

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

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री संजय सरमा, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.1983/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2011-12**)

Shri A Raja Aadhithya Properties, A2 North Main Road, NGO A Colony, Tirunelveli. <u>Presently at:</u> 1461-62, Thiruvallur Nagar, Mogappair, Chennai – 600 050.	बनाम / Vs.	Pr. CIT-2 Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. APFPR-9413-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri N.V. Balaji (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri Guru Bashyam (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	22-08-2022
घोषणा की तारीख / Date of Pronouncement	:	22-08-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contest the revisional jurisdiction as exercised by Ld. Principal Commissioner of Income Tax-2, Chennai-2 [Pr.CIT] u/s 263 vide order dated 29-03-2019 against the assessment order passed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 254 on 01-11-2016 pursuant to order of the Tribunal in ITA

No.115/Mds/2016 dated 24-03-2016. The grounds taken by the assessee read as under:

1. That the order of the learned Principal Commissioner of Income Tax- 2 ['PCIT'] is contrary to the facts and circumstances of the case and against the principles of equity and natural justice.
 2. The PCIT has failed to exercise the powers laid down under section 263 of the Act objectively. The PCIT erred in arbitrarily setting aside the assessment order without appreciating the fact that the assessment was completed in line with the directions of the Tribunal.
 3. The PCIT failed to appreciate that the order of the assessing officer is not erroneous or prejudicial to the interest of the revenue.
 4. The PCIT failed to appreciate since the assessing officer had made sufficient enquiries, he will not have jurisdiction under section 263.
 5. The appellant craves the leave of the Hon'ble Tribunal to recall the orders of dismissal of appeal and direct hearing of this appeal.
2. The Registry has noted delay of 30 days in the appeal, the condonation of which has been sought by the assessee on the strength of an affidavit. The delay has been attributed to miscommunication between the assessee and his advocate. Considering the period of delay and the contents of the affidavit, we condone the delay and admit the appeal for adjudication on merits.
3. The material facts are that the assessee was assessed u/s. 143(3) of the Act on 29-03-2014 which travelled up to the level of Tribunal in ITA No.115/Mds/2016 order dated 24-03-2016. The Tribunal issued certain directions to Ld. AO *qua* disallowance u/s 40(a)(ia) after considering the order of Chennai Tribunal in Shri N. Palanivel Vs. ITO [2015] 40 ITR (Trib.) 325.
4. Pursuant to these directions, the Ld. AO issued notice to the assessee seeking relevant details. It was noted that there was no outstanding amount payable in respect of the expenditure related to s. 40(a)(ia) of the Act. Accordingly, the disallowance made u/s.

40(a)(ia) in respect of rent payment, advertisement expenses, legal fee expenses totaling to Rs.23.14 Lacs was deleted by Ld. AO which was sought to be revised by Ld. Pr. CIT.

5. The revision was in view of the observation of Ld. Pr. CIT that the ratio of decision of Tribunal stood overruled by the decision of Hon'ble Supreme Court in the case of **M/s. Palam Gas Services Vs. CIT in Civil Appeal No.5512 of 2017**. Accordingly, the order giving effect to Tribunal order as passed by Ld. AO on 01-11-2016 was held to be erroneous and prejudicial to the interest of the revenue. Since the assessee did not respond to the show-cause notice, Ld. AO was directed to consider the issue denovo in accordance with law and pass necessary orders after affording reasonable opportunity of hearing to the assessee. Aggrieved, the assessee is in further appeal before us.

6. Upon careful consideration, it could be seen that Ld. AO has merely given effect to the order of Tribunal in ITA No. 115/Mds/2016 passed on 24-03-2016. As a matter of judicial discipline, the Ld. AO was bound by the directions given by the Tribunal and had no other option. Apparently, the order of Tribunal has attained finality albeit on account of low tax effect. But the fact remain that the issue has already attained finality and therefore, the order passed by Ld. AO to carry out the directions of the Tribunal could not be held to be erroneous or prejudicial to the revenue which would justify revision u/s 263. Therefore, we have no hesitation in quashing the impugned order passed u/s 263.

7. The appeal stand allowed.

Order pronounced on 22nd August, 2022.

Sd/-
(SONJOY SARMA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 22-08-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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