

**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, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ITA No.2267/Chny/2018  
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. V.M & Co., 99/2, Maharonbu Ground Road, Near New Velumanickam Theatres, Ramanathapuram – 623 501.	बनाम/ Vs.	DCIT Circle-1, Karaikudi.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAIFV-9271-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Meenakshi Sundaram (Advocate)-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri M. Rajan (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	13-09-2022
घोषणा की तारीख / Date of Pronouncement	:	28-09-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member):**

1. By way of this appeal, the assessee contest legality of revisional jurisdiction u/s. 263 as exercised by Ld. Principal Commissioner of Income Tax, Madurai-2 (Pr. CIT) vide order dated 28.05.2018 against the assessment order framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28.12.2017. The grounds raised by the assessee read as under:

1. The order of the learned PCIT is opposed to law on the facts and in the circumstances of the case.
2. The learned PCIT ought to have seen that the assessing officer completed the assessment after conducting due verification as deemed fit by her and the learned PCIT cannot term it as inadequate without explaining how it was inadequate.
3. The learned PCIT ought to have seen that there is difference between "lack of enquiry" and "inadequate enquiry" as explained by the Honourable Delhi High Court in the case of CIT Vs Anil Kumar Sharma (335 ITR 83) and for inadequate enquiry the assessment cannot be set aside.
4. The learned PCIT ought to have seen that the case was selected for limited scrutiny and the assessing officer can only examine the issues for which the case was selected for limited scrutiny and he cannot examine any other issues.
5. The learned PCIT ought to have seen that the assessing officer had not recorded a finding that the books of accounts were incorrect and incomplete and therefore the net profit cannot be estimated by rejecting the books of accounts and the PCIT cannot conclude that income was to be estimated without seeing the books of accounts.
6. The learned PCIT ought to have seen that the assessing officer already examined the claim of payment to district collector in the light of the decision of the Honourable High Court in the appellant's own case and without pointing out any error in the assessment order, the PCIT was not justified in setting aside the assessment.
7. For the above grounds and any other ground (s) that may be adduced at the time of hearing, the impugned order may be cancelled and justice rendered.

2. The Ld. AR, drawing attention to the grounds of appeal, assailed the revision and submitted that proper enquiries were made by Ld. AO before framing the assessment and the order could not be held to be erroneous or prejudicial to the interest of the revenue. The Ld. CIT-DR on the other hand, justified the revisional proceedings on the ground that the issues flagged in the revisional order were never subject matter of verification and examination by Ld. AO. The Ld. CIT-DR also filed written submissions in support of the revision which have duly been taken note of by us. In the written submissions, Ld. CIT-DR has relied in Explanation-2 to Sec.263 and cited various judicial precedents in support of the revision. The case was put for clarification also.

3. Having heard rival submissions and after going through the impugned order, our adjudication would be as given in succeeding paragraphs.

### **Assessment Proceedings**

4.1 We find that the assessee being resident firm is stated to be engaged as civil contractor and sale of ready mix concrete. It was assessed for the year u/s 143(3) of the Act on 28.12.2017. The case was selected for limited scrutiny under CASS to examine (i) interest expenses (ii) sundry creditors & (iii) other expenses claimed in the Profit & Loss Account.

4.2 Accordingly, statutory notices were issued calling for requisite details. The assessee filed details with respect to interest expenses of Rs.1.23 Crores, outstanding payables of Rs.1.05 Crores and other expenses of Rs.32 Crores with ledger extracts. Each aspect was examined with evidences and reasons.

4.3 Regarding outstanding payables, it was noted by Ld. AO that these were those advances which were received at year-end from government department with whom the contract was continuing to facilitate the closure of payment from government departments. This was balanced by bills receivables. Therefore, this was only a Balance Sheet entry having no significance in revenue yielding.

4.4 The other expenses of Rs.32.04 Crores include Wages, general expenses, site expenses and payment made to collectorate. The assessment order takes note of the fact that relevant ledger extracts and selective vouchers were examined. Out of such examination, expenses under the General Expenses of Rs.32.48 Lacs were culled out due to unsupported vouchers having no proper narration in the books of

accounts / ledger. Therefore, the expenditure of 32.48 Lacs was disallowed and the assessment was framed determining the income at Rs.131.35 Lacs.

### **Revisional Proceedings**

5. Subsequently, Ld. Pr. CIT, upon perusal of case records, held an opinion that the order was erroneous and prejudicial to the interest of the revenue and accordingly, show-caused the assessee on 16.05.2018. The same stem from the observation of Ld. Pr. CIT that the assessee did not furnish adequate details of other expenses of Rs.32.04 Crores. Since the supporting vouchers were not filed during assessment proceedings, the books should have been rejected and the income was to be determined @8% as per Sec.44AD. The assessee reflected Net profit Rate of 1.24% which was lesser than net profit rate of 2.71% as reflected in AY 2014-15 despite turnover remaining the same. Further, the assessee claimed Rs.25 Lacs as expenses paid to collectorate for which no supporting documents or details were filed and also there were no evidences for genuineness of the expenses incurred.

6. The assessee defended the assessment order, inter-alia, on the ground that particulars of other expenses were produced and duly explained during the course of assessment proceedings. The Ld. AO went through the particulars filed and verified the same. After satisfying himself, certain addition was made with due application of mind. The copies of the supporting documents were again filed with the reply.

7. Regarding expenses to collectorate, it was submitted that the assessee firm originated from another proprietary concern namely Shri V. Manoharan individual, the partner of assessee firm. The activities already done by him were continued further. On the same lines, the

upkeep of the Velumanickam Hockey Stadium at Collectorate, Ramanathapuram contributed by him and allowed as expenditure since AY 2003-04 had to be continued and it was only for business. As the Collectorate needed money for development of hockey stadium, it was paid by the assessee for the promotion of the business. The expenditure was allowed in earlier years which were also confirmed up-to the level of Hon'ble High Court of Madras. Therefore, the expenditure was allowable and no sort of disallowance was warranted.

8. However rejecting the same, Ld. Pr. CIT held that there was duplication of expense claimed by the assessee under various head. The assessee did not explain the steep reduction in the net profit rate during the year. Regarding payment to collaborate, the assessee failed to provide any evidences for genuineness of the expenses incurred. Therefore, the assessment order was set aside and Ld. AO was directed to re-do the assessment in accordance with law.

9. Pursuant to the same, an assessment has been framed by Ld. AO on 15.12.2019 determining the income @8% of turnover of Rs.74.57 Crores. Aggrieved as aforesaid, the assessee is in further appeal before us assailing the revisional jurisdiction as exercised by Ld. Pr. CIT u/s 263.

### **Our findings and Adjudication**

10. Upon careful consideration of material fact, it could be noted that the case of the assessee was selected for limited scrutiny under CASS to examine (i) interest expenses (ii) sundry creditors & (iii) other expenses claimed in the Profit & Loss Account. Accordingly, details of the same were called for by Ld. AO during the course of assessment proceedings. The assessee filed various details and replies. Vide reply

dated, 11.09.2017, the assessee furnished requisite details, year-end outstanding payable and furnished explanation of the same. Vide reply dated 07.12.2017, the assessee explained the circumstances under which the payment to Collectorate was made. All the requisite details as called for by Ld. AO were filed by the assessee and the assessment order also take note of this fact. The Ld. AO has noted that the assessee filed details with respect to interest expenses of Rs.1.23 Crores, outstanding payables of Rs.1.05 Crores and other expenses of Rs.32 Crores with ledger extracts. Each aspect was examined with evidences and reasons. Regarding outstanding payables, specific observations were made in the assessment order. Regarding other expenses of Rs.32.04 Crores, the assessee had filed relevant ledger extracts along with selective vouchers which were examined. Out of such examination, expenses under the General Expenses of Rs.32.48 Lacs were culled out due to unsupported vouchers having no proper narration in the books of accounts / ledger and the same were added back to the income of the assessee. Thus, it could be seen that all the three aspects of limited scrutiny were duly examined and verified by Ld. AO and certain addition was made after perusal of all the evidences. Therefore, it would not be correct to say that the assessment was framed without due verification or examination. No error could be found in the assessment order which would justify revision of the order. In such a case, Explanation-2 to Sec.263 would have no application.

11. The observations of Ld. Pr. CIT that the assessee did not furnish adequate details of other expenses of Rs.32.04 Crores are not correct. The observation that there was fall in the Net Profit rate and therefore, the income should have been estimated @8%, is also without any basis.

It could be seen that the assessee's books were subjected to Tax Audit and no defects could be pointed out by Ld. AO in the books of accounts maintained by the assessee. Hence, there is no justification for rejection of books of accounts. Another aspect is that the assessee's income could not be estimated u/s 44AD since the turnover is beyond threshold limit of Sec. 44AD. The assessee's books were audited and there could be various reasons for fall in the net profit rate. However, even otherwise, this aspect was beyond the scope of limited scrutiny. The last allegation of Ld. Pr. CIT that the payment to collectorate was not genuine, we find that this payment is being made by the assessee since past several years which has been allowed by higher judicial authorities in earlier years. Nevertheless, the assessee had filed sufficient evidences and explanation during the course of assessment proceedings in support of claim of this payment. The same was duly considered and accepted by Ld. AO with due application of mind. The acceptance of the claim could not be termed as erroneous.

12. The Ld. CIT-DR has relied on Explanation-2 to Sec. 263 to support the argument that the order was passed without making inquiries or verification which should have been made. However, we find that it is not a case wherein no inquiries were made by Ld. AO. Rather the case was selected for limited scrutiny to examine and verify three aspects which were duly examined and verified by Ld. AO. Secondly, this explanation is subjected to satisfaction of primary conditions of Sec.263 i.e., the order should be erroneous as well as prejudicial to the interest of the revenue. Upon perusal of assessment order, we do not find any error in the same and unable to accept this plea of Ld. CIT-DR.

13. Finally, on the basis of above facts and circumstances, we would hold that the impugned order could not be sustained in law. By quashing the same, we allow the appeal of the assessee.

14. The appeal stands allowed in terms of our above order.

Order pronounced on 28<sup>th</sup> September, 2022.

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

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 28-09-2022  
**EDN**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A) 4. आयकरआयुक्त/CIT  
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF