguments, Ld. CIT(DR) requested to affirm the order of the PCIT.

7. We have heard rival contentions and gone through the facts and circumstances of the case. Admitted facts are that the assessee's income declared from agricultural activities at Rs. 81.85 Lakhs is assessed by Assessing Officer as unexplained income. Admittedly this addition of agricultural income as unexplained income is a matter is being contested before CIT(A) in Appeal No. 10976/2019-20 filed on 31.01.2020. We noted that this issue has been dealt by Hon'ble Madras High Court in the case of Smt. Renuka Philip (Supra) wherein Hon'ble Madras High Court had dealt with exactly identical situation where the addition was subject matter of appeal before CIT(A) was held to be covered by the concept of doctrine of merger in view of the provisions of clause (c) of Explanation (1) to section 263 of the Act. Hon'ble Madras High Court has considered this issue and observed from Para 22 to 25 read as under:

"22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section

54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction under Section 54 <http://www.judis.nic.in> of the Act should be accepted.

23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the Commissioner could not exercise power under Section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous.

24. As noticed above, the Assessing Officer while completing the re-assessment proceedings has assigned certain reasons for coming to a conclusion that the assessee is entitled for deduction under Section 54F and not under Section 54 of the Act. This reason assigned by the Assessing Officer has been found by us to show due application of mind. As observed, we cannot expect an Assessing Officer to write a judgment. In such circumstances, the view taken by the Commissioner in his order under Section 263 of the Act has to be termed as a change <http://www.judis.nic.in> of opinion, or in other words, the Assessing Officer adopted one of the two views possible and in such circumstances, it cannot be stated that the order is prejudicial to the interest of the Revenue as well as erroneous. For the purpose of exercise of jurisdiction under Section 263 of the Act, the twin tests are to be satisfied and even assuming, the re- assessment order is to be held as erroneous, it cannot be stated to be prejudicial to the interest of Revenue as every erroneous order cannot be subject matter of Revision under Section 263 of the Act. Further more, if the order passed by the Commissioner under Section 263 of the Act as confirmed by the Tribunal is allowed to stand, then the very purpose of the remand order against the original re-assessment proceedings would become a fait accompli.

25. Thus, for the above reasons we are fully satisfied that the assumption of jurisdiction by the Commissioner under Section 263 of the Act was wholly without jurisdiction as the twin tests have not been satisfied and consequently, the order dated 14.03.2012 as confirmed by the Tribunal by order dated 13.07.2012 calls for interference.”

8. Even this issue has been decided by Hon'ble Allahabad High Court in the case of Vem Resorts & Hotels (P) Ltd (supra) and particularly in Para 25 Hon'ble Allahabad High Court observed as under:

"25. As, Clause (c) of Explanation 1 to Section 263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act by CIT is barred. Thus, in the present case, the CIT wrongly exercised jurisdiction under Section 263 of the Act by remanding back the matter to assessing authority on 25.3.2013, while the appeal was decided by CIT (A) on 5.6.2013. Thus, the order passed by the ITAT does not suffer from any irregularity and needs no interference."

9. In view of the above facts situation that the addition of agricultural income by the AO as unexplained income is contested before the CIT(A) by the assessee and once this being contested before CIT(A), in view of the provisions of clause (c) of Explanation (1) to section 263 of the Act, the doctrine of merger will apply and the PCIT cannot take any cognizance of the matter while adjudicating u/s. 263 of the Act. Even otherwise also the CIT(A)'s powers are co-terminus with those of the AO and he can do what the AO could do and can also direct the later to do what the later failed to do on that very issue. In fact, an appeal is merely continuation of the original proceedings and unless some fetters are placed upon the powers of CIT(A), he exercise the same powers as that by the AO. In the present case, the CIT(A) can also rectify charging of higher rate of tax during appeal proceedings, in case the provisions of the Act so provides and income of the assessee declared as agricultural income is upheld to be assessed as unexplained income. Accordingly, we are of the view that the revision order

passed by PCIT u/s.263 of the Act is bad in law and without jurisdiction. Hence, we quash the revision order passed by PCIT and allow the appeal of the assessee.

10. Similar are the facts in ITA No. 341/Chny/2022 in the case of K. Srinivasan for AY 2017-18 and hence respectfully following same and taking consistent view, we quash the revision order in the case also.

11. In the result, both the appeals filed by the assesseees are allowed.

Order pronounced on 3rd August, 2022.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई / Chennai; दिनांक / Dated : 03 -08-2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded 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 |