

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

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

आयकर अपील सं./ITA No.: 346/Chny/2022

निर्धारण वर्ष / Assessment Year: 2017-18

Varam Capital Private Limited,
C/o. Mafoi Strategic
Consultant Pvt. Ltd.,
Plot No. 3726, 6th Avenue,
Q- Block, Anna Nagar,
West Chennai – 600 040.
[PAN: AABCK-4258-L]

Principal Commissioner of
v. Income Tax-3,
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. R. Viswanathan, FCA
: Shri. M. Rajan, CIT-DR

सुनवाई की तारीख/Date of Hearing

: 23.02.2023

घोषणा की तारीख/Date of Pronouncement

: 10.05.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax, Chennai-3, passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 17.03.2022 and pertains to assessment year 2017-18.

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

"1. The Order U/s.263 dated 17.03.2022 of the CIT-3, Chennai in **ITBA/REV/F/REVS/2021-22/1040929827{1}** setting aside the assessment order passed u/s 143(3) for the limited purpose is contrary to facts and opposed to law and untenable.

2. The Learned CIT-3, Chennai did not have jurisdiction to pass the order U/s263 against the order u/s 143(3), as the issue related to increase in Capital, Deposits of cash and the claim of bad debts are examined in detail by the Assessment proceedings by the Ld AO and cannot be brought within the jurisdiction of Sec 263 for revision.

3. The order U/s 263 is bad in law, as the Learned CIT - 3 Chennai erred in not considering the fact the issues in consideration for Revision were verified by the Ld AO in the Assessment proceedings.

4. In any case, the Learned CIT-3, Chennai ought to have considered the facts and the circumstances brought out by the assessing officer, in the preassessment notices and the reply including the details furnished by the Appellant before passing of the assessment order. In view of the discussion and consideration of the issues during Assessment Proceedings, the same cannot be reassessed or again decided u/s 263 or to have enlarged the same.

5. The Ld CIT-3 failed to appreciate that Appellant's Assessment proceedings was completed with through verification and details were submitted in the Proceedings.

6. The Learned CIT 3 ought to have appreciated that the issues considered in the 26 3 Order in the Assessment was properly framed and sec 263 does not warrant for invoking the jurisdiction.

For these and among other grounds that may be allowed to be adduced later, the appellant humbly and respectfully prays that the order U/s 263 be deleted and annulled."

3. The brief facts of the case are that, the assessee company is engaged in the business of Micro Finance

Institution (MFI) offering loans through its offices located across the country. The assessee has filed its return of income for the assessment year 2017-18 on 28.09.2017, admitting a total income of Rs. 31,89,940/- under normal provisions and Rs. 89,48,699/- under the provisions of section 115JB of the Act. The assessment has been completed u/s. 143(3) of the Act, on 30.12.2019 and accepted income declared by the assessee in the return of income filed for the relevant assessment year.

4. The case has been, subsequently taken up for revision proceedings by the PCIT, Chennai-3 and show cause notice u/s. 263 of the Act, dated 21.02.2022 has been issued and served on the assessee. In the said show cause notice, the PCIT has taken up three issues for revision proceedings and opined that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, on the issue of non-consideration of increase in share premium to the extent of Rs. 1,00,82,060/-, in light of provisions of section 56(2)(vii) of the Act, cash deposits made during the demonetization period to the extent of Rs. 19,53,06,367/- and non-consideration of bad and doubtful

debts written off to the extent of Rs. 1,22,85,775/-.

Therefore, called upon the assessee to explain as to why the assessment order passed by the Assessing Officer should not be revised in terms of provisions of section 263 of the Act. In response, the assessee submitted that all three issues questioned during the revision proceedings has been thoroughly examined by the Assessing Officer during assessment proceedings and the Assessing Officer has issued notice u/s. 142(1) of the Act, with Annexure and called for various details including return of income, computation of income, profit and loss account, balance sheet and notes to accounts etc. The assessee has filed relevant details and explained the case. The Assessing Officer has also subsequently asked about the large share premium received during the year and cash deposit during demonetization period reported etc. In response, the assessee has explained share premium received during the year and also explained source for cash deposits made during demonetization period. The Assessing Officer, after considering relevant facts has completed assessment. Therefore, it cannot be said that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue.

5. The PCIT, after considering relevant submissions of the assessee and also taken note of relevant facts opined that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, because the Assessing Officer failed to verify increase in share premium in light of provisions of section 56(2)(vii) of the Act. The Assessing Officer had also failed to verify source for cash deposits made during demonetization period and the explanation of the assessee that, in the business of micro finances, source for cash deposits is out of receipts from borrowers is not satisfactory. The Assessing Officer, has further failed to examine the claim of the provision for bad and doubtful debts in light of provisions of section 36(1)(vii) r.w.s. 36(2) of the Act. Therefore, rejected arguments of the assessee and set aside the assessment order passed by the Assessing Officer with the direction to complete the assessment after giving reasonable opportunity to the assessee. Being aggrieved by the PCIT order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee, referring to notice issued by the Assessing Officer u/s. 142(1) of the Act dated

26.12.2019, submitted that the Assessing Officer has called for various details including necessary approval received from registrar of companies for issuing shares at premium. In response to it, the assessee has filed its reply on 27.12.2019 and explained the case of the assessee. The Assessing Officer, had also issued 142(1) notice, dated 26.08.2019 and called for various details including financial statements, return of income filed for relevant assessment year and also called for source for cash deposits made during demonetization period. The assessee has filed all details and has also explained source for cash deposits. The Assessing Officer, after considering relevant submissions of the assessee completed the assessment. Therefore, it cannot be said that the Assessing Officer has not verified the issue and applied his mind to issue taken up for revisions proceedings. In this regard, he relied upon the decision of ITAT Vishakhapatnam Benches in the case of Y.V. Ramana vs CIT(1) in ITA No. 177/Vizag/2015, dated 09.12.2016.

7. The Id. CIT-DR, supporting the order of the PCIT submitted that the Assessing Officer admits that the assessee has furnished incomplete details. Further, the Assessing

Officer issued notice u/s. 142(1) of the Act, dated 26.12.2019 and assessee has not filed any details which is evident from the findings recorded in the assessment year. Although, no reply was received from the assessee, the AO has completed assessment on 30.12.2011 and accepted income declared by the assessee, without following SOP issued by CBDT for verification of cash deposits made during demonetization period and also failed to examine historical cash transactions of the assessee. The PCIT, after considering relevant facts has rightly invoked their jurisdiction and set aside the assessment order in terms of provisions of section 263 of the Act, and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The PCIT invoked jurisdiction u/s. 263 of the Act and set aside the assessment order passed by the Assessing Officer u/s. 143(3) dated 30.12.2019, on the ground that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. The PCIT, had taken up three issues for revision proceedings. According to the PCIT, the Assessing Officer fails to examine

the issue on increase in share premium in light of provisions of section 56(2)(vii) of the Act. The PCIT, further observed that although, the assessee has made huge cash deposits during demonetization period, the Assessing Officer has not verified the issue in light of SOP issued by CBDT for verification of huge cash deposits during demonetization period. The PCIT, had also noticed that although the assessee has claimed deduction for provision for bad and doubtful debts, the Assessing Officer has not applied his mind to relevant provisions of Act, before allowing the claim which rendered the assessment order erroneous in so far as it is prejudicial to the interests of the revenue.

9. The provisions of section 263 deals with the power of the Commissioner to revise the assessment order, in case if he has satisfied that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests 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 Assessing Officer caused prejudice to the interest of the revenue. In other words, in order to invoke jurisdiction u/s. 263 of the Act, twin conditions embedded therein must be

satisfied. The first and foremost condition is assessment order passed by the Assessing Officer must be erroneous and secondly it should be prejudicial to the interest of the revenue. In light of above legal position, if you examine assessment order passed by the Assessing Officer u/s. 143(3) dated 30.12.2019, we are of the considered opinion that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, on three issues taken up by the PCIT for revision proceedings. In so far as first issue is concerned, although the assessee has received huge share premium, but the Assessing Officer has not verified the issue in light of provisions of section 56(2)(vii) of the Act, by calling for specific details with regard to price charged by the assessee and valuation of shares, but simply accepted the explanation of the assessee without any verification with regard to price determined for allotment of shares. As regards huge cash deposits during demonetization period, although the assessee has deposited a sum of Rs. 19.53 crores into various bank accounts, but the Assessing Officer has not made any attempts to verify huge cash deposits in light of SOP issued by CBDT for verification of cash deposits during demonetization period. Similarly, the claim of

provision for bad and doubtful debts written of was also not verified with reference to provisions of section 36(1)(vii) r.w.s. 36(2) of the Act.

10. We further noted that, although the Assessing Officer has issued 142(1) notice dated 26.08.2019, but it was the observation of the Assessing Officer in the assessment order that the assessee has furnished incomplete details and hence, one more notice u/s. 142(1) of the Act dated 26.12.2019 has been issued calling for further details. The Assessing Officer, further noted that in response to notice dated 26.12.2019, the assessee has not furnished any details called for. From the above observations of the Assessing Officer, it is very clear that although the assessee did not furnished relevant details called for by the Assessing Officer with reference to increase in share premium, cash deposit during demonetization period and provision for bad and doubtful debts, but the Assessing Officer has completed the assessment on the basis of available information on record and accepted income declared by the assessee for the relevant assessment year. In our considered view, even though the assessee has not furnished any details with regard to three issues taken up by the PCIT for revision

proceedings, the Assessing Officer has completed the assessment and accepted the income declared for relevant assessment years. Therefore, we are of the considered view that the Assessing Officer has failed to verify the issues in light of relevant provisions of the Act and he ought to have verified in light of provisions of section 263 of the Act and Explanation (2) to section 263 of the Act, which rendered the assessment order to be erroneous in so far as it is prejudicial to the interests of the revenue and thus, the PCIT has rightly invoked their jurisdiction u/s. 263 of the Act and set aside the assessment order passed by the Assessing Officer u/s. 143(3) dated 30.12.2019. In so far as case laws relied upon by the assessee on ITAT Visakhapatnam Bench, in the case of Y.V. Ramana vs CIT-1 in ITA No. 177/Vizag/2015, dated 09.12.2016, we find that the facts of the present case does not apply to case laws relied upon by the assessee and thus, the support taken by the assessee from the above judgment is not applicable to facts of the present case.

11. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the assessment order passed by the Assessing Officer is

erroneous in so far as it is prejudicial to the interests of the revenue, on the issue of increase in share premium, cash deposits during demonetization period and deduction claimed towards bad and doubtful debts. The PCIT, after considering relevant facts has rightly set aside the assessment order passed by the Assessing Officer u/s. 143(3) dated 30.12.2019 and thus, we are inclined to uphold the findings of the Id. PCIT and dismiss the appeal filed by the assessee.

12. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the court on 10th May, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 10th May, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF