

अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्रीमहावीर 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 अपीलसं./**ITA No.: 486/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2015-16

Dr. A.B. Chitra,
615, Chitra Hospitals,
Tenkasi Road,
Rajapalayam – 626 117.

The DCIT,
vs. Virudhunagar Circle,
Virudhunagar.

PAN: AERPC 2082H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Balasubramanian, Advocate
प्रत्यर्थी की ओर से/Respondent by : Dr. R. Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing : 15.02.2023

घोषणा की तारीख/Date of Pronouncement : 17.02.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the revision order passed by the Principal Commissioner of Income Tax, Madurai-1 u/s.263 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order in Revision No.PCIT, Madurai-1/Revision-263/10000322530/2022 dated 26.03.2022. The assessment was framed by the DCIT,

Virudhunagar Circle, Virudhunagar for the assessment year 2015-16 u/s.143(3) r.w.s. 147 of the Act vide order dated 28.12.2019.

2. At the outset it is noticed that this appeal is time barred by 1 day. It is noticed from Form 36 that the order of PCIT was received on 31.03.2022 but appeal was actually filed on 31.05.2022 with a delay of 1 day. The assessee has filed petition for condonation of delay along with affidavit stating the reason that the delay of one day has occurred during transmission of appeal papers for signature from her counsel and in turn to her counsel after signing. As the delay is small just of 1 day and the cause seems reasonable, which was not contested by Revenue, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is against the revision order passed by PCIT holding that the assessment order framed by AO u/s.143(3) r.w.s.147 of the Act is erroneous and prejudicial to the interest of Revenue since, the AO passed the assessment order without verifying the actual unaccounted income found from the impounded ledger account pertaining to assessment year 2012-13 to 2015-16. For this, assessee has raised various grounds which

are argumentative and exhaustive and hence, need not be reproduced.

4. Brief facts are that the assessee is an individual, filed her return of income for the relevant assessment year 2015-16. A survey u/s.133A of the Act was conducted on the hospital premises of the assessee on 16.10.2015. Subsequently, on the basis of impounded material the assessee's case was reopened u/s.147 of the Act and consequently, assessment was completed u/s.143(3) r.w.s. 147 of the Act on 28.12.2019 making assessment of income at Rs.89,20,940/-.

5. The PCIT on verification of material impounded during survey noted that the ledger account pertaining to assessment years 2012-13 to 2015-16 depicted that the gross receipt was at Rs.3,85,73,984/- whereas the assessee has admitted gross receipts at Rs.1,56,09,918/- in the profit & loss account for the relevant assessment years 2012-13 to 2015-16. According to PCIT, the suppressed gross receipt is to the tune of Rs.2,29,64,066/-. He tabulated the unaccounted receipts as per impounded material, receipt declared in the profit & loss account and the differential amount as under:-

AY	Total receipt as per Impounded material in Rs.	Total receipt credited to the P&L Account in Rs.	Difference in Rs.
2012-13	82,02,597	33,84,047	48,18,550
2013-14	90,92,713	36,99,156	53,93,557
2014-15	1,01,19,086	42,17,880	59,01,206
2015-16	1,11,59,601	43,08,848	68,50,753
Total Suppressed Gross Receipt			2,29,64,066

The PCIT thereafter also tabulated the unaccounted receipt admitted by assessee and estimated expenditure claimed and determined by AO in the assessment as under:-

AY	Unaccounted receipt admitted by you in Rs.	Estimated expenditure determined by you in Rs.	Estimated unaccounted income by you In Rs.
2012-13	43,18,550 (as per impounded material 48,18,550)	17,27,420	25,91,130
2013-14	53,93,557	21,57,422	32,36,134
2014-15	59,01,206	23,60,477	35,40,715
2015-16	68,50,753	27,40,301	41,10,451
Total			1,34,78,431

For the relevant assessment year 2015-16, the PCIT noted that although the assessee has declared total receipts at Rs.1,11,59,601/- but assessee has claimed expenditure to the extent of Rs.41,10,451/- and hence, the amount of Rs.41,10,451/- remains untaxed for the relevant assessment year. The PCIT also holds that the expenditure claimed by assessee of Rs.27,40,301/-

also cannot be allowed without verification and hence, he estimated the balance unaccounted income of Rs.63,78,880/- ought to have been added to the income of assessee. According to PCIT, the AO has failed to examine the above issue during the assessment proceedings and hence, he directed the AO to pass fresh assessment order after making necessary enquiries in regard to balance amount of Rs.63,78,880/-. The PCIT has observed this in para 5 a under:-

5. I have considered the written submissions of the assessee. In the light of the facts of the case, the provisions of the law and the material information available on records. It is an admitted fact that the assessing officer has not verified the correctness of income admitted by the assessee discussed in para (2) above. The assessing officer has failed to verify this aspect during the course of assessment proceedings shows lack of enquiry and incorrect application of law. The authorized Representative has now stated before me that assessee does not offer any specific income. The authorized Representative has further stated that the assessee promised to pay the tax which may arise at the time of assessment proceedings and the above promise has been fulfilled by the assessee by paying all the difference income as an undisclosed income for the A.Y 2015-16 and 2016 17. Though the assessee has claimed that she had admitted the entire unaccounted income from the Asst. years 2015-16 and 2016-17, the assessee had admitted Rs.70,99,550/- only, as discussed in is para (2) above, out of assessee's estimated unaccounted income of Rs.1,34,78,431/-. Accordingly, the balance amount of Rs.63,78,880/- [Rs. 1,34,78,431 - Rs.70,99,550] has not been admitted by the assessee. The authorized Representative has not given any specific explanation to the omission of income to the of Rs.63,78,880/- pointed out in the notice u/s263. The assessing officer is therefore directed to conduct thorough verification on the discrepancies noticed and examine the claim of the assessee. The assessing officer shall make necessary addition in the event of assessee failing to explain the above omission satisfactorily before the assessing officer too.

Aggrieved, assessee came in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the gross receipts for the relevant assessment year 2015-16 is only to the extent of Rs.1,11,59,601/-, which the AO has considered while framing assessment. This fact is noted by AO in his assessment order and he has also noted the fact of difference of Rs.68,50,753/- between the gross receipts as per ledger account impounded and returned gross receipts by the assessee in the P & L account. He noted that the assessee has claimed expenditure of Rs.27,40,301/- and after reducing the same from unaccounted gross receipts of Rs.68,50,753/- balance amount of Rs.41,10,451/- was offered. Accordingly, assessment was made at an income of Rs.89,20,940/-. We find that the entire unaccounted income, if any that has to be added in the respective assessment years i.e., AYs 2012-13 to 2014-15 and not in this assessment year 2015-16. The revision order for this year is without basis, as the AO has considered the entire gross receipts as per impounded material at Rs.1,11,59,601/- and assessed the net income at Rs.89,20,94/-/. Hence, we find no infirmity in the assessment order and revision order passed by PCIT

is without any basis. Hence, we quash the revision order and allow the appeal of assessee.

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

Order pronounced in the open court on 17th February, 2023 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 17th February, 2023

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. |