आयकर अपीलीय अधिकरण "सी"न्याय□पीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JMAND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./**ITA No.501/Chny/2022**
(**निर्धारणवर्ष** / Assessment Year: 2015-16)

Meera Hussain 19, Thambu Chetty Street, Mannady,Chennai-600 001.	**बनाम**/ Vs.	**Pr. CIT** Chennai-8.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.**AAHPM-9324-J**		
(□ पीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri T.T. Durairaj Kandiar(CA) – Ld.AR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri M. Rajan (CIT) – Ld.DR

सुनवाईकीतारीख**/Date of Hearing**	:	04-05-2023
घोषणाकीतारीख/**Date of Pronouncement**	:	19-05-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assail the invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax, Chennai-8 (Pr. CIT) vide impugned order dated 25.03.2021 in the matter an assessment framed by Ld. AO u/s.143(3) of the Act on 14-11-2017. The grounds taken by the assessee are as under:-

"On the facts and circumstances of the case, the Order of the Hon'ble Principal Commissioner of Income Tax, Chennai-8, passed u/s.263, with reference No.: ITBA/REV/F/REV5/2020-21/ 1031753147(1), dated 25.03.2021, is against the facts of the case weight of evidence on record and bad in law for the following reasons:-

1.The Appellant begs to submit that the learned Asst. Commissioner of Income Tax had completed the Assessment (Limited Scrutiny) U/S.143(3) of the Income Tax on 14.11.2017, after thorough verification of records and details furnished, accepting {he contention and explanation of the Assessee and apparently there was nomistake or error in the order passed by the learned Assessing Officer, and it is not prejudicial to the revenue.
2.The Appellant begs to submit that Audit Objections were raised for the same issues discussed in the aforesaid Assessment proceedings, in response to which the Appellant had filed letters providing due clarifications on various dates.
3. The Appellant begs to submit that the revision proceedings initiated to consider the same issues raised and considered in the original assessment and also in the audit objection raised, which was adopted as such without application of mind, is not in accordance with provisions of section 263.
On the facts and circumstances of the case, the order of the Hon'ble PCIT, Chennai-8 is against the provisions of the Act as the original Order cannot be treated as erroneousand prejudicial to the interest of revenue and is completely unsustainable in law."

2. The Registry has noted delay of 380 days in the appeal, the condonation of which has been sought by the assessee on the strength of affidavit of the assessee. The Ld. AR has submitted that the delay ought to have been condoned in terms of the decision of Hon'ble Supreme Court in suo-moto writ petition (c) No. 3 of 2020 dated 10.01.2022 which has excluded the time period from 15.03.2020 till 28.02.2022 while computing limitation due to Covid-19 Pandemic. The Ld. AR submitted that the order was received on 25.03.2021 and the last date for preferring appeal was 24.05.2021 which fall in the aforesaid exclusion period. Though Ld. CIT-DR opposed condonation, however, keeping in view the aforesaid directions of Hon'ble Apex Court, we condone the delay and admit the appeal for adjudication on merits. Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under. The assessee being resident individual is stated to be engaged in trading of furniture items under the name and style of M/s Hameem Trading Co.

3. The original return of income was selected for limited security under CASS for the reasons 'import turnover mismatch, custom duty payment mismatch, sales turnover mismatch, sundry creditors, increase in capital. Notices u/s 142(1) were issued on 16.01.2017 and 06.07.2017. In response, the assessee filed certain details which were verified and the returned income of Rs.64.94 Lacs was accepted.

4.1 Subsequently, upon perusal of case record, ld. Pr. CIT sought revision of the order. In all 5 issues were flagged in the revisionary order viz. (i) Allowability of Countervailing duty on import of goods; (ii) Difference in invoice figures between ICEGate and ITR; (iii) Rent from Paruthipattu Godown; (iv) Service Tax Component; (v) Discrepancies in Sundry Creditors.

4.2 For each of the issues, Ld. Pr. CIT formed an opinion that the order was erroneous and prejudicial to the interest of the revenue. The said observations were as under: -

> **3.1.(a)** On perusal of the records, it was observed that invoice value of import purchase was to the tune of Rs.8,86,41,223 as per the Export Import summary data from CBEC and the details submitted by the assessee. However, the assessee had admitted Rs.5,57,80,798 only in his P & L Account with an amount of Rs.2,36,15,059 and Rs.19,92,498 adjusted in Focus Product Scheme Scrip (FPS) towards customs duty as expenses paid on the value of Rs.8,86,41,223.
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> **3.1.(b)** The customs duty paid is inclusive of Rs.1,08,19,397 and Rs.8,86,255 adjusted in FPS Scrip towards Countervailing Duty (CVD) which is eligible for taking CENVAT credit under Central Excise Act. The customs duty paid also includes Rs.40,51,870 and Rs.3,32,738 adjusted in FPS Scrip towards Additional Import Duty levies in lieu of sales tax/VAT which are also eligible for refund under customs notification no.102/2007 dated 14/09/2007. Therefore, amount claimed as expenses towards CVD is to be brought to tax. And as the additional import duties are receivable, income was not declared by the assessee.
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> **3.1.(**c) Since the assessee is entitled to take input credit for Rs.1,08,19,397 and Rs.8,86,255 towards CVD, the said expenditure is to be disallowed and (ii) as the assessee is entitled for refund of additional duty of Rs. 40,51,870 and Rs.3,32,738, the same ought to have been offered as income of the assessee in the said year.
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> **3.1(d)** It is seen from the records that the Assessing Officer while completing the assessment did not verify specifically whether the assessee claimed input credit for

an equivalent amount of CVD and also whether the assessee preferred any claim before the customs authorities for refund of additional duty.

3.2. (a) The Invoice value of import as per the Export Import summary data from CBEC is Rs.6,92,25,999 while the assessee had shown only Rs.5,57,80,798. It is seen from the records that with respect to mismatch in invoice value as per CBEC data and as declared by the assessee, the Assessing Officer has obtained specific clarification. To this the assessee, vide reply dated 03.09.2018 stated that the assessee made imports through 29 bills of entry and the total invoice value of the same is Rs.5,57,80,798 which was duly claimed in the Income Tax Return. On a perusal of the records, the following are noticed:

No. of imports	As per assessee	As per CBEC data
Invoice Value	Rs. 5,57,80,798	Rs. 6,92,25,999
Assessable Value	Rs. 8,86,40,134	Rs. 8,86,40,134
Customs duty paid	Rs. 2,36,15,059	Rs. 2,36,14,475

The information furnished by the assessee is as per claims made in ITR towards Invoice value and customs duty paid and with regard to assessable value, the same is as per ICE gate data submitted by the assessee. The assessee's submission that the sum of Rs.6,92,25,999 appearing in the CBEC report has got nothing to do with value of import actually made was not examined by the Assessing Officer for the reason that there is no difference in the assessable value of imports as per the assessee and the CBEC data. Consequently, the Assessing Officer ought to have obtained complete details of the imports from the customs department and examined the same to ensure that there is no under invoicing or suppressionof expenditure.

4.1.(a) It is seen from records that the assessee has let out his property at Paruthipet Village, Avadi, Chennai-57, which is an open Land to an extent of 85000 S.Ft. for a monthly Rent of Rs.5,01,500/- equated to Rs.5.90 per S.Ft. The total Rent for the whole year works out to Rs.60,13,000/- and after claiming deduction u/s.24 at 30% amounting to Rs.18,05,400/-, the balance of Rs.42,12,600/- has been offered as income from House Property. As per the Lease agreement dated 01.06.2012, entered into between the assessee and M/s. TCI Supply Chain Solutions, vide Point 4 in page *2* i.e. On the terms and conditions hereinafter contained.

Now it is hereby agreed by and between the parties hereto as follows:

1. Premises and Area: In consideration of the lessee agreeing to pay the LESSOR the rent hereunder reserved, the LESSOR hereby grants unto the Lessee, the lease of the said premises for **parking of vehicles admeasuring 85,000 sq. Ft of open area,** situated at Poonamallaee, AvadiPoonamallaee Road, GovardhangiriAvadi Chennai 600057 as more particularly described in the Schedule hereunder written and hereinafter referred to as "the said premises"

The **Schedule to the above lease deed reads as under:**

"SCHEDULE"

All that piece and parcel of measuring to an extent of 1 acre and 95.82 cents (85299.192 Sq. Ft) Door No ... Avadi-Poonamallee Road, Govardhangiri, Paruthipet, Avadi, Chennai 600 071 or thereabouts with TNEB Power connection and situated at Paruthipet village,PoonamalleeTafuk, Thiruvallore district and comprised in S.Nos. 703/1 Part (22.17

cents) 704l1A Part (42 cents), 704118 Part (27.20 cents), 704/2 Part (24 cents), 70413 Part (80,45 cents) together with compound wall on three sides being East, South and West and bounded on the .... "

4.1.(b)From the above, it is clear that the Property let out was an open Land of 85,000Sg.Ft. Hence it is not a House Property. Accordingly, the deduction u/s 24(a) at 30% is not applicable. **The income has to be computed w.r.to. Sec.56 and deduction, if any, may have to be claimed u/s 57 only.**

4.1.(c) Also, in respect of the same property, apart from the Rental income of Rs.60,18,000/-, the assessee has received a sum of Rs.7,43,832/- also, in the name of Service Tax at 12.36% as per col. No.10 of the lease deed. In this connection, it is pointed out that:-

(a) What had been received by the assessee from the Tenant had to be added first to the Rent Received and the deduction, if any had to be claimed subsequently.

(b) Under the scheme of computation of Income for the House Property u/s 23 & 24, deduction towards ServiceTax payments are not allowed.

(c) The Service Tax is a tax levied by the Government of India on the service provider and it cannot be equated to the Taxes levied by the Local Authority referred to in the proviso under sec.23(1)(c).

(d) The Service Tax paid by the assessee, amounting to Rs.7,43,832/- is not a Service Tax, as stipulated u/s. 27(vi) of the Act; as the Govt. ofIndia or the Central Excise Department is not a Local Authority, as defined u/s10(20) of the IT Act.

(e) Payment of Service Tax could qualify in computing income from Business or Profession under the relevant provisions and not under computation of income from House Property,

4.1.(d) Hence, the Service Tax component received by the assessee, amounting to Rs.7,43,832/-,though not captioned as Rent, is actually a part of Rent received by the assessee and it should be brought to tax. As already discussed herein before, the rent is for the open Land, It does not qualifyfor deduction u/s 24(a) and hence Rs.7,43,832/- is also to be assessed in full and added to annual value of rent receivable from the above property.

4.1.(e) The total income from the above property will be Rs.67,61,882/- (Rs.60,18,000 + Rs.7,43,832/-) and should be assessed under income from Other Sources. **Hence, the difference of Rs.23,52,595/-** i.e. (Rs.67,61,882/- minus amount already admitted under Income from House Property at Rs.44,09,287/-) **has to be brought to tax under Income from Other Sources.**

5. One of the Sundry Creditors M/s. New Horizon Trade Wings (HK) had not confirmed the credits. As per the Ledger Sundry Creditors, the amount payable to the above sundry Creditors was shown as Rs. 75,29,519/- as Opening Balance and there were no additions during the year. The assesse himself stated vide his reply dated 14.11.2017 that the creditor located in Hongkong did not respond to any of the mails sent to confirm the sums payable though the said sum was payable from 31.03.2014. Hence, it is clear that the said liability ceases to exist in the books of account of the assessee. Consequently, the same is liable to treated as income of the assessee u/s 41(1) of the I.T.Act.

6. In view of the above, it is clear that the Assessing Officer failed to examine the material available on record and completed the assessment without verifying the above issues for which the case was selected for scrutiny. Thus, the order passed u/s 143(3) dated 14.11.2017 is erroneous and prejudicial to the interest of Revenue

> and requires revision u/s 263. It is therefore proposed to revise the order u/s 143(3) dated 14.11.2017 for A.Y.2015-16 and pass a revision order u/s 263 of the Income-tax Act, 1961 as the facts and circumstances of the case deem fit.

4.3 The assessee defended the order on the ground that CVD / SAD were incurred for the purpose of import of goods meant for resale in the course of business and therefore, allowable u/s 37 of the act. Regarding difference in ICEGATE and ITR figures, the assessee submitted that the figures in ICEGATE only provide assessable vale and not invoice value. Regarding rental income, the assessee submitted that the open land was given on land and as per the contractual terms, restrooms and driver room was to be provided to the lessee. It was also submitted that the property was subjected to property tax. The service tax component was statutory levy and the same could not be considered as assessee's income. Regarding confirmation of sundry creditors, the assessee submitted that there was no response from the sundry creditor but the amount was outstanding from financial year 2013-14.

4.4 However, not convinced, Ld. Pr.CIT held that the order required revision under Section 263 and accordingly, issued following directions: -

> 8. I have carefully considered the facts of the case and the submissions made by the assessee. I have also gone through the details furnished by the assessee. There is nomaterial or evidence on record to show that the Assessing Officer indeed applied his mind and came to a judicious conclusion in respect of the issues raised in show cause notice, which is clear from the discussion made in para 3, 4 and 5 of the order. He has passed the order in undue haste without calling for the required details and without applying mind to **relevant material.** The Assessing Officer has passed the order without conducting necessary investigation which he was prima-facie required to do making the order an erroneous assessment warranting revision u/s 263. Reference in this regard may be made to decision of Hon'ble ITAT (SB), Chennai, in the case of Rajalakshmi Mills Ltd Vs ITO 313 ITR(AT)182, wherein it was held that Commissioner of Income tax can regard order as erroneous on the ground that Assessing Officer should have made further enquiries before accepting statement made by assessee in his return. Passing an order without applying mind to relevant facts would certainly be an erroneous assessment requiring exercise of Jurisdiction u/s263. This view is supported by the decision of Hon'ble Guwahati High Court in CIT Vs Jawahar Bhattacharjee 341 ITR 434 (Gau)(FB). In 41 ITR 286 (Ker), it was held that when Assessing Officer passed a cryptic order which does not

> contain details and claims were accepted without enquiry, the assessment order was erroneous and order u/s 263 was justified. In case of Supercloth, 99 ITD 300 (Chn), it was held that lack of enquiry by AO was sufficient to invoke revisionary jurisdiction u/s 263. In caseof Rampyari Devi 67 ITR 84 (SC), it was held that accepting the issue without conduction enquiry is valid ground for invoking proceedings u/s 263. In case of the assessee, the Assessing Officer has neither applied her mind nor made any enquiry or called for all required details to come to a proper conclusion. In fact, the explanations given by the assessee during the present proceedings were never put forth during the assessment proceedings. But the Assessing Officer accepted all such issues without applying mind to the relevant facts and without causing necessary enquiry. Since twin conditions of order being erroneous and it also being prejudicial to the interests of revenue are satisfied, revisionary proceeding u/s 263 of the Act have been rightly initiated.
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> **9.** Thus, the conditions for invoking revisional jurisdiction u/s 263 of the Act are satisfied and I hold that the Assessment Order dated 14.11.2017 passed u/s 143(3) of the Act for the A.Y .2015-16 is to be subjected to revision u/s 263. Hence, the Assessment Order is hereby **set aside** with a direction to examine the aspect discussed in the body of the order (supra) and pass the fresh Assessment Order within the stipulated time after providing sufficient opportunities to the assessee. The assessee has full liberty to present any material which was not submitted earlier before the Assessing Officer at the time of assessment proceedings.

Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it could be gathered that assessment was framed by the Assessing Officer u/s.143(3) on 14-11-2017. During the course of assessment proceedings, notice u/s.142(1) was issued on 16-01-2017, inter-alia, calling for financial statements, note on business activity and soft books of account. Another notice was issued on 06.07.2017 calling for further details from the assessee. Both the notices were responded to by the assessee. In reply dated 17.07.2017, the assessee filed details of sundry creditors, purchase ledger, copies of VAT returns, sales ledger, reconciliation of sales turnover and details of import purchases. The assessee furnished further reply on 25.07.2017 wherein the assessee explained import purchase and customs duty mismatch. Further details were filed vide replies dated 24.10.2017, 27.10.2017 & 14.11.2017. The

Ld. AO framed assessment on 14.11.2017. From the perusal of all these documents, it could be concluded that though details queries were raised by Ld. AO and elaborate details were furnished by the assessee, there was no application of mind on the replies of the assessee. There is nothing in the assessment order which would indicate application of mind on any of the issues. Therefore, we would hold that it was a case where there was no application of mind on the issues as flagged in the revisionary order. None of the issues as flagged in the revisionary order has been considered by Ld. AO while framing the assessment. This being so, we do not find any need to interfere in the impugned order, in any manner. The Ld. AR has filed written submissions supporting the case of the assessee on merits. However, at this stage, we are only concerned with examination of validity of revisionary jurisdiction. Therefore, we refrain from going into the merits of the case. However, our adjudication as above shall not be construed as any expression on merits of the case and the assessee is free to agitate the issues, on merits, during consequential proceedings.

6. The appeal stands dismissed.

Order pronounced on 19th May, 2023

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा□सदस्य / ACCOUNTANT MEMBER**

चेन्नईChennai; दिनांकDated : 19-05-2023
DS

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/Appellant2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT4. विभागीयप्रतिनिधि/DR 5. गार्डफाईल/GF