

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

श्री मंजूनाथा .जी, माननीय लेखा सदस्य एवं
श्री मनोमोहन दास, माननीय न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.386/Chny/2022
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.K. C. Silk Traders, No.12, Sivan Koil Street, Eral-628 801. [PAN: AAEFK 6149 E]	V.	The Principal Commissioner – of Income Tax, Madurai-1, Madurai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.387/Chny/2022
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.K. C. Readymades, No.3, Barathar Middle Street, Eral-628 801. [PAN: AAEFK 6162 F]	V.	The Principal Commissioner – of Income Tax, Madurai-1, Madurai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.388/Chny/2022
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.K. Chinnadurai & Co., No.3, Barathar Middle Street, Eral-628 801. [PAN: AAEFK 6150 F]	V.	The Principal Commissioner – of Income Tax, Madurai-1, Madurai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh- Kumar, CIT
सुनवाई की तारीख/Date of Hearing	:	14.12.2023
घोषणा की तारीख /Date of Pronouncement	:	20.12.2023

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आदेश / ORDER

PER MANJUNATHA. G, AM:

These three appeals filed by the assessee are directed against separate, but identical orders passed by the Principal Commissioner of Income Tax, Madurai-1, u/s.263 of the Income Tax Act, 1961 (in short "the Act") and pertains to assessment year 2015-16. Since, facts are identical and issues are common, for the sake of convenience, these three appeals were heard together and are being disposed off, by this common order.

2. All the three assesseees have filed, more or less, common grounds of appeal, and therefore, for the sake of brevity, grounds of appeal filed in ITA No.386/Chny/2022 in the case of M/s.K.C.Silk Traders, are re-produced as under:

1. The revisional order of the PCIT, Madurai - 1 dated 24.03.2022 vide DIN & Order No. ITBA/REV/F/REV5/202 1-22/10416553 16(1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.

2. The PCIT erred in assuming jurisdiction u/s 263 of the Act and consequently erred in passing the revision order in setting aside the reassessment completed on 30.12.2019 based on the findings from para 5 of the impugned order which according to the appellant were wrong and erroneous findings, consequently vitiating the revision order completely.

3. The PCIT failed to appreciate that the twin conditions prescribed for assuming jurisdiction u/s 263 of the Act were not satisfied concurrently on the facts and in the circumstances of the case and hence ought to have appreciated that the order of revision under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The PCIT failed to appreciate that the findings from para 5 of the impugned order were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law and ought to have appreciated that the distinction between the concept of review and the concept of revision under the Act was completely overlooked and brushed aside inasmuch as in this regard, ought to have appreciated that the review of the assessment order completed on scrutiny would be prohibited within the scope of the powers of revision u/s 263 of the Act.

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5. The PCIT failed to appreciate that the detailed reply dated 23.02.2022 extracted in page 7 to 29 of the impugned order filed in response to the show cause notice issued for revising the assessment was not considered in proper perspective and ought to have appreciated that the entire gamut of facts discussed from para 5 of the impugned order was part of the re-assessment proceedings which were considered and accepted in passing the return of income filed in response to the notice issued u/s 148 of the Act.

6. The PCIT failed to appreciate that the distinction between lack of enquiry and inadequate enquiry was also overlooked before passing the revision order and ought to have appreciated that there could not be any presumption of lack of enquiry on the part of the Assessing Officer much less inadequate enquiry on the facts and in the circumstances of the case thereby vitiating the revision order.

7. The PCIT failed to appreciate that there was complete scrutiny of facts relating to the transactions referred to in the revision order while passing the re-assessment order passed by the JAO and hence ought to have appreciated that the decision to direct the JAO to revisit the issue should be reckoned as bad in law.

8. The PCIT failed to appreciate that the failure to grant reasonable time to respond to the show cause notice before completion of the revision order was wholly unjustified and not sustainable in law.

9. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts extracted from ITA No.386/Chny/2022 in the case of M/s.K.C.Silk Traders are that the assessee is dealing in the business of textile. The assessee is a part of four Firms. All are dealing in the business of textile. All four partnership firms having common partners. A survey u/s.133A of the Act, was conducted at the business premise of the assessee on 09.10.2014. During the course of survey, it was found that the assessee has not maintained stock register. The physical stock was valued at Rs.1,64,74,782/- and then, worked out book stock at Rs.1,32,20,149/- by taking into account opening stock shown in the return of income filed for AY 2014-15 and adding purchases made up to the date of survey and subtracting sales up to the date of survey. The details of stock as per book and physical stock valued at the time of survey of all four firms, was tabulated by the AO in their assessment order, which is as under:

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S.No	Name of the concern	Stock as per book	Physical stock valued at the time of survey	Difference
1	M/s. K. Chinnadurai & Co	1,12,77,170	95,04,759	17,72,411
2	M/s. K.C. Silk Traders	1,32,20,149	1,64,74,782	32,54,633
3	M/s. K.C. Fabrics	1,80,46,619	1,78,64,388	1,82,231
4	M/s. K.C. Readymades	95,45,251	1,13,23,328	17,78,077
	Total	5,20,89,189	5,51,67,257	
Excess stock found - Rs.30,78,068/-				

4. During the course of survey, a sworn statement was recorded on 09.10.2014 from one of the partners, Shri C.Selvaraj and in response to Q.No.14, he has agreed to offer the excess stock of Rs.30,78,068/- quantified from all four partnership firms as additional income in addition to normal income in the hands of M/s.K.Chinnadurai & Co. Subsequently, one more sworn statement was recorded from Shri C.Selvaraj on 03.11.2014 where he has agreed to offer excess stock found during the course of survey equally in the hands of four partnership firms viz., M/s.K.Chinnadurai & Co., M/s.K.C.Silk Traders, M/s.K.C.Readymades, and M/s.K.C.Fabrics.

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5. The assessee has filed its return of income for AY 2015-16 on 23.09.2015 and the return of income filed by the assessee has been processed u/s.143(1) of the Act, on 13.01.2016. The assessment has been re-opened u/s.147 of the Act, by issuing of notice u/s.148 of the Act, dated 08.02.2018 and in response to notice u/s.148 of the Act, the assessee has filed its return of income on 14.02.2018. On 29.06.2018, the AO passed an order and dropped the proceedings initiated u/s.147 of the Act. The case has been once again re-opened u/s.147 of the Act, by issuing notice u/s.148 of the Act, dated 19.03.2019, for which, the assessee has filed its return of income on 26.03.2019 declaring total income of Rs.16,30,870/-. The case was taken up for scrutiny and during the course of assessment proceedings, the AO on the basis of survey conducted u/s.133A of the Act, coupled with return of income filed by the assessee observed that the assessee has offered additional income of Rs.7,70,000/- towards excess stock found during the course of survey, and thus, completed the assessment u/s.143(3) r.w.s.147 of the Act on 31.12.2019 accepting income returned by the assessee.

6. The case has been subsequently taken up for revision proceedings by the PCIT, Madurai-1, and accordingly, show cause notice u/s.263 of the Act, dated 14.02.2022 was issued and called upon the assessee 'as to why' the assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act, on 30.12.2019, shall not be revised. In the said show cause notice, the PCIT

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has observed that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, because, the AO has failed to verify the issue of excess stock found during the course of survey in right perspective of law, which is evident from the fact that although, there is no provisions under the Act to set off excess stock found in the case of one assessee against deficit stock found in the case of another assessee, but the AO has netted off excess stock and deficit stock found in different assessee's cases and accepted the additional income offered by the assessee. Further, although, there is no evidence to prove that the assessee has offered the additional income of Rs.7,70,000/- towards excess stock found during the course of survey in the return filed, but, the AO has simply accepted the return of income which has rendered the assessment order passed by the AO to be erroneous in so far as it is prejudicial to the interest of the Revenue. The PCIT further observed that the assessee has claimed remuneration to partners at Rs.25,20,000/- u/s.40(b) of the Act. However, it could not be ascertained from the records whether the excess stock of Rs.7,70,000/- wrongly apportioned to each firm was considered in computing the business income. If so, the amount of Rs.4,62,000/- (@ 60% on the balance business income of Rs.7,70,000/-) out of the total remuneration ought to have been disallowed. Though, the AO has stated that the assessee has offered excess amount of Rs.7,70,000/- in the return, but failed to verify the above issue. Therefore, opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the

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interest of the Revenue and accordingly, called upon the assessee to file necessary objections, if any, for proposed revision.

7. In response to show cause notice, the assessee submitted that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue, because, the issue of excess stock found during the course of survey, has been verified by the AO in re-assessment proceedings and after considering explanation of the assessee, has accepted additional income offered towards excess stock equally in the hands of four firms. Further, the sole reason for the AO to take up the re-assessment proceedings is to verify the findings of survey in connection with excess stock. Therefore, the PCIT cannot presume that the AO has not verified the issue which rendered the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue.

8. The PCIT after considering relevant submissions of the assessee and also taken note of certain judicial precedents, opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, because, although, there is no specific provisions under the Income Tax Act, 1961, that allows netting off variation in stock among different assesseees, but the AO has simply accepted netting off stock and also division of excess stock among four firms without assigning any reasons. The PCIT further observed that it is pertinent to note that all

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four entities are separate entities and the partners are not one and the same. Further, each entity is maintaining separate books of accounts and the stock in the survey of premise are distinct and belongs to the respective assessee. Therefore, the AO is incorrect in accepting netting off stock and division of excess stock among four firms. The AO also failed to verify whether the assessee has considered additional income towards excess stock for allowing deduction towards partner's remuneration u/s.40(b) of the Act. Since, the AO has not carried out required enquiries he ought to have been carried out in the given facts and circumstances of the case, the assessment order passed by the AO becomes erroneous and thus, set aside the assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act on 30.12.2019 and direct the AO to pass fresh assessment order after making necessary enquiries in accordance with law.

9. Aggrieved by the order of the PCIT, the assessee is in appeal before us.

10. The Ld.Counsel for the assessee, Shri S.Sridhar, Advocate, submitted that the PCIT is erred in assuming jurisdiction u/s.263 of the Act, and set aside the assessment order without appreciating the fact that the AO has considered the issue of excess stock found during the course of survey during re-assessment proceedings and has discussed the issue in the assessment order before accepting the claim of the assessee. Therefore, it cannot be said that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue. The Ld.Counsel for

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the assessee further explained that before revision of assessment order, the case was subject to re-assessment proceedings u/s.147 of the Act, although, the AO has dropped first reopening of assessment, but the subsequent reopening was framed for the purpose of verifying the findings of survey conducted u/s.133A of the Act. The AO after considering necessary findings of survey u/s.133A of the Act, including statement recorded from the assessee observed that the assessee has offered additional income of Rs.7,70,000/- in all four firms in the return of income filed in response to notice issued u/s.148 of the Act. Therefore, accepted the return of income filed by the assessee. The PCIT without pointing out how the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, simply set aside the assessment order with a direction to pass fresh assessment order. Therefore, he submitted that it is a classic case of reviewing the view taken by the AO in the given facts and circumstances of the case, which is not permissible under the law.

11. The Ld.DR, Shri R. Clement Ramesh Kumar, CIT, supporting the order of the PCIT, submitted that the PCIT brought out clear facts to the effect that the AO has failed to verify case of the assessee, which is evident from the fact that although, there is no provisions under the Income Tax Act, 1961, to allow netting off excess stock found in one assessee's case to deficit found stock in another assessee's case, but the AO has allowed netting of stock and also assessed net excess stock found during the course

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of survey equally in the hands of four assesseees which is rendered assessment order to be erroneous in so far as it is prejudicial to the interest of the Revenue. The PCIT after considering relevant facts has rightly set aside the assessment order by exercising powers conferred u/s.263 of the Act, and their orders should be upheld.

12. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.263 of the Act, deals with revision powers of the PCIT. As per said provisions, if the PCIT satisfies that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, then, for the reasons stated the order can be set aside. In order to invoke jurisdiction u/s.263 of the Act, twin conditions must be satisfied i.e. (i) order passed by the AO should be erroneous and (ii) it must be prejudicial to the interest of the Revenue. Whether the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, can be ascertained by the reasons given by the PCIT in the revision order. The PCIT should give specific reasons 'as to how' the assessment order passed by the AO is erroneous and which caused prejudice to the interest of the Revenue. Unless, the PCIT gives reasons for invoking jurisdiction, simply assessment order cannot be termed as erroneous and prejudicial to the interest of the Revenue.

13. In this legal background, if you examine the facts of the present case, there is no dispute with regard to the fact the assessment order passed by

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the AO is neither erroneous nor prejudicial to the interest of the Revenue. This is because, the sole basis for the AO to take up the case for re-assessment u/s.147 of the Act, is survey conducted u/s.133A of the Act, and consequent excess stock found during the course of survey. In fact, in the present case, there was a survey u/s.133A of the Act, on 09.10.2014 and during the course of survey, physical stock was taken and then compared with stock as per books of accounts of four entities. The survey team found that there was an excess stock in the case of M/s.K.C.Silk Traders and M/s.K.C.Readymades and deficit stock in the case of M/s.K.Chinnadurai & Co. & M/s.K.C.Fabrics. The survey team has netted off excess stock against deficit stock and arrived at net excess stock of Rs.30,78,068/-. A sworn statement was recorded from Shri C.Selvaraj one of the partners of the four firms, where he has admitted additional income towards excess stock in the hands of M/s.K.Chinnadurai & Co. as unexplained investment. Subsequently, another statement was recorded from Shri C.Selvaraj on 03.11.2014, where he has agreed to offer excess stock equally in the hands of four partnership firms. Accordingly, the assessee has offered Rs.7,70,000/- in the return of income filed for the relevant assessment year and also paid taxes. The AO during the course of assessment proceedings considered the findings of survey conducted u/s.133A of the Act, coupled with statement recorded from partner observed that the assessee has offered additional income of Rs.7,70,000/- in the return of income filed for the relevant assessment year and

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accordingly, completed the assessment by accepting return of income. In our considered view, once the AO has accepted the claim of the assessee with regard to netting off stock in trade found during the course of survey and also accepted additional income offered in the hands of four firms equally towards excess stock, then the PCIT cannot substitute his views and claim that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue. We further observed that it is not a case of lack of enquiry or inadequate enquiry, because, the AO has considered the issue in light of various evidences filed by the assessee and has taken one possible view. Therefore, we are of the considered view that there is no scope for the PCIT to assume jurisdiction and to set aside the assessment order passed by the AO. Therefore, we are of the considered view that the revision order passed by the PCIT u/s.263 of the Act, dated 26.03.2022, has no legs to stand and thus, we quashed the order of the PCIT u/s.263 of the Act.

ITA Nos.387 & 388/Chny/2022:

14. The facts and issues involved in these two appeals filed by the assessee are identical to the facts and issues which we had considered in ITA No.386/Chny/2022 in the case of M/s.K.C.Silk Traders for AY 2015-16. The reasons given by us in preceding paragraphs in the case of M/s.K.C.Silk Traders shall, ***mutatis mutandis***, apply to these appeals, as well.

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Therefore, for similar reasons, we quashed the orders of the PCIT u/s.263 of the Act, in both cases.

15. In the result, appeals filed by the three different assesseees in ITA No.386/Chny/2022, in ITA No.387/Chny/2022 & in ITA No.388/Chny/2022 are allowed.

Order pronounced on the 20th day of December, 2023, in Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 20th December, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF