

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.884/Chny/2020
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.Valli Agro Food Industries,
36, South Street,
Sattur-626 203.

v. The PCIT,
Madurai-1

[PAN: AAIFV 9086 B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Chandrasekaran, FCA
प्रत्यर्थी की ओर से /Respondent by : Mr.M.Rajan, CIT
सुनवाई की तारीख/Date of Hearing : 28.11.2022
घोषणा की तारीख /Date of Pronouncement : 02.12.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax, Madurai-1, dated 12.09.2020 and pertains to assessment year 2015-16.

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

1. As there is no error in the assessment order and not prejudicial to the interest of the revenue, order u/s. 263 by the Principal Commissioner is unwarranted and unjustified.

2. Unabsorbed Depreciation is not unabsorbed Business Loss. The limitation for carrying forward of business loss do not apply to carrying forward the unabsorbed Depreciation.

Hence it is prayed that the Principal Commissioner ought not to have passed the order that the order of the Assessing officer is erroneous and prejudicial to the interest of the revenue.

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3. The brief facts of the case are that the assessee is a partnership firm which is engaged in the business of manufacturing and sale of rice filed its return of income for the AY 2015-16 on 30.11.2016 declaring 'Nil' total income. The case has been selected for limited scrutiny under CASS with the reason to verify whether cash in hand shown in the return of income is correct. The assessment has been completed u/s.143(3) of the Act, on 30.10.2017 and accepted income declared by the assessee without making any addition towards cash in hand shown as on 31.03.2015.

4. The case has been subsequently taken up for revision proceedings by the PCIT, Madurai-1, and notice u/s.263 of the Act, was issued and called upon the assessee to file objections, if any, for proposed revision. The PCIT, in the said show cause notice observed that although, there is a huge cash balance as on 31.03.2015 when compared to cash balance as on 31.03.2014, but the AO has not verified increase in cash balance, even though, the assessee has filed its return of income after demonetization date i.e. 08.11.2016. The PCIT further observed that since, the assessee has not explained the reasons for huge increase in cash balance, the AO ought to have invoked provisions of Sec.68 of the Act, and bring to tax cash balance as unexplained cash credit. The PCIT further observed that although, the assessee has filed belated return for the AYs 2012-13 to 2014-15, but the AO has allowed to carry forward unabsorbed depreciation, which rendered assessment order to be erroneous and prejudicial to the interest of the Revenue. In response to show cause notice, the assessee

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submitted that the assessment has been taken up for verification of cash in hand shown as on 31.03.2015. The AO has called for various details including cash book, sales tax return, ledger, bank statements, etc., and the assessee has furnished all details. The AO after considering relevant evidences observed that reason for selection for limited scrutiny has been examined with reference to supporting evidences and concluded the assessment. Therefore, it cannot be said that the assessment order passed by the AO is erroneous and prejudicial to the interest of the Revenue. The PCIT after considering relevant submissions of the assessee and also by relying upon various judicial precedents observed that the assessment order passed by the AO dated 30.10.2017 is erroneous in so far as it is prejudicial to the interest of the Revenue, because, the AO failed to carry out required enquiries he ought to have been carried out in light of relevant provisions of the Act and thus, set aside the assessment order and direct the AO to re-do the assessment after making necessary enquiries and verification in accordance with law. Aggrieved by the order of the PCIT, the assessee is in appeal before us.

5. The Ld.AR for the assessee submitted that assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue, because, the very purpose of taking up for assessment is huge increase in cash balance and the AO has examined the said issue during the course of assessment proceedings. In so far as unabsorbed depreciation, the question of AO looked into does not arise, because, the

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case was taken up for limited scrutiny. Further, during the Financial Year relevant to the AY 2015-16, the assessee has returned 'nil' total income and thus, the AO has no reason to go into verification of unabsorbed depreciation carry forward to subsequent assessment years. Therefore, on both issues, assumption of jurisdiction by the PCIT fails.

6. The Ld.DR, on the other hand, supporting the order of the PCIT, submitted that although, the AO has verified the issues with reference to evidences filed by the assessee, but he has failed to carry out required enquiries he ought to have been carried out in the given facts and circumstances of the case, more particularly, when there is a huge rise in cash in hand after demonetization. Similarly, the AO has failed to carry out necessary verification on the issue of unabsorbed depreciation and thus, the PCIT rightly held that the assessment order passed by the AO is erroneous and prejudicial to the interest of the Revenue

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.263 of the Act, confers suo moto powers to the PCIT to revise the assessment order passed by the AO, if the PCIT satisfies, assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue. In order to assume jurisdiction u/s.263 of the Act, the PCIT must satisfy that the assessment order passed by the AO is erroneous and also it is prejudicial to the interest of the Revenue and said satisfaction should be arrived on the basis of reasoning. In this case, the PCIT has taken

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up two issues for proceedings u/s.263 of the Act, and the first issue taken up by the PCIT is huge cash in hand as on 31.03.2015 when compared to previous financial year and according to the PCIT, the assessee has shown huge cash in hand without any proper source. The PCIT further observed that the assessee has filed return of income subsequent to the date of demonetization and therefore, opined that there is no proper explanation for cash in hand shown as on the date of balance sheet. The AO without verifying the said facts simply accepted the explanation furnished by the assessee which rendered the assessment order to be erroneous and prejudicial to the interest of the Revenue. We find that the reasons given by the PCIT to take up said issue for revision proceedings is devoid of merits for the simple reason that the scrutiny assessment has been taken up with a reason to verify huge cash in hand as on the date of balance sheet and the AO during the course of assessment proceedings, called upon various details including cash book, sales tax return for the relevant assessment year and also bank statements, to ascertain source for cash in hand shown in the books of accounts. The AO after satisfying with the explanation furnished by the assessee has accepted the return of income filed by the assessee without making any additions to returned income. In our considered view, once the AO has considered the issue and has accepted the explanation of the assessee, then there is no scope for the PCIT to take up said issue for revision proceedings on the guise of inadequate enquiry. We further noted that the PCIT may assume jurisdiction to revise

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assessment order, in a case, where there is no enquiry at all. However, he does not have power to revise the assessment order, in a case, where enquiry has been made and according to the PCIT, enquiry is inadequate and this principle is supported by the decision of the Hon'ble Bombay High Court in the case of CIT v. Gabriel India Ltd., reported in [1993] 203 ITR 108 (Bom).

8. As regards unabsorbed depreciation to be carry forward to subsequent years, the PCIT was of the opinion that although, the assessee has furnished return of income for the AYs 2012-13 to 2014-15 beyond due date specified u/s.139(1) of the Act, but the AO has allowed to carry forward unabsorbed depreciation. We find that once again the reasons given by the PCIT to revise the assessment order on this issue is devoid of merits for simple reason that the issue before the AO is AY 2015-16 and for this assessment year, the assessee has returned 'nil' total income. Therefore, the AO had no occasion to examine brought forward unabsorbed depreciation for earlier assessment years. Even, assuming for a moment, the PCIT is right on his observation, but fact remains that brought forward unabsorbed depreciation can very well be examined by the AO when the assessee has claimed set off of unabsorbed depreciation against current year income in subsequent assessment years. Since, there is no positive income for the impugned assessment year and the assessee has not claimed set off of unabsorbed depreciation, in our considered view, there is no prejudice is caused to the Revenue for the impugned assessment year

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and thus, the question of revision of assessment order on this issue does not arise. To sum up, we are of the considered view that the PCIT is erred in revising the assessment order passed by the AO u/s.143(3) of the Act, dated 30.10.2017 and thus, we quashed the order passed by the PCIT u/s.263 of the Act, for the reasons stated herein above.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 02nd day of December, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 02nd December, 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