

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 428/Chny/2022
निर्धारण वर्ष / Assessment Year: 2017-18

Mrs. Devi,
5, 4/2, Aparna Enclave,
Nandhini Street,
Velmurugan Nagar,
Madurai – 625 010.

[PAN: ANJPD-2937-R]

(अपीलार्थी/Appellant)

v. The Principal Commissioner of
Income Tax, Madurai-1,
No.2, V.P. Rathnaswamy Road,
Bibikulam, Madurai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. B. Ramakrishnan, FCA &
Shri. Shrenik Choradia, ACA

प्रत्यर्थी की ओर से/Respondent by : Shri. S. Senthil Kumaran, CIT-DR

सुनवाई की तारीख/Date of Hearing : 01.12.2022

घोषणा की तारीख/Date of Pronouncement : 04.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of learned Principal Commissioner of Income Tax, Madurai-1, dated 29.03.2022, passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and pertains to assessment year 2017-18.

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

"1. The impugned order is illegal, opposed to the facts, contrary to law, without jurisdiction and against the principles of natural justice and therefore liable to be quashed.

2. The learned PCIT erred in enhancing the assessment under section 263 when the assessment order was not prejudicial to the interests of revenue as the assessing officer while completing the assessment was satisfied that addition was already made in the case of the assessee's father.

3. The learned PCIT ought to have seen that the assessee's father did not raise any ground before the CIT (Appeals) that the above Rs 97,29,000/- was correctly assessable in the case of his daughter.

4. The learned PCIT erred in enhancing the assessment on the ground that the assessment order would become prejudicial to the interest of revenue if the addition was deleted by the CIT (Appeals).

5. The learned PCIT ought to have examined as to whether the assessment order was prejudicial to the interest of revenue as on the date of passing the order and cannot enhance the assessment on future contingents.

6. The learned PCIT ought to have seen that the account was operated by the assessee's father on the basis of the authorisation given by the bank including the authorized signatory and the amount was deposited by the assessee's father in puducherry without the knowledge of the Appellant

7. The Learned PCIT erred in law and facts by making addition u/s 68 of the Income Tax Act, whereas the assessee has filed her return u/s 44 AD with no books of accounts then how credit is found in the books of accounts which are non-existent.

8. The Learned PCIT has erred on facts by making addition of Rs.9729000/- an whereas the amount deposited is only Rs.9726000/- as per AO's records and sine assessee's father is first holder the same cannot be added to the assessee.

9. The appellant prays for leave to add, alter, amend or modify any or all the grounds any time before or at the time of hearing."

3. The brief facts of the case are that, the assessee is an individual, running hotel in the name of M/s. Sri Devi. The appellant had filed her return of income for the assessment year 2017-18, dated 14.03.2018, declaring total income of Rs.3,61,240/-. The assessment has been completed u/s.143(3) of the Act on 28.12.2019 and determined total income of Rs.4,75,740/- by making adjustment of disallowance on various expenditure amounting to Rs. 1,14,499/-.

4. The case has been subsequently taken up for revision proceedings by the PCIT, Madurai-1, and issued notice u/s.263 of the Act dated 25.01.2022. In the said show cause notice, the PCIT observed that during the financial year relevant to assessment year 2017-18, the assessee has made a total cash deposit of Rs. 97,29,000/- in the bank account with Axis Bank and it was explained during the course of assessment proceeding, that it was out of revenue collections generated from hotel business. The AO further noted that said bank account is in joint name of the assessee and Shri M. Kathiresan. The PCIT, further observed that in the assessment of Shri M. Kathiresan, cash deposit in Axis bank account was added, but because said bank account is a joint account, the AO ought to

have made addition towards cash deposits in the hands of the assessee on protective basis. Therefore, opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. In response, the assessee submitted that cash deposits in Axis bank account was owned up by M. Kathiresan and the AO has made addition towards cash deposits in the hands of the assessee's father M. Kathiresan. Since, cash deposits found in the bank account is owned by assessee's father, question of making addition on said cash deposit as assessee's income on protective basis does not arise and for this purpose assumption of jurisdiction by PCIT is incorrect.

5. The PCIT, after considering relevant submissions of the assessee and also taken note of various facts observed that assessment order passed by the AO u/s.143(3) of the Act dated 28.12.2019 is erroneous in so far as it is prejudicial to the interests of the revenue. The AO although made additions towards cash deposits found in Axis bank account in the hands of Shri M. Kathiresan, father of the assessee, but fact remains that said bank account is jointly operated by the appellant and his father, and thus, the AO should have made additions

towards cash deposits in the hands of assessee on protective basis. Since, the AO has failed to appreciate the issue in right perspective of law, which caused prejudice to the interests of the revenue and thus, rejected the argument of the assessee and set aside assessment order passed by the AO and direct the AO to redo the assessment in accordance with issue discussed in the order passed u/s.263 of the Act and made additions towards cash deposits in the hands of the assessee on protective basis.

6. The Ld. Counsel for the assessee, referring to bank statements of Axis bank and also the assessment order passed by the AO in the case of Shri Muthu Asari Kathiresan, father of the assessee, submitted that the AO has made addition towards cash deposit found in Axis bank account No. 916020029743902 in the joint name of the appellant and her father u/s. 68 r.w.s.115BBE of the Act as unexplained income. Further, the appellant never owned up the bank accounts. Further, Shri. M. Kathiresan, had owned up bank account and also explained source for cash deposit in his individual capacity. The AO after considering relevant facts had made addition in the hands of M.

Kathiresan, but he has chosen not to make any additions towards very same cash deposits in the hands of the assessee. Therefore, it cannot be said that the assessment order passed by the AO is erroneous in so far as prejudicial to the interests of the revenue. In this regard, he relied upon the Hon'ble Supreme Court decision in the case of CIT vs. Max India Ltd [2008] 166 Taxmann.com 188(SC).

7. The Ld. DR, on the other hand supporting the order of the Ld. PCIT submitted that if you go through the date of 143(2) notice and date of reply filed by the assessee, the assessee has filed reply explaining source for cash deposits at fag end of assessment proceedings and the AO does not looked into the issue in light of bank account operated by assessee and her father. Although, the AO had made addition towards cash deposits in the case of M. Kathiresan, he ought to have make additions in the hands of the assessee to protect the interests of the revenue. Since, the AO has failed to act in accordance with law, the PCIT rightly held that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the bank account operated by the appellant with AXIS bank bearing no. 916020029743902 is a joint account held along with her father M. Kathiresan. Further, said bank account was operated in the name of the hotel Sri Devi. It is also admitted fact, that the case of appellant and her father M. Kathiresan was taken up for scrutiny to verify large cash deposits found after demonetization. In the assessment of Shri. M. Kathiresan, father of appellant, the AO had made addition towards cash deposits found in Axis bank account jointly held by the appellant and her father as unexplained income u/s. 68 r.w.s. 115BBE of the Act. But, in the assessment of appellant passed by the AO u/s. 143(3) of the Act, although the case has been taken up for scrutiny to verify cash deposits during the demonetized period, the AO chose not to make any addition against very same cash deposit which has been owned up by M. Kathiresan and also additions has been made in his hand. From the above, it is very clear that the issue on cash deposits with

Axis bank with Account Bearing no. 916020029743902, is within the knowledge of the Assessing Officer while completing the assessment proceedings of the assessee u/s. 143(3) of the Act. Since, the purpose of scrutiny assessment in the case of the appellant is to verify large cash deposits found in the bank account during demonetization period, it is commonly understood that the AO has verified the issue and satisfied with the reply furnished by the assessee, when the AO has not made any addition towards the issue on which the assessment proceedings has been taken up. Further, it is also an admitted fact that M. Kathiresan, one of the joint holder of Axis bank account no. 916020029743902, whether cash deposits found is owned up as his income and also has explained source for the same. But, the Assessing Officer of M. Kathiresan, did not accept the explanation of the Kathiresan and made additions towards cash deposits u/s. 68 of the Act. Since, cash deposits found in Axis bank account is already assessed in the hands of another joint holder of bank account, the question of making addition towards very same cash deposits in the hands of the appellant on protective basis does not arise. Further, the said substantive addition and protective addition is not there in the

Income Tax Act and it is only created to protect the interests of the revenue. Since, M. Kathiresan, never disputed ownership of bank account in his name and also addition has been made in his hands towards cash deposit, the question of protect interest of the revenue and making protective addition of cash deposits does not arise. Therefore, we are of the considered view, that the AO while completing assessment proceedings of the appellant u/s. 143(3) of the Act, has taken up a view when two views are possible and has accepted explanation furnished by the assessee. Once, the AO has taken a view and has accepted the claim of the assessee, when two views are possible, it cannot be said that the assessment order passed by the AO is erroneous in so far as prejudicial to the interests of the revenue, and this legal view is supported by the decision of the Hon'ble Supreme Court in the case of CIT vs Max India Ltd (supra). This view is also supported by the decision of the Hon'ble Jurisdictional High Court of Madras in the case of CIT vs Sak Soft Ltd [2008] 298 ITR 63 (Mad), where it has been held that where two views are possible in matter on question of exemption u/s. 10B of the Act, and Assessing Officer preferred one view against another view, his order could not be said to be

erroneous or prejudicial to the interests of the revenue. In this case, the AO has considered cash deposits found in bank account and assessed the same in the hands of one joint account holder and chose not to make additions in another joint account holder, although both cases have taken up scrutiny to verify cash deposits. Therefore, we are of the considered view, that the PCIT has erred in holding that the assessment order passed by the AO is erroneous and prejudicial to the interests of the revenue and thus, we quash the order passed by the PCIT u/s. 263 of the Act.

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

Order pronounced in the court on 04th January, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 04th January, 2023

JPV

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 |