

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No. 202/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

Arumugam Kamatchi 15/372, Prop: Suba Garments, Sathy Main Road, P. Puliampatti, Sathy Taluk, Erode -638 459.	बनाम/ Vs.	PCIT (Central) Chennai -2, M.G. Road, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. BDOPK-1329-Q		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No. 203/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

Ramasamy Dharuman 394, Prop: Sri Thenu Textiles, Sathy Main Road, P. Puliampatti, Sathy Taluk, Erode -638 459.	बनाम/ Vs.	PCIT (Central) Chennai -2, M.G. Road, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AFSPD-5712-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No. 204/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

Dharuman Vanisuganya 15/24, Prop: Sri Thenu Silks, Sathy Main Road, P. Puliampatti, Sathy Taluk, Erode -638 459.	बनाम/ Vs.	PCIT (Central) Chennai -2, M.G. Road, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. ALUPV-3096-J		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No. 205/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

Ramasamy Moorthy 454, Prop: Sri Thenu Sarees, Sathy Main Road, P. Puliampatti, Sathy Taluk, Erode -638 459.	बनाम/ Vs.	PCIT (Central) Chennai -2, M.G. Road, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AGSPM-7875-R		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No. 206/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

Sri Thenu Silks 214, Sathy Main Road, P. Puliampatti, Sathy Taluk, Erode -638 459.	बनाम/ Vs.	PCIT (Central) Chennai -2, M.G. Road, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. ABAFS-2142-Q		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ **ITA No. 207/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

Ramasamy Murugesan 216, Prop: Vinayaga Adavar Adayagam, Sathy Main Road, P. Puliampatti, Sathy Taluk, Erode -638 459.	बनाम/ Vs.	PCIT (Central) Ch -2, M.G. Road, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AKKPM-7054-J		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Erode) (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri M. Rajan (CIT) – Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	08-09-2022
घोषणा की तारीख / Date of Pronouncement	:	08-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of these appeals, various assessee contest the revisional jurisdiction u/s. 263 as exercised by learned Principal Commissioner of Income Tax, Chennai-2 [Pr.CIT] vide separate orders dated 04.03.2022. The substantial facts as well as issues are stated to be same and it is admitted position that adjudication in any one appeal

shall apply to other appeals also. For the purpose of adjudication, facts from ITA No.206/Chny/2022 has been culled out wherein the grounds raised by the assessee read as under:

- 1) The order of the Principal Commissioner of Income Tax, passed u/s 263 of the IT Act is against law, facts and circumstances of the case.
- 2) The PCIT erred in not considering the reply filed by the appellant in proper perspective.
- 3) The PCIT erred in holding that Assessing Officer passed the order u/s. 143(3) of the Act dt.30/12/2019 for the impugned assessment year 2017-18 without considering the survey findings.
- 4) The PCIT erred in holding that assessment order passed by the Assessing Officer is erroneous in so far as it is also prejudicial to the interest of revenue.
- 5) The PCIT failed to consider/look into the material fact that the appellant had submitted all the details that were for called for by the Assessing Officer.
- 6) The PCIT erred in assuming that the retraction of survey deposition were made at the end of the limitation of the assessment, whereas the retraction was actually made as early as on 28/03/2018 which shows the non-application of mind by the PCIT.
- 7) The PCIT's contention on stock difference is purely based on conjecture and surmises i.e. without any supporting evidences, as the appellant had not maintained any stock register.
- 8) The PCIT erred in holding that the appellant had not submitted any details to verify the cash deposits made, without considering the bank statements submitted by the appellant.
- 9) When the Assessing Officer passed an order after taking a plausible view on basis of evidence produced before him, the order u/s.263 by PCIT was merely a change of opinion for which revisionary powers cannot be exercised.
- 10) The Order u/s.263 is required to be quashed, for the said section can be invoked only when there is a lack of enquiry and not inadequate enquiry. Relying on 322 ITR 167 (Del)
- 11) The order of the PCIT is liable to be cancelled, for when the material was there on record, considered and a particular view was taken, it is not open for the PCIT, in revisionary proceedings to take a different view on same material.

2. The Ld. AR advanced arguments and submitted that the assessment was framed by Ld. AO with due application of mind after considering all the facts as available on the record. The Ld. CIT-DR, on the other hand, submitted that the assessee group was subjected to

survey wherein certain discrepancies in stock were noted by the survey team and statements were recorded. It was submitted by Ld. CIT-DR that all this material was not considered by Ld. AO in the assessment order and therefore, the order was erroneous and prejudicial to the interest of the revenue. Having heard rival submissions and after due consideration of material on record our adjudication would be as under.

3.1 The assessee being resident firm is stated to be engaged in running textiles shops. The assessee group was subjected to survey u/s 133A on 23.01.2018 wherein it transpired that the copy of bills given to customers was destroyed and fresh bills were generated in the system for accounting. A statement was recorded from Shri M. Senthil Rajan, Accountant of the group wherein fact of suppression of sales was admitted. The statement of Shri Parameshwaran corroborated the statement given by the accountant.

3.2 Accordingly, the case was subjected to scrutiny assessment u/s. 143(3) of the Act. The assessee filed return of income declaring income of Rs.10.86 Lacs. A notice u/s. 143(2) as well as notice u/s 142(1) was issued during the course of assessment proceedings calling for requisite details.

3.3 Upon perusal of documents on record, it could be seen that the assessee furnished only one reply on 04.11.2019 wherein the assessee furnished financial statements, Audit Report, Digital Books of Accounts, Trial Balance, Bank Account statement and VAT audit report. It was submitted that stock register was not maintained for AYs 2016-17 and 2017-18. The Ld. AO, without raising any further query, accepted the returned income vide assessment order dated 30.12.2019.

Revisional Proceedings

4.1 Subsequently, upon perusal of case records, the Ld. Pr.CIT held the order to be erroneous and prejudicial interest of the Revenue and show caused the assessee on 16.02.2022. The issues flagged in the revisional order was that a pen-drive was found during the survey which contained data of all the group concerns from 19.11.2016 to 23.01.2018 and as per this data, the profit for this period worked out to Rs.16.30 Crores which was approx. 26% of total sales during this period.

4.2 During survey, the cumulative net profit of the group as per tally data was computed at Rs.306.15 Lacs for AY 2017-18 but the total returned income of the whole group was only Rs.77.37 Lacs and therefore, Ld. Pr. CIT held an opinion that the group did not fully disclose the income earned by them.

4.3 Due to retraction of survey deposition, non-submission of details, non-cooperation, the assessment was completed without considering the survey findings and by accepting the income returned. Further, post demonetization, the group made cash deposit in Bank Accounts of firm and family member which could not be verified due to non-submission of details and due to non-cooperation.

4.4 It was further observed that the disclosure made by the Managing Partner was mainly based on excess stock found at the time of survey. The Managing Partner promised to apportion the excess stock amongst group concerns and agreed to offer the undisclosed income in the hands of the respective firms / partners. The Tally data showing the real business volume was not rightly analyzed and not correctly quantified at the time of assessment due to non-cooperation and due

to time constraints. The bifurcation of the stock between different entities was not effectively carried out / furnished by the assessee during the course of assessment proceedings. The retraction was made by the Managing Partner at the very end of the limitation of the assessment which compelled Ld. AO to accept the returned income. The retraction was not substantiated with material evidences. The time taken between the admission and retraction was skillfully done when the limitation date of assessment was closer. The Ld. AO completed the assessment without taking into consideration any of the survey findings resulting into loss of revenue.

4.5 Though the assessee opposed revision of order, however, relying upon the decision of Hon'ble Supreme Court in **Malabar Ind. Co. Ltd. V/s CIT (243 ITR 83)**, Ld. Pr. CIT set aside the assessment order with a direction to Ld AO to redo the assessment after verifying the documents / evidences submitted by the assessee as well as after considering the survey findings after affording opportunity of hearing to the assessee. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

5. After careful consideration of material facts, it is quite obvious that the survey findings have remained to be considered by Ld. AO while framing the assessment order. The issues flagged in the revisional order were never the subject matter of any query by Ld. AO. The assessee also did not file any satisfactory replies to rebut the survey findings. This is due to the fact that the admission made by the assessee has subsequently been retracted. However, no satisfactory explanation was furnished by the assessee with respect to tally data

and stock discrepancies as found during the course of survey operations. The assessee filed only one reply in which it was categorically stated that the assessee did not maintain stock data whereas in tally data, such stock discrepancies were noted by the survey team. The aforesaid facts would led to inevitable conclusion that it was a case of no enquiry which made the assessment order erroneous and prejudicial to the interest of the revenue. Therefore, we do not find any reason to interfere in the revisional jurisdiction. However, our adjudication would not be construed as any expression on the merits of the addition. Since facts are the same in all the other appeals, our adjudication as above would apply to all the other appeals also.

6. In the result, all the appeals stands dismissed.

Order pronounced on 08th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated : 08-09-2022
JPV/-

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