

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.352/Chny/2022

(निर्धारणवर्ष / Assessment Year: 2017-18)

Shri Duraisamy Chettiar Balasubramanian, 159-C, Kamarajar Salai, Madurai – 625 009.	Vs	The PCIT, Madurai-1, Madurai.
PAN : AHDPB 3779M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. N.B. Som, CIT

सुनवाईकीतारीख/Date of hearing	:	07.09.2023
घोषणाकीतारीख /Date of Pronouncement	:	13.09.2023

आदेश / ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the revision order of the Principal Commissioner of Income Tax, Madurai-1, in order No.ITBA/REV/F/REV5/2021-22/1041046078(1) dated 19.03.2022. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 1(1), Madurai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 05.12.2019.

2. The only issue in this appeal of the assessee is as regards to order of the PCIT revising the assessment framed by the Assessing Officer u/s.263 of the Act by holding assessment as

erroneous and prejudicial to the interests of the Revenue, as the Assessing Officer while framing assessment has considered cash flow statement and formed an opinion that cash deposits are explained. For this the assessee has raised grounds 1 to 9 which are exhaustive, argumentative & factual and hence, need not be reproduced.

3. Brief facts are that the assessee is an individual filed his return of income for the relevant assessment year 2017-18 declaring agricultural income of Rs.10 lakhs and admitting total income of Rs.2,88,730/-. The assessee's case was selected for limited scrutiny under CASS to verify the following two issues:-

- i) cash deposits during the year; &
- ii) cash deposits during demonetization period .

The Assessing Officer noticed from cash flow statement furnished by the assessee that the assessee has not declared sale of land of Rs.3,00,241/- in the return of income and hence, he worked out short term capital gain at Rs.2,64,242/- and added to the total income of the assessee. Subsequently, the PCIT, on examination of records, noticed that the assessee has made cash deposits in City Union Bank Ltd. amounting to Rs.54,60,000/- and as per show cause notice dated

05.01.2022, the assessee has agricultural income of Rs.10 lakhs and balance cash deposits of Rs.44.60 lakhs was not verified by the Assessing Officer and without proper enquiry and non-application of mind, the Assessing Officer completed the assessment u/s.143(3) of the Act. The assessee filed explanation before the PCIT, but the PCIT by recording finding in para 5 & 7 revised the assessment and directed the Assessing Officer to verify source of cash deposits of Rs.44.60 lakhs by observing as under:-

"5. I have considered the 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 not verified the source for me cash deposit of Rs.44,60,000/- as evident from records. The assessee in his reply has stated that the assessing officer has made spot inspection and verified the claim of agricultural income which is the main reason for acceptance of cash deposit. It is true that the assessing officer has made in enquiry with regard to the agricultural income, however it may be noted that out of the total deposit of Rs.54,60,000/-, agricultural income constitutes Rs. 10,00,000/- only. As such the source for the remaining cash deposit of Rs.44,60,000/- [54,60,000 - 10,00,000] remains unexplained. The assessing officer has also failed to verify the source for the balance amount of Rs.44,60,000/- during the assessment proceedings. The assessee further contested that the assessing officer has scrutinized the cash-flow statement thoroughly and hence the present case cannot fall within the ambit of the two conditions namely erroneous and prejudicial as provided in section 263 of the Act. In this regard it is pertinent to note that in the show cause notice u/s 263 dated 05/01/2022, it was clearly mentioned that the Assessing Officer has not called for the details for the remaining cash deposit of Rs.44,60,000/- and failed to verify the source for the same and hence the source for the cash deposit of Rs.44,60,000/- remains unexplained. The contention of the assessee that the assessment order was

passed after thorough examination is not acceptable as the assessing officer has not examined source for the balance amount of Rs.44,60,000/-during the assessment proceedings and failed to make necessary additions in the assessment order, the facts which are elaborately discussed in the foregoing paras. Consequently the assessment order passed u/s 143(3) of the Act on 18/12/2019 became erroneous as well as prejudicial to the interests of the revenue. In light of the above discussion, the contentions of the assessee is devoid of any merits, factually incorrect and hence deserves to be rejected. Moreover the case law quoted by the assessee is not applicable for this case. The assessing officer is therefore directed to collect the books of accounts, Bank statement and relevant details and conduct necessary verification examine to source for the remaining cash deposit of Rs.44,60,000/-. In the event of assessee failing to explain source for the cash deposit of Rs.44,60,000/-discussed above with substantial evidence, the same may be treated as assessee's unexplained cash credit and taxed accordingly.

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7. *In view of the above, I am satisfied that the order dated 05/12/2019 passed by the Assessing Officer u/s 143(3) of the Income Act is erroneous in so far it is prejudicial to the interest of the revenue. Accordingly, in exercise of powers conferred u/s 263 of the Act, I set aside the aforesaid order with the direction to the Assessing Officer to frame the assessment after making necessary enquiries and verification with regard to source for the cash deposit as discussed in para (5), above in accordance with law. The Assessing Officer shall allow reasonable opportunity of being heard to the assessee before passing the order."*

Aggrieved, now the assessee is in appeal before the Tribunal.

4. Before us, the learned counsel for the assessee drew our attention to assessment order that particular notice u/s.142(1) dated 16.10.2019 was issued asking genuineness of source of

cash deposits during demonetization period and cash deposits during the year 2016-17. The assessee furnished explanation vide letter dated 18.11.2019 and 29.11.2019 submitting cash flow statement and assessment was completed after proper verification. The learned counsel stated that once this is a case, no revision is possible, because the Assessing Officer has formed one of the opinion and accepted cash deposits as explained. The learned counsel for the assessee also filed paper book consisting of pages 1 to 11 dated 22.03.2023. The learned counsel for the assessee also drew our attention to page 3, wherein cash flow statement was attached, but from the records, it is noticed that there is no cash flow statement submitted before us. At this, the learned counsel for the assessee stated that he is ready to file cash flow statement, but till date he has not filed any cash flow statement.

5. On the other hand, the learned CIT DR relied on revision order.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessment order is very cryptic and even it is not clear how the Assessing Officer has verified cash flow statement particularly, cash

deposits. The Assessing Officer has only verified sale of land not disclosing business income returned for Rs.3,00,241/-. We noted that the Assessing Officer has not carried out proper enquiry or not verified source of cash deposits for which scrutiny assessment was proposed i.e., limited scrutiny. Hence, we find that the PCIT has rightly held that assessment order is erroneous and prejudicial to the interests of the Revenue and he has rightly set aside the assessment order and directed the Assessing Officer to reframe the assessment, after verifying source of cash deposits. We find no infirmity in the order of the PCIT and we uphold the same.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 13th September, 2023

Sd/-
(जी. मंजुनाथ)
 (G.Manjunatha)
 लेखा सदस्य / Accountant Member
 चेन्नई/Chennai,
 दिनांक/Date:13.09.2023
 DS

Sd/-
(महावीर सिंह)
 (Mahavir Singh)
 उपाध्यक्ष/ Vice-President

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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