

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.: 419/CHNY/2021

निर्धारण वर्ष/Assessment Year: 2015-16

M/s. Samy Construction,
41, Annai Sathya Nagar,
Palayapalayam Pirivu,
Perundurai Road,
Collectorate Post,
Erode - 638 011.

The ACIT,
Vs. Circle-1,
Erode.

PAN : ABQFS 5998C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S. Sridhar, Advocate
: Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 14.12.2022

घोषणा की तारीख/Date of Pronouncement

: 21.12.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the revision order passed by the Principal Commissioner of Income Tax, Coimbatore u/s.263 of the Income Tax Act, 1961, (hereinafter 'the Act') vide order C.No.220/PCIT-2/Cbe/2019-20 dated 03.03.2020. The assessment was framed by the ACIT, Circle-1, Erode for the

assessment year 2015-16 u/s.143(3) of the Act vide order dated 13.09.2017.

2. At the outset, it is noticed that this appeal is time barred by limitation by 541 days. This appeal was filed before Tribunal only on 25.10.2021 and as per Form 36, the order of CIT(A) was received on 03.03.2020. The assessee has filed condonation petition stating that the delay was due to the spread of Covid-19 pandemic. The assessee has also stated that 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. In term of the directions of Hon'ble Supreme Court, we condone the delay in filing of this appeal by assessee and admit the appeal for adjudication.

3. The only issue in this appeal of assessee is as regards to the revision order passed by PCIT revising the assessment framed by the AO on the issue that the AO has not verified the TDS angle in regard to labour expenses claimed by assessee.

4. The brief facts are that the assessee is engaged in the business of civil construction. The assessee filed e-return of income for the assessment year 2015-16 on 20.09.2015 declaring taxable income at Rs.1,14,96,820/-. The assessee's case was selected for limited scrutiny under CASS for the following reasons, 1. Mismatch in amount paid to related persons u/s 40A(2)(b) reported in Audit Report and ITR, 2. Large other expenses claimed in the Profit & Loss a/c. The AO after examination of the vouchers in respect of labour expenses noted that the assessee incurred casual labour expenses which is major head of expenses amounting to Rs.7,58,02,188/-. On test check, the AO noticed from the vouchers in respect of labour expenses that all payments are in cash and below Rs.20,000/-. It was noted by the AO that nature of work is mentioned in the voucher for which payment is made but does not supported with any working that as how the amount is arrived at. According to AO, the vouchers contain certain names of recipients but no address or contact number is mentioned. In view of these defects, the AO while completing assessment u/s.143(3) of the Act in limited scrutiny assessment disallowed labour expenses to the extent of Rs.15 lakhs and added to the total income of the assessee. The AO completed the assessment accordingly. The PCIT on perusal of the case records and considering the submissions of the assessee noted that

going through the size of requirements of manpower for civil work, the AO has not verified the TDS angle at the time of completion of scrutiny assessment. Therefore, he set aside the assessment order and directed the AO to redo the assessment after verification of TDS angle on labour payments. For this, he particularly made observations in para 6, which read as under:-

“6. On verification of records, it is seen that the assessee has claimed Rs.8.76 crores as other expenses out of which Rs.7.58 crores was towards labour charges. The claim of expenses as labour charges to the tune of Rs.7.58 crores which would mean that 700 labourers per day would have been engaged for 365 days @ 300 per day. Managing this size will require manpower contractors but TDS angle not verified at the time of completion of scrutiny assessment.”

5. Now before us, the Id.counsel for the assessee made argument that once the assessment is selected for limited scrutiny to verify the major labour expenses of Rs.7,58,02,188/- and which was verified by the AO and adhoc disallowance of Rs.15 lakhs was made and particularly, the PCIT has not given any finding in regard to, how these payments i.e., labour payments attract the provision of TDS because the PCIT himself has recorded that daily payment is Rs.300 per day. According to him, the order of AO is neither erroneous nor prejudicial to the interest of Revenue and once the PCIT could not establish that the assessment order is erroneous or prejudicial to the

interest of Revenue, the revision proceedings u/s.263 of the Act cannot be exercised by the PCIT.

6. On the other hand, the Id.CIT-DR could not controvert the above fact situation and could not make any argument as to how the assessment order is erroneous and prejudicial to the interest of Revenue but he relied on the revision order passed by PCIT.

7. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through the facts in entirety and noted that the AO has selected the case for scrutiny on limited scrutiny basis and framed assessment after making disallowance of adhoc labour expenses of Rs.15 lakhs which was the subject matter of limited scrutiny. We noted that the AO has gone through the vouchers in respect of labour expenses and noted that the nature of work for which payment is made is mentioned in the vouchers but not supported by any working as to how the amount is arrived. He also noted that the vouchers contain certain names of recipient but no address or contact number is mentioned. It means that AO has gone into the details of labour expenses and there is issue of TDS or not, even, the PCIT has not brought on record anything. In the absence of any finding qua applicability of

provisions of TDS, we are of the view that PCIT cannot direct the AO to make roving or fishing enquiries without any basis. Hence, we are of the view that the assessment order is neither erroneous nor prejudicial to the interest of Revenue and hence, we quash the revision order.

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

Order pronounced in the open court on 21st December, 2022 at Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

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

चेन्नई/Chennai,
दिनांक/Dated, the 21st December, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त) अपील(/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |