

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

महनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकर अपील सं. ITA No.1307/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Annappandinadar Jaganathan Prop: Jagan Metal Mart Canara Bank building, Modachur Road, Gobichettipalayam-638 452.	बनाम/ Vs.	ACIT Circle-2 Erode.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AEWPJ-8097-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं./ ITA No.1308/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Jaganathan Balasingh No.8, Mahalakshmi Metal Mart, Veleppa Gounder Street Chinna Modachur, Gobichettipalayam-638 476.	बनाम/ Vs.	ACIT Circle-2 Erode.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AHHPB-6693-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri N. Arjun Raj (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT)-Ld. DR

सुनवाई की तारीख/Date of Hearing	:	09-05-2024
घोषणा की तारीख /Date of Pronouncement	:	03-06-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by different assesseees for Assessment Year (AY) 2017-18 assails revisional jurisdiction as exercised by Ld. Pr.

Commissioner of Income Tax, Coimbatore-1 (Pr. CIT) u/s 263 vide orders dated 09-11-2023. Facts as well as issues are quite similar in both the appeals. For the purpose of adjudication, facts in ITA No. 1307/Chny/2023 have been culled out in this order. The Ld. Pr. CIT has sought revision of assessment order as passed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2019.

2. The Ld. AR advanced arguments to submit that one of the possible views was taken by Ld. AO. The view of Ld. AO could not be substituted by revisional authority. The Ld. CIT-DR, on the other hand, advanced arguments to justify invocation of revision jurisdiction u/s 263. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. It could be seen that the assessee was assessed u/s 143(3) on 30-12-2019. In the opening paragraphs, Ld. AO has noted that the assessee was subjected to survey u/s 133A on 20-09-2016 wherein the assessee disclosed excess stock of Rs.95.76 Lacs. During the course of assessment proceedings, notice u/s 142(1) was issued and various details were called from the assessee. After due consideration of assessee's reply, Ld. AO made adhoc disallowance of certain expenditure and framed the assessment.

4. The Ld. Pr. CIT, upon perusal of case records, sought revision of the order vide order dated 25-03-2022. However, Tribunal, vide ITA No.629/Chny/2022 dated 07-02-2023, restored the issue of revision back to the file of revisional authority. In the set aside proceedings, the assessee furnished various submissions. It was noted by Ld. Pr. CIT that the assessee was engaged in manufacturing and trading of metals and plastic items. Though the assessment was completed, the same was

erroneous and prejudicial to the interest of the revenue in view of the fact that the assessee was subjected to survey u/s 133A wherein excess stock was detected for Rs.95.76 Lacs. The assessee credited the excess stock to Profit & Loss Account and offered the same as business income. Since the assessee had made unexplained credit, being the excess stock in the books of accounts, the said unexplained credit was to be taxed u/s 68 of the Act. This issue was not considered by Ld. AO in the assessment order which would attract revision u/s 263.

5. The assessee, in its submissions, pleaded that stock was rightly offered and assessed to tax as 'Business Income'. The Ld. AO had applied his mind to this issue during the course of assessment proceedings. Therefore, there was no error in the assessment order.

6. However, Ld. Pr. CIT observed that the assessee did not substantiate its case as to why the provisions of Sec.68 was not to be invoked in his case since unexplained stock represent unexplained credits which ought to have been taxed at higher rates u/s 115BBE. The Ld. AO also did not bring any material on record to suggest that the same should be taxed under normal tax rates as 'Business income'. The issue was not examined in right perspective. The Ld. AO ought to have taxed the same u/s 115BBE. Therefore, rejecting assessee's submissions, Ld. Pr. CIT directed Ld. AO to redo the assessment on the impugned issue after verification of facts pertaining to taxability of unaccounted stock. Aggrieved, the assessee is in further appeal before us challenging aforesaid revision of the order.

Our findings and Adjudication

7. From the facts, it emerges that some excess stock was unearthed during survey proceedings. The assessee credited the same to Profit &

Loss Account and offered the same as 'business income'. The same has been accepted by Ld. AO. In the opening para of assessment order itself, Ld. AO has taken note of the outcome of survey proceedings. In such a case, it could be said that the issue was duly taken note of by Ld. AO and a view was taken in the matter. The Ld. AO accepted the working of the assessee in the assessment order. The said view could be said to be one of the possible views. The coordinate benches of this Tribunal, in various decisions, has concurred that such excess stock was to be treated as business income only. These decisions include the decision of Chennai Tribunal in **M/s Mookambika Impex vs. DCIT (ITA No.299/Chny/2023)**; the decision in **M/s Overseas Leathers vs. DCIT (ITA No.962/Chny/22)**; the decision in **M/s Ethiraj Hotel Mart vs DCIT (ITA No.1096/Chny/20223)**; the decision in **M/s Santhilal Jain Vijay Kumar vs. ITO (ITA No.1103/Chny/2022)** as well as various other decisions, the copies of which have been placed on record. In such a scenario, though the assessment order may be prejudicial to the interest of revenue but it could not be said that it was erroneous. This being the case, impugned revision could not be sustained in law. We order so.

8. Admittedly, similar facts exist in ITA No.1308/Chny/2023 wherein assessment has been framed by same assessing officer. Facts leading to revision are quite identical. Therefore, our adjudication as above shall *mutatis-mutandis* apply to this appeal also.

9. Both the appeals stand allowed.

Order pronounced on 3rd June, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 03-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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