

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.622/CHNY/2023
निर्धारण वर्ष /Assessment year : 2018-2019.

Shri. Premkumar Menon,
Old No.110, New No.166,
St. Mary's Road, Alwarpet,
Chennai 600 028.

Vs. The Income Tax Officer,
Non Corporate Circle 17(1)
Chennai.

[PAN AIAPP 7309R]
(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Vijayaraghavan and
Shri.Saroj Kumar Parida, Advocate

प्रत्यर्थी की ओर से /Respondent by : Shri. Nilay Baran Som, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 28.12.2023

घोषणा की तारीख /Date of Pronouncement : 29.12.2023

आदेश / ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the Revision order passed by the Principal Commissioner of Income Tax, (in short 'the PCIT') Chennai-8 in Revision No. ITBA/REV/F/REV5/2022-23/1051705295 (1) dated 30.03.2023. The assessment was framed by the Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National e-Assessment Centre, Delhi for the assessment year 2018-19

u/s.143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 10.03.2021.

2. The only issue in this appeal of assessee is as regards to revision order passed by the PCIT u/s.263 of the Act, as assessment order was for limited scrutiny assessment and the Id. PCIT now want to enlarge the scope of limited scrutiny by setting aside assessment order. For this, assessee has raised various grounds which are argumentative and exhaustive, hence need not be reproduced.

3. The brief facts of the case are that assessee's case was selected for limited scrutiny under E-assessment scheme, 2019 and relevant assessment order was passed after verifying the issue of claim of deduction from income from other sources under section 57 of the Act. The assessment was completed by the Id. Assessing Officer vide order dated 10.03.2021 passed u/s.143(3) r.w.sections 143(3A) and 143 (3B) of the Act. Subsequently, the PCIT issued show cause notice on 8.3.2023 u/s.263 of the Act for revising assessment framed vide order dated 10.03.2021. In this show notice, Id. PCIT raised the issue that assessee has separately shown the maintenance collected amounting to ₹41,67,528/- from the tenants and the same has been disclosed under the head "income from other sources" and deducted expenses of ₹98,17,815/- and thereby claimed loss of ₹56,50,287/-. The Id. PCIT also noticed that

TDS with respect to rent and services charges were deducted u/s.194IB of the Act and therefore the amount received as service/maintenance charges should have been claimed as rent received and should have been taxed under the head "income from house property" rather than allowing assessee's claim of loss. The Id. PCIT also noticed that Assessing Officer has not verified the nature of expenditure incurred on account of maintenance and hence excess deduction of ₹98,17,815/- was allowed under the "head income from other sources".

4. Assessee replied to show cause notice stating that he is part owner of the building known as 'Menon Eternity'. It was constructed only for the purpose of providing office space for IT Companies and as per the agreement for lease there is separate provision in addition to payment of lease rentals for the building for payment of amounts for the services to be rendered in the nature of maintenance charges. Hence, the assessee offered the maintenance charges as income from other sources and claimed the consequential expenses. The Id. Authorized Representative for the assessee drew our attention to the reply dated 13.03.2023 that assessee had filed complete details before the Id. Assessing Officer during the course of assessment ie. copies of bills and invoices to e-Proceedings response. Id. Counsel for the assessee drew our attention to page 4 & 5 of assessee's paper book wherein the reply is attached. Id. Counsel for the assessee also relied on the second paper book wherein complete reply

to the Assessing Officer vide letter dated 10.02.2020 was filed and relevant explanation reads as under:-

'2. I own two floors, viz., 8th and 9th floor of the commercial property known as "Menon Eternity" at No.165, St. Mary's Road, Alwarpet, Chennai - 600 018.

3. The whole property mentioned above (which is a commercial property) consists of basement, ground floor plus 10 floors, built by M/s Lancor Holdings Ltd. There were various tenants earlier in respect of each floor, like BNP Paribas, Cognizant Technologies, Fichtner Consulting Engineers (India) Private Ltd., etc The property has got parking facility for vehicles belonging to the tenants and their clients in the basement, ground floor and first floor.

4. The building has 400 KV power supply and pest control services for common areas, Security services, both physical securities and electronic surveillance systems, centralized air-conditioning, Diesel genset, Motors, Fire hindrance, fire alarm systems, Extinguishers, Transformers, External Glass ACP cleaning services, Water Management, Solid Waste Management, Landscaping services, etc.

5. The building has got its own lifts numbering 5 which are used by all tenants.

6. The building of this nature obviously require separate maintenance services. Earlier, this building was maintained by the builder, viz., M/s Lancor Holdings through its sister concern, M/s Lancor Maintenance & Services Ltd.

In view of certain dispute, M/s Lancor holdings and myself, an arbitration suit was filed. In the mean time, M/s Lancor Maintenance & Services Ltd., refused to maintain the property and walked out and the fact of which was informed to the Arbitrator.

7. Later, I had to take up the maintenance as requested by the Arbitrator and accordingly, I am maintaining the whole property by collecting maintenance charges from the tenants and incurring expenditures there for. Because of the Arbitration dispute, some of the tenants have vacated the property. However I have to maintain the entire property".

Apart from this explanation, nothing is required because assessee case is selected for limited scrutiny assessment.

5. The Id. PCIT not convinced by the reply of the assessee had framed following two questions:-

'1. Whether the maintenance charges collected from the tenants amounting to Rs.41,67,528/- is to be assessed as income from house property or under the head income from other sources.

2. In case, such maintenance charges collected by the assessee are assessed as income from other sources whether the expenses claimed by the assessee are allowable u/s 57''.

The Id. PCIT on the first issue directed the Assessing Officer has under by holding the assessment order as erroneous and prejudicial to the interest of the Revenue:-

'The Assessing Officer has failed to call for and examine the various clauses of the rental agreement and nature of services being provided by the landlords, to decide the issue. Though the decision of Hon'ble ITAT 'C' Bench, Chennai, in the assessee's own case for the AY 2016-17, is in favour of assessee on this issue, the department has not accepted the decision in principle and further appeal has not been filed only due to the fact that the tax effect is less than the monetary limit prescribed by the Board for filing an appeal before the High Court.

Since the Assessing Officer has failed to do so, the order has become erroneous and prejudicial to the interests of the revenue''.

As regards to the second question, the Id. PCIT was of the view that Id. Assessing Officer has failed to make enquiries into various facets of maintenance expenses claimed by the assessee. This resulted in the assessment order being erroneous and in so far as prejudice to the interest of the Revenue. Hence, the Id. PCIT set aside the assessment and directed the Assessing Officer to redo the assessment.

6. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id. Counsel for the assessee drew our attention to all the replies filed by the assessee before the Assessing Officer vide letter dated 10.02.2020 which is reproduced at para 4 above. Further, the Id. Counsel for the assessee drew our attention to notice issued u/s.142(1) of the Act dated 25.11.2020 wherein the Assessing Officer had required the assessee to explain only the large deduction claimed u/s.57 of the Act. Relevant enquiry against limited scrutiny assessment reads as under:-

" Large deduction claimed u/s.57 (Non-business (ITR))

The Id. Counsel for the assessee took us to the assessment order and it is also clear that it was limited scrutiny assessment as recorded by the Id. Assessing Officer as under:-

'The case was selected for limited scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

<i>Sl. No.</i>	<i>Issues</i>
<i>1</i>	<i>Deductions from Income from Other Sources".</i>

We note that the Id. Assessing Officer had raised specific queries regarding deduction claimed u/s.57 of the Act which reads as under:-

'1. Furnish computation of income for the relevant A.Y. 2018-19

2. Provide details of Income(s) from other sources alongwith supporting documents.
3. Provide details of deduction claimed u/s 57 along with supporting documents.
4. Please provide the details of expenditure claimed under section 57, if any, alongwith documentary proof.
5. In case of interest income from banks, please provide deatils of Name of the Bank and branch where accounts held, Type of account (SB/FD/others), Account Number, Held in the name of/belongs to alongwith the copy of bank statements.
6. Please provide reconciliation of gross receipts shown in Schedule OS of ITR and interest income shown in P & L a/c with the receipts reported in 26AS u/s 193 and 194A. Please explain the reasons for the discrepancy, if any.
7. Provide comparison of Income from other sources and deductions claimed u/s 57 during relevant A.Y. 2018-19 and last two years'.

Even the assessee has replied complete queries regarding the claim of deduction u/s.57 of the Act and specifically it is a simplicater case of limited scrutiny assessment. As urged by the Id. Counsel that this issue is now squarely covered by the decision of Hon'ble Madras High Court in the case of *CIT vs. Smt. Padmavathi*, [2020] 120 taxmann.com 187 (Madras), wherein it is held as under:-

17. The assessing officer in his limited scrutiny, has verified the source of funds, noted the sale consideration paid, the expenses incurred for stamp duty and other charges. Furthermore, the assessee in their reply dated 11.01.2019 to the show cause notice dated 26.10.2018 issued by the PCIT has specifically stated that the assessment was getting time barred, assessing officer took upon himself the role of a valuation officer under Section 50(C)(2) and found that the guideline value was not actual fair market value of the property and the actual consideration paid was the fair market value and therefore, he did not choose to make any addition under Section 50(C) of the Act.

18. The PCIT, has not dealt with this specific objection, but, would fault the assessing officer for not invoking Section 56(2)(vii)(b)(ii)

merely on the ground that the market value was higher. As point out earlier, the guideline value is only an indicator and that will always not represent the fair market value of the property and therefore, the invocation of the power under Section 263 of the Act by the PCIT is not sustainable in law.

On this short premise, the revision order will go. Accordingly, we quash the revision order passed by PCIT and allow the appeal of assessee.

7. In the result, the appeal filed by the assessee in ITA No.622/Chny/2023 for assessment year 2018-2019 is allowed.

Order pronounced on 29th day of December, 2023, at Chennai.

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA.G)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai

दिनांक/Dated:29.12.2023

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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