

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.: **619/CHNY/2021**

निर्धारण वर्ष/Assessment Year: 2015-16

Smt. Sabapathy Kalaiselvi,
No.40-A, Kamarajar Road,
K K Pudur,
Coimbatore – 641 038.

The Income Tax Officer,
Vs. Non Corporate Ward-2(5),
Coimbatore.

PAN : AFSPK 0206K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri J. Saravanan, Advocate
: Shri S. Senthil Kumaran, CIT

सुनवाई की तारीख/Date of Hearing

: 05.12.2022

घोषणा की तारीख/Date of Pronouncement

: 23.12.2022

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.120/41/PCIT-1/2019-20 dated 19.02.2020. The assessment was framed by the Income-tax Officer, Non-Company

Ward-2(5), Coimbatore for the assessment year 2015-16 u/s.143(3) of the Act vide order dated 13.12.2017.

2. At the outset, it is noticed that this appeal is delayed by 619 days. This appeal was filed before Tribunal only on 30.12.2021 and as per Form 36, the order of CIT(A) was received on 21.02.2020. The assessee has filed condonation petition stating that the delay was due to the spread of Covid-19 pandemic and nationwide lockdown imposed by the Government from 25.03.2020. 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 order of PCIT in revising the assessment order framed by AO vide dated 13.12.2017 passed u/s.143(3) of the Act stating that the assessment is neither erroneous nor prejudicial to the interest of

Revenue as the same was framed after making necessary and requisite enquiries and examination of the details. For this, assessee has raised number of grounds which are argumentative and exhaustive and hence, need not be reproduced.

4. Brief facts are that the AO framed original assessment u/s.143(3) for the relevant assessment year 2015-16 vide order dated 13.12.2017. Subsequently, on examination of assessment records, the PCIT noticed on verification of total income statement that the business loss of Rs.1,19,71,418/- was set off against income earned under the head 'long term capital gain' of Rs.1,22,11,844/-. According to PCIT, the AO failed to verify the excess allowance of bad debts which works out to Rs.1,08,38,418/- (Rs.1,31,20,648 – Rs.22,82,230/- the income declared) required to be withdrawn. According to AO, the assessment order passed without making enquiry or verification for the assessment year 2015-16 by the AO is erroneous and prejudicial to the interest of Revenue on the above issue. Accordingly, the PCIT after considering the submissions of the assessee held that the assessment order is erroneous and prejudicial to the interest of Revenue for the reason that the AO in his records and assessment proceedings has not enquired into the money lending activity of the assessee as well as

sale of immovable property and capital account. Therefore, the PCIT directed the AO vide para 8 as under:-

“8. The Assessing Officer, is hereby, directed to re-do the assessment afresh after verification of the facts discussed above and also after reconciliation of the figures by the assessee, capital introduction claim, money lending activity and any other issue that is relevant to examine the claim of bad debts incurred by the assessee during the period relevant to the A.Y.2015-16. After due satisfaction by the AO in accordance with law, the AO shall pass a fresh assessment order incorporating therein the findings made during the reassessment proceedings. The Assessing Officer shall give adequate opportunity of being heard to the assessee in this regard before passing the fresh assessment order.”

Aggrieved, assessee came in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee drew our attention to the assessment order framed and it is limited scrutiny assessment just to verify large business loss set off against other heads of income including capital gains. The Id.counsel for the assessee drew our attention to para 2 & 3 of the assessment order dated 13.12.2017 passed u/s.143(3) of the Act, which reads as under:-

“2. The case was selected for limited scrutiny to verify Large business loss set off against other heads of income. Notice u/s 143(2) dated 01/08/2016 was issued and served on the assessee on 20/08/2016. In response to the notice, Shri V. Ramanath FCA and Shri R. Shivapranesh of K.S. Palanisamy and Co., Chartered accountants and duly Authorised Representative, appeared and filed the details called for.

3. It is seen that the assessee has claimed huge bad debts during the year in course of her money lending business and set it off against income

from capital gains. In this regard, some of the debtors who were claimed as bad and written off during the year were summoned and statement was taken from them. In some of the cases the debtors stated their inability to attend in person and confirmed that they have not returned the loans they have obtained from the assessee as on 31.03.2015.”

5.1 The Id.counsel for the assessee in view of the above, stated that the AO has examined the details of investment made during the year as well as the nature of business i.e., of money lending and also summoned the debtors who confirmed the same. Some of the debtors could not attend in person but confirmed in writing that they have not returned the loans they have obtained from the assessee as on 31.03.2015. The Id.counsel for the assessee filed complete details and this being a limited scrutiny case, we are of the view that PCIT has only reconsidered the same issue which was already considered by the AO.

6. On the other hand, the Id.CIT-DR asked the Bench to confirm the order of PCIT on the following:-

1. The assessee filed ROI belatedly on 08-01-2016 admitting a total income of Rs.2,40,426/- after the setting off of business loss on account of alleged money lending activity of Rs,1, 19,71,4 18/- against the Capital Gain on Sale of Immovable Properties to the tune of Rs.1,22,11,844/-.

ii. Whereas the AO has not verified the genuineness of the money lending activity of the assessee by way of obtaining the required license of the assessee for the purpose of carrying out money lending as per Money Lending Act, 1957. As per Section 3 of Tamil Nadu Money Lending Act,

1957, a person requires a license for carrying out the said business and Section 9 of the said Act stipulates about the various records to be maintained for that business. It is also notable that no Such money lending activity was noticed in the earlier ROI of the assessee. Further, the assessee has not filed ROI from the AY2015-16 onwards.

iii. The assessee has not proved the genuineness of the loan by way of providing necessary documentary evidences for the lending of loans (date of lending, mode of lending, acknowledgement for receipt and the details of Security received against said loan)

iv. Even if it is presumed that the money lending activity is genuine, no prudent businessman would lend money without receipt of adequate security.

v. It is observed that during the assessment proceedings, the assessee has furnished documents such as promissory notes received from the borrower against the loan. By examination of promissory notes, it was noticed that most of them were prepared on 249-2014 and it did not contain the Signature of witnesses and the details of mode of Payment, etc, The AO had accepted these documents as evidences without proper examination.

Further, some of the debtors, in their sworn statement stated that they could not pay the loan received, despite legal notice received by them, But it is noticed that all the legal notices issued, invariably in the financial year 2015-16 relevant to the AY2016-17. Hence, if the recovery action if self was initiated in the subsequent financial year, the question of how the loans become bad within 6 months of the Same FY relevant to AY2015-16 is questionable and not acceptable. But, the AO had accepted these statements erroneously without taking cognizance that the loans become NPAs only in the Subsequent year but allowed the claim of Bad Debts in the FY2014-15 itself.

vi. Further, It is difficult to accept that how all the 128 parties to whom the loans were advanced become bad during the same year. Even if these loans were not recovered during the year, the same cannot be treated as bad debts without initiation required recovery measures. The same can be proved by sufficient evidences like

a) the recovery action initiated against the receipts of loans during the year

- b) reasons for treating the said loans as bad within 6 months of giving such loans
- c) FIR / complaint filed against the debtors
- d) Activity initiated for adjusting the loans recoverable with the security given by the receipts of loan. It is notable that writing off of bad debts is not an empty formality, the assessee cannot convert any live amount into bad debts only on the basis of technical rule of write off. Reliance is placed on the decision of Bangalore ITAT in the case of Embassy Classic Pvt Ltd vs DCIT (2010-TIOL-591-ITAT-BANG)

vii. It is also noticed that, in the Assessment Order itself the AO had stated that some of the debtors had not attended against the Summons issued but the AO had accepted the confirmation given by them without any further verification. It is evident from the letter issued by the AO to assessee vide his letter dated 04.12.2017.

viii. Hence it is clear from the above facts that the assessee received a Capital Gain of Rs. 1.30 Crores and to avoid the legitimate tax, the assessee has concocted a story of a money lending business. The AO without verifying the genuineness of the assessee's money lending business had simply accepted the loss as business loss on account of money lending activities.

7. After hearing rival contentions and going through the facts of the case, we noted that this being limited scrutiny assessment framed by the AO for the purpose of verification of large business loss incurred in the money lending. We noted that the AO has gone into the details and noted in the assessment order para 3, which is reproduced above in para 5. We also noted that all the debtors have confirmed while summoned and statements were taken from them. Some of them could not attend in person but confirmed in writing. We noted that the AO has formed an opinion and now PCIT, should

not have invoked the powers of revision u/s.263 of the Act on the same issue which is examined by the AO in detail. Hence, we find that the revision order passed by PCIT is bad in law and hence, the same is quashed.

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

Order pronounced in the open court on 23rd 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 23rd December, 2022

RSR

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.