

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

श्री महावीर 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.181/Chny/2021  
निर्धारण वर्ष /Assessment Year: 2016-17

**Sathyanarayanan Radhika,**  
No. 362, Raja Street,  
Coimbatore – 641 001.  
**[PAN: AFGPR-7178-R]**

**The Asst. Commissioner of**  
**Vs. Income Tax,**  
Non Corporate Circle,  
Coimbatore.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Ms. Joshita Jothi, C.A  
: Shri ARV Sreenivasan, Addl. JCIT

सुनवाई की तारीख/Date of Hearing

: 07.09.2022

घोषणा की तारीख /Date of Pronouncement

: 07.09.2022

**आदेश / ORDER**

**Per Mahavir Singh, Vice President :**

This appeal by the assessee is arising out of the revision order of Principal Commissioner of Income Tax, Coimbatore-1, in Revision No.PCIT, Coimbatore-1/Revision-263/100000195634/2021 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter 'the Act') dated 29.03.2022 for Assessment Year 2016-17. The Assessment was framed by Asst. Commissioner of Income Tax, Non Corporate Circle-2, Coimbatore u/s. 143(3) of the Act vide order dated 14.12.2018.

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2. At the outset, it is noticed that this appeal is barred by limitation by 10 days. The assessee has filed condonation petition along with affidavit stating that the orders of PCIT, Coimbatore-1 dated 14.12.2018, was received by the assessee on 30.03.2021 but the appeal was filed only on 08.06.2021 due to Covid-19 Pandemic. It means that there is a delay of 10 days. The Id.AR before us stated that this delay is due to pandemic period of Covid-19 and subsequent events and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Since the Hon'ble Supreme Court has condoned the delay during the said period, respectfully following the same we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is against the revision order passed by PCIT u/s. 263 of the Act for the reason that the A.O failed to verify the loan amount received by the assessee of Rs. 1,42,00,690/- during the Financial Year 2015-16 relevant to this Assessment Year 2016-17.

4. We have heard rival contentions and gone through the facts and circumstances of the case. The brief facts of the case are that the assessee is an individual and original assessment was completed by the A.O u/s. 143(3) of the Act vide order dated 14.12.2018. Subsequently, the PCIT issued show cause notice u/s. 263 of the Act requiring the assessee to explain as to why the assessment order framed by the A.O for the year under consideration should not be subjected to revision u/s. 263 of the Act. The PCIT noted the fact from the records that during Financial Year 2015-16, the assessee received a sum of Rs. 1,00,42,690/- as loan from Shri R. Sathyanarayanan. He noted that as per audit report in Form No.44AB, the loan received by the assessee was not otherwise than by an account payee cheque or account payee draft and moreover, as per the ledger account of M/s. Raghuram Jewels the aggregate amount of loan through cheque was received at Rs. 1.25 Crores. According to PCIT, the A.O failed to verify the balance amount of Rs. 17,00,690/- received in violation of s. 269SS of the Act, which is required to be added back to the total income of the assessee. Accordingly, the PCIT passed revision order directing the A.O to re-do the assessment after verification of facts discussed above. Aggrieved, the assessee came in appeal before the Tribunal.

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5. Before us, the Ld. Counsel for the assessee Ms. Joshita Jothi, C.A has filed Form No.3CB and stated that the Auditor has made mistake in noting the particulars of loan taken in Form No.3CD i.e., the audit report vide 31(a) , wherein the loan amount is mentioned at Rs. 1,42,00,690/-, whereas the actual loan amount is at Rs. 1.25 Crores and this sum of Rs. 17,00,690/- is interest pertaining to earlier year which is accumulated in this loan and it has been subsequently rectified by filing the Addendum to Form No.3CB, wherein the correct amount was disclosed. The Ld. Counsel for the assessee stated that there is no error in the assessment order so as to be prejudicial to the interest of Revenue which requires review u/s. 263 of the Act. She stated that even for levying penalty u/s. 269SS of the Act as directed by PCIT, the amount of Rs. 17,00,690/- was never a loan or deposit rather it was interest on this loan of Rs. 1.25 Crores. For this purpose, the Ld. Counsel for the assessee relied on the decision of Hon'ble Madras High Court in the case of *CIT v. C.R.K. Swamy [2012] 254 ITR 158 (Madras)*, wherein the Hon'ble High Court considered that non initiation of penalty proceedings would not render assessment erroneous or prejudicial to the interest of Revenue and Commissioner would not be justified in exercising power u/s. 263 of the Act. For this,

she referred to the observations of Hon'ble Madras High Court in para 2 & 3, which reads as under:

*"2. Moreover, as held by a Bench of the Delhi High Court in the case of Addl. CITv. Sudershan Talkies [1993] 200 ITR 153, failure on the part of the assessing authority to initiate penalty proceedings would not give jurisdiction to the Commissioner of Income-tax to pass an order under section 263 of the Income-tax Act, 1961 ('the Act') and to direct initiation of such proceedings. We are in respectful agreement with that view.*

*3. The question referred to us for the assessment year 1984-85, as to whether, on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order passed under section 263 and holding that non-initiation of penalty proceedings under section 271(1)(c) of the Act do not render the assessment made dated 16-1-1989, erroneous or prejudicial to the interests of the revenue and consequently the Commissioner is not justified in assuming under section 263, is, therefore, answered in favour of the assessee and against the revenue."*

6. When these facts were confronted to Sr. D.R, he only relied on the revision order passed by PCIT.

7. After hearing both the sides and going through the facts, we noted that the loan amount of Rs. 1.25 Crores was taken in previous year from Shri R. Sathyanarayanan and the balance amount of Rs. 17,00,690/- was interest on the loan amount and this cannot be treated as unexplained and moreover, there is no failure of the provisions of s. 269SS of the Act, because the assessee has not received any cash loan. Hence, we quash the revision order and allow the appeal of the assessee.

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8. In the result, the appeal of the assessee is allowed.

*Order pronounced in the open Court on 07<sup>th</sup> September, 2022.*

**Sd/-**  
**(मनोज कुमार अग्रवाल)**  
**(Manoj Kumar Aggarwal)**  
**लेखा सदस्य /Accountant Member**

**Sd/-**  
**(महावीर सिंह)**  
**(Mahavir Singh)**  
**उपाध्यक्ष / Vice President**

चेन्नई/Chennai, दिनांक/Dated: 07<sup>th</sup> September, 2022.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy 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