

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.552/Chny/2022  
निर्धारण वर्ष /Assessment Year: 2011-12

Mr.Komara Gounder Chinnusamy,  
Bhuvana Traders Poosarikadu,  
Alavaipatty Post,  
Rasipuram-TK,  
Namakkal.  
[PAN: AKBPC 5305 R]  
(अपीलार्थी/Appellant)

v. The Income Tax Officer,  
Ward-2,  
Tiruchengode.  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.T.S.Lakshmi-  
Venkataraman, FCA  
प्रत्यर्थी की ओर से /Respondent by : Mr.M.Raja, CIT  
सुनवाई की तारीख/Date of Hearing : 15.09.2022  
घोषणा की तारीख /Date of Pronouncement : 21.09.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax, Coimbatore, dated 13.06.2022 and pertains to assessment year 2011-12.

**2. The assessee has raised the following grounds of appeal:**

- 1. The order of PCIT, Coimbatore 1 dated 13.06.2022 is opposed to the facts of the case and is not legally maintainable.*
- 2. The PCIT is not justified in reconfirming the original order dated 29.01.2021.*
- 3. The PCIT is not justified in denying the appellant's request to provide the copy of audit objection, if any, based on which the provisions of section 263 was invoked.*

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*The revision proceedings u/s.263 has been initiated by PCIT on the basis of Audit objection and not on the basis of any fresh materials coming in to the possession of PCIT other than those available at the time of completion of Scrutiny assessment.*

*4. In terms of section 263, The PCIT has to form an opinion on independent examination of any record or any proceedings under this Act and on his satisfaction that the order passed by the AO is erroneous in so far as it is prejudicial to the interest of the revenue, he may initiate the revision proceedings. In the case of the appellant the revision proceedings has been initiated on the basis of Audit objection which doesn't give a footing to PCIT to initiate the revision proceedings. In view of this the revision proceedings of PCIT is bad in law.*

*5. The PCIT in her order u/s 263 has given the direction to the AO that there is under assessment of trade discount and has given a finding that there is under assessment of income to an extent of Rs.21,91,261.*

*6. A reading of the assessment order dated 29.12.2018 in page 3 para 6 the subject matter of proceedings u/s.263 has been verified by the assessing officer. After due application of mind and examination of facts the AO has come to a conclusion that an addition of Rs.1,25,000/- to the returned income is justified in respect of trade discount of Rs.23,16,261 received by the assessee. In view of this there is no error or prejudice in the assessment order so as to enable the PCIT to 4.invoke his powers u/s 263 of the Act.*

*7. From the above fact it could be seen that the PCIT has invoked powers u/s.263 of the Act to redo the assessment on an alternate possible view which is bad in law.*

*8. In view of the above grounds and other submissions to be made at the time of Appeal' hearing, the order U/S 263 passed by PCIT Coimbatore-1 may be cancelled and justice rendered.*

**3.** The brief facts of the case are that the assessee is a Proprietor of M/s.Bhuvana Traders, is engaged in the business of purchase and sale of poultry feeds. An information gathered from AIR, which is ascertained that the assessee has made cash deposits to the tune of Rs.25 lakhs into SB A/c maintained with Axis Bank, Rasipuram Branch, during the FY 2010-11 relevant to AY 2011-12. The assessee did not file his return of income for the AY 2011-12. Therefore, assessment has been re-opened u/s.147 of the Act, and the assessment has been completed u/s.143(3) r.w.s.147 of the Act, on 29.12.2018 and determined total income of Rs.3,41,260/- after making addition of gross profit @ 5.4% on total trade discount received

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from M/s.SKM Animal Feeds and Foods (India) Pvt. Ltd., Erode, amounting to Rs.23,16,261/-.

**4.** The case has been, subsequently taken up for revision u/s.263 of the Act, and accordingly, show cause notice issued and called upon the assessee to explain, as to why, the assessment order passed by the AO u/s.143(3) dated 29.12.2018, shall not be revised for the reasons stated in show cause notice. The PCIT, in the said show cause notice observed that although, the assessee had received trade discount of Rs.23,16,261/-, but the AO has wrongly estimated gross profit of 5.4% and made addition of Rs.1.25 lakhs instead of making addition towards entire amount of trade discount of Rs.23,16,261/-. In response, the assessee submitted that the AO has considered the issue of trade discount received by the assessee and after considering the explanation furnished by the assessee that trade discount has been passed to the customers has fairly estimated GP of 5.4% and made addition of Rs.1.25 lakhs. Since, the AO was already considered the issue and has taken one passible view, the PCIT cannot substitute his view and set aside the assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act. The PCIT, however, was not convinced with the explanation furnished by the assessee and according to the PCIT, the AO has not carried out required enquiries he ought to have been carried out in terms of s.263 of the Act, and thus, opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue and hence, set aside the assessment order passed by the AO

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and direct the AO to re-do the assessment afresh after verification of the facts discussed above with regard to the issue of trade discount received by the assessee. Aggrieved by the order of the PCIT, the assessee is in appeal before us.

**5.** The Ld.AR for the assessee submitted that the PCIT erred in invoking jurisdiction u/s.263 of the Act, and setting aside the assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act dated 29.12.2018, without appreciating the fact that the AO has considered the issue of trade discount received from M/s.SKM Animal Feeds and Foods (India) Pvt. Ltd., and after considering relevant submissions of the assessee, has estimated gross profit on trade discount. Therefore, once the AO has considered the issue, there is no scope for the PCIT to revise assessment order on very same issue.

**6.** The Ld.DR, on the other hand, supporting the order of the PCIT, submitted that although, the assessee has received trade discount of Rs.23,16,261/-, but the AO has estimated gross profit of 5.4% and made addition of Rs.1.25 lakhs, which rendered the assessment order to be erroneous and it is prejudicial to the interest of the Revenue. The PCIT after considering relevant facts has rightly set aside the assessment order passed by the AO and their orders should be upheld.

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**7.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The PCIT has revised assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act, on the issue of trade discount received by the assessee from M/s.SKM Animal Feeds and Foods (India) Pvt. Ltd., amounting to Rs.23,16,261/-. According to the PCIT, although, the assessee has received trade discount of Rs.23,16,261/-, but the AO has estimated gross profit of 5.4% on said trade discount instead of making addition towards full amount of trade discount received by the assessee. We find that the assessee has received trade discount from M/s.SKM Animal Feeds and Foods (India) Pvt. Ltd., and argued before the AO that trade discount received from the supplier of feeds, has been passed to the customers while selling the product. The AO after considering relevant submissions of the assessee has estimated gross profit of 5.4% on trade discount received by the assessee. From the above, what is clear that the AO has considered issue of trade discount received by the assessee during the course of assessment proceedings, and has taken one of the possible view. In our considered view, once the AO has taken view on the issue, then there is no scope for the PCIT to substitute his view and direct the AO to make assessment in a particular manner. In our considered view, the issue has been thoroughly dealt with and after being satisfied with the explanation of the assessee, the AO has completed the assessment. Hence, we are of the considered view that the PCIT is completely erred in setting aside the assessment order passed by the AO

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u/s.143(3) r.w.s.147 of the Act, and thus, we quashed the order passed by the PCIT u/s.263 of the Act.

**8.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 21<sup>st</sup> day of September, 2022, in Chennai.

**Sd/-**  
**(महावीर सिंह)**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(जी. मंजूनाथा)**  
**(G. MANJUNATHA)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 21<sup>st</sup> September, 2022.  
**TLN**

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