आयकर अपीलीय अधिकरण "सी" न्यायपीठ 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, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.812/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. V.G. Rajamani Agencies Pvt. Ltd. 66, Subbiah Mudaliar Street, Thomas Street, Coimbatore-641 001.	बनाम/ Vs.	**PCIT-1** Coimbatore.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AABCV-1589-R**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri S. Sridhar (Advocate) Erode - Ld.AR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाईकीतारीख/**Date of Hearing**	:	18-10-2023
घोषणाकीतारीख /**Date of Pronouncement**	:	09-01-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails the invocation of revisionary jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income Tax-1, Coimbatore (Pr. CIT) vide impugned order dated 21-06-2023 in the matter of an assessment framed by Ld. Assessing Officer, National Faceless Assessment Centre, Delhi u/s.147 r.w.s 144 r.w.s 144B of the Act on 30-03-2022. The grounds raised by the assessee read as under: -

1.The Order passed by the Learned Principal Commissioner in exercise of powers under Section 263 is bad and illegal.

2.The Learned Principal Commissioner erred in not considering the reply filed by the Appellant with respect to the validity of the notice issued under Section 148 of the Act.
3.The assumption of jurisdiction under Section 263 by the Learned Principal Commissioner is erroneous, for the assessment order, against which the PCIT invoked powers u/s.263, is already pending on appeal filed before the CIT(A), National Faceless Appeal Centre and the law does not permit overlapping of jurisdiction. [Reliance is placed on ITA **No:350/Chy/2022** dt.21/04/2023]

2. The Ld. AR advanced arguments and submitted that the assessment proceedings, in totality, was already subject matter of adjudication before first appellate authority at the time of revision and therefore, doctrine of merger would apply. Reliance has been placed on the recent decision of this Tribunal in **Prabhu Kanimozhi vs. Pr. CIT (ITA No.350/Chny/2022 dated 21.04.2023)** wherein Tribunal, on similar facts, held that the assessee's case was covered under Clause (c) of Sec 263(1) which puts a bar on initiation of revision u/s 263 when an appeal is pending before Ld. CIT(A). The Ld. AR submitted that considering the same, the revision would be bad-in-law. The Ld. CIT-DR, on the other hand, controverted the arguments of Ld. AR and submitted that the issue, for which the return of income was scrutinized, was not examined by Ld. AO and therefore, the revision was justified. The Ld. CIT-DR sought distinction in the facts of cited decision of Tribunal. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 From the records, it emerges that the assessee filed return of income on 31.10.2017 declaring income of Rs.1.05 Lacs. The return was subjected to scrutiny since it transpired that the assessee deposited cash in various bank accounts during the period of demonetization

between 09.11.2016 to 30.12.2016. The cash in hand as on 08.11.2016 was Rs.40.06 Lacs but the assessee deposited cash of Rs.128 Lacs, Accordingly, the case was reopened and notice u/s 148 was issued on 31.03.2021. Since the assessee did not file return of income in response to notice u/s 148, the assessment was completed on best judgment basis u/s 144. The assessee also failed to furnish supporting documents as well as requisite details as called for by Ld. AO. Only partial submissions were made wherein certain discrepancies were found. It also transpired that the assessee was engaged in wholesale and retail trading of Nestle Products and Ujala products. The assessee submitted that the deposits were out of sale proceeds.

3.2 The Ld. AO issued notice u/s 133(6) to the banks and obtained bank account statement which revealed that the assessee deposited cash of Rs.110.89 Lacs in Kotak Mahindra Bank Ltd. and another Rs.11.34 Lacs in City Union Bank during the aforesaid period. The assessee made sales of Rs.1682.70 Lacs and submitted monthly purchase and monthly sales summary. The actual data of opening stock, purchases, sales and closing stock differed with the figures declared by the assessee in the return of income. The same has been tabulated in para 5.3 of the assessment order. Accordingly, the books of accounts were held to be not correct and held to be incomplete.

3.3 After considering the reconciliation statement as well as partial details submitted by the assessee, Ld. AO finally held that an amount of Rs.240.85 Lacs was undisclosed income of the assessee in stock which was not declared in the Income Tax return. Accordingly, the same was added to the income of the assessee and assessment was completed.

The assessee preferred further appeal against the same before first appellate authority which was stated to be pending for adjudication at the time of revision of the order.

Revisionary Proceedings

4.1 In the meanwhile, Ld. Pr. CIT, vide impugned order dated 21.06.2023, held that the assessment order was erroneous and prejudicial to the interest of the assessee and show-caused the assessee on revision of assessment. The Ld. Pr. CIT observed that the details pertaining to cash was not furnished and the cash deposits were not verified properly. The Ld. AO made addition on account of stock but leaving the core issue of cash deposits during demonetization which was the primary reason for reopening the assessment.

4.2 The assessee assailed the proposed revision and relied on various case laws governing the revision of the assessment. The same has already been enumerated in the impugned order and not repeated here for the sake of brevity.

4.3 However, rejecting assessee's submissions, Ld. Pr. CIT held that required details of cash deposits were not furnished by the assessee during the course of assessment proceedings and the issue of cash deposit was not examined by Ld. AO. When an assessment is opened primarily for one reason i.e., cash deposits during demonetization period, by not making any addition on this issue but meandering into other issues and making addition on that issue alone is not valid in the eyes of law. By not assesseing the income for which reassessment was initiated and assessing on some other heads of income, has rendered the assessment order as erroneous and prejudicial to the interest of the

revenue. Therefore, the assessment was to be revised to remedy the said error. Accordingly, the assessment was set aside denovo. The Ld. AO was directed to examine the cash deposits and also any other issues that may arise in the course of scrutiny assessment proceedings after satisfying himself in accordance with law. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the stated facts, it emerges that an assessment was framed in the case of the assessee on best judgment basis u/s 144 since the assessee failed to file the requisite details as called for by Ld. AO. The assessee only filed partial details. The case was reopened to verify the issue of cash deposit during demonetization period. However, since the assessee filed only partial details, the Ld. AO considered the trading result of the assessee and finding discrepancies in the same to the extent of Rs. 240.85 Lacs, added the same to the income of the assessee. The bank statements were called for by Ld. AO u/s 133(6) and Ld. AO duly noted the cash deposit made by the assessee in its bank accounts. After considering material on record as well as submissions filed by the assessee, Ld. AO chose to make addition on account of trading result and thought it fit not to make any addition on the issue of cash deposit. The assessment was framed on best judgment basis since the assessee failed to file the requisite details. In such a case, the assessment has been made to the best of judgment of Ld. AO and therefore, that judgment of Ld. AO could not be held to be erroneous though it may be prejudicial to revenue. Once the assessment is on best

judgment basis, Ld. Pr. CIT could not substitute the judgment of Ld. AO and impose another view on him.

6. The second pertinent fact is that the assessee has assailed the reassessment proceedings before first appellate authority which was pending for adjudication at the time of revision of the order. In such a case, the ratio of decision of Hon'ble Madras High Court in the case of **Smt. Renuka Philip vs. ITO (409 ITR 567)** would apply wherein it was held as under: -

> 22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction under Section 54 of the Act should be accepted.
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> 23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the Commissioner could not exercise power under Section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous.
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> 24. As noticed above, the Assessing Officer while completing the re-assessment proceedings has assigned certain reasons for coming to a conclusion that the assessee is entitled for deduction under Section 54F and not under Section 54 of the Act. This reason assigned by the Assessing Officer has been found by us to show due application of mind. As observed, we cannot expect an Assessing Officer to write a judgment. In such circumstances, the view taken by the Commissioner in his order under Section 263 of the Act has to be termed as a change of opinion, or in other words, the Assessing Officer adopted one of the two views possible and in such circumstances, it cannot be stated that the order is prejudicial to the interest of the Revenue as well as erroneous. For the purpose of exercise of jurisdiction under Section 263 of the Act, the twin tests are to be satisfied and even assuming, the re-assessment order is to be held as erroneous, it cannot be stated to be prejudicial to the interest of Revenue as every erroneous order cannot be subject matter of Revision under Section 263 of the Act. Further more, if the order passed by the Commissioner under Section 263 of the Act as confirmed by the Tribunal is allowed to stand, then the very purpose of the remand order against the original re-assessment proceedings would become a fait accompli.

> 25. Thus, for the above reasons we are fully satisfied that the assumption of jurisdiction by the Commissioner under Section 263 of the Act was wholly without jurisdiction as the twin tests have not been satisfied and consequently, the order dated 14.03.2012 as confirmed by the Tribunal by order dated 13.07.2012 calls for interference.
> 26. In the result, the appeal filed by the assessee is allowed and the order passed by the Commissioner dated 14.03.2012, under Section 263 of the Act as confirmed by the Tribunal by order dated 13.07.2012 are set aside, and it is left open to the assessee to pursue her claim before the Assessing Officer. Accordingly, the Substantial Questions of Law are answered in favour of the assessee. Since, the matter has been pending for a quite long number of years and there has been repeated orders of assessment, we direct the Assessing Officer to give effect to the re-assessment order dated 31.12.2009, wherein the Assessing Officer had granted the benefit of Section 54F of the Act to the assessee. No costs.

The Hon'ble Court thus held that when larger issue was pending before CIT(A), the revisionary authority could not exercise jurisdiction u/s 263. Following this decision, similar ratio has been laid down by Hon'ble Allahabad High Court in **CIT vs. VAM Resorts and Hotels Pvt. Ltd. (418 ITR 723).** The cited decision of Chennai Tribunal is also on similar lines and supports the case of the assessee.

7. Therefore, considering the facts of the case and respectfully following the binding judicial precedent as aforesaid, we would hold that the impugned revision u/s 263 was bad-in-law and the same is therefore, liable to the quashed. We order so.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 9th January,2024

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्याय□यिक सदस्य/JUDICIAL MEMBER	**लेख□सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 09-01-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT 4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF