

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. No.324/Chny/2022
निर्धारण वर्ष/Assessment Years: 2018-19

Ramasamy Sathyan,
32, Kamarajapuram North,
Karur, Tamil Nadu 639 002.
[PAN: AAYPS7833F]

Vs. The Assistant Commissioner of
Income Tax,
Central Circle 2,
Trichy.

(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 : 09.05.2024
घोषणा की तारीख /Date of Pronouncement : 12.06.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 08.03.2022 passed by the Id. Principal Commissioner of Income Tax (Central), Chennai-2, Chennai under section 263 of the Income Tax Act, 1961 ["Act" in short] for the assessment year 2018-19..

2. The assessee raised seven grounds of appeal amongst which, the two issues emanates for our consideration, firstly, as to whether the Id. PCIT was justified in setting aside the assessment order dated 27.12.2019 passed by the Assessing Officer under section 143(3)

r.w.s. 153C of the Act being erroneous and prejudicial to the interest of Revenue, non-est and non-service, secondly, on merits in the given facts and circumstances of the case.

3. The Id. AR Shri S. Sridhar, Advocate submits that the original assessment order dated 27.12.2019 passed by the Assessing Officer is non-est on the ground for not containing the signature of the Assessing Officer and for non-service of the order on the assessee. He has submitted that the assessee mentioned his e-mail ID for communication as sathyan.suryaa@gmail.com, but, no such order has been received by the assessee. He drew our attention to paper book page No. 74 and submits that no address, date, notice under CC, etc. are mentioned therein. He further submits that no demand notice also served on the assessee and for such non-compliance, he argued that the original assessment order dated 27.12.2019 passed by the Assessing Officer is non-est.

4. He drew our attention to the report filed by the Assessing Officer in terms of directions of the Tribunal, argued, supports the contention of non-service of order being non-est. It was further submitted that the Id. PCIT failed to give a finding as to how the original assessment order

dated 27.12.2019 passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. Further, he submits that a contention was raised by the assessee before the Id. PCIT that the proposed addition on account of profits is exempt under section 10(2A) of the Act, as such the original assessment order of the Assessing Officer is not erroneous and prejudicial to the interest of Revenue, argued, that no discussion was made by the Id. PCIT in the impugned order. He vehemently argued that the revision order passed under section 263 of the Act is not maintainable against non-est of assessment order and prayed to allow the grounds concerned raised by the assessee. Further, the Id. AR argued that the Id. PCIT has lost sight of electronic/faceless regime, where hosting of the assessment order in the ITBA portal can be considered as one of the modes of services and not under the physical regime of assessment. He drew reference to the non-service of demand notice under section 156 of the Act either electronic mode or physical through post on the assessee. He argued that the revenue mixed up in the physical regime and electronic regime and completely adopted erroneous process. He argued that the authenticated order of the assessment order needs to

be hosted in the ITBA portal in view of Rule 10 of e-Assessment Scheme.

5. On the other hand, the Id. DR Shri R. Clement Ramesh Kumar, CIT submits that the original assessment order dated 27.12.2019 passed by the Assessing Officer was served on the assessee by uploading the same in the ITBA portal on the same day, within the limitation period and drew our attention the grounds of appeal raised in quantum appeal. He submits that the requirement for exercising jurisdiction under section 263(1) of the Act is to call for records and by examination of such records, on earlier hearing, the physical assessment record was summoned by this Tribunal and found signed copy of original order dated 27.12.2019 passed by the Assessing Officer. He submits that the Id. PCIT validly examined the assessment records and found satisfied for invoking jurisdiction under section 263 of the Act. He vehemently argued that it was a mere mistake in uploading the unsigned copy of assessment order dated 27.12.2019 in ITBA portal and since the assessment was completed by Central Range, being a search case, no necessity to upload order in the ITBA portal.

6. On merits, he argued that the Assessing Officer did not consider the share of profits in the hands of the assessee while completing the assessment under section 143(3) r.w.s. 153C of the Act and drew our attention to para 5 of the impugned order. Further he argued that the Id. PCIT has rightly invoked the jurisdiction under section 263 of the Act by making a specific finding that the Assessing Officer missed to have included the share of profit in the assessment made under section 143(3) r.w.s. 153C of the Act and prayed to dismiss the grounds of appeal raised by the assessee.

7. Head both the parties and perused the material available on record.

8. The first contention of the Id. AR is that the impugned order passed by the Id. PCIT is non-est and non-existence in the eye of law as the original assessment order dated 29.12.2019 passed under section 143(3) r.w.s. 153C of the Act is unsigned and unserved on the assessee. No doubt, the Id. DR placed on record, the report of the Assessing Officer that while passing assessment through online (ITBA) portal, there is no mandatory requirement of manually sending assessment order to the assessee as it was duplication of work. But,

however, the Id. DR contended that in the physical assessment record, order dated 27.12.2019 was found to be signed and by mistake, the Assessing Officer uploaded unsigned copy in the ITBA portal. The Id. PCIT rightly examined the assessment record and on his satisfaction invoked the jurisdiction under the Act. We find the contention raised by the Id. AR, whether it is unsigned copy of assessment order in ITBA portal and for non-service is immaterial for initiation of the proceedings under section 263 of the Act as this Tribunal also found duly signed assessment order dated 27.12.2019 while examining the assessment records during the course of earlier hearings.

9. Further, on careful reading of the provisions of section 263 of the Act, which explains that the PCIT/PCCIT or CCIT or PCIT or CIT may call for and examine the records of any proceedings under this Act and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after examining the record and by giving an opportunity to the assessee, conducting such inquiry as he deems necessary and pass an order enhancing or modifying or cancelling the assessment and directing for a fresh assessment. In the present case, the Id. PCIT called for record and examined the same having found the order

passed by the Assessing Officer under section 143(3) r.w.s. 153C of the Act is erroneous and prejudicial to the interest of Revenue, by giving an opportunity to the assessee, directed the Assessing Officer to verify the contentions of the assessee and pass a fresh assessment order in accordance with law relating to share amounts of profit of ₹.45,56,962/- and nowhere in the order it was mentioned the assessment order is unsigned. The argument of the Id. AR is that since the order uploaded in the portal is unsigned and for non-service, vitiates the proceedings under section 263 of the Act, we note that as discussed above regarding the provisions under section 263 of the Act, nowhere it is mentioned that non-service of order and unsigned order of the Assessing Officer makes the proceedings under section 263 of the Act invalid. The requirement under section 263 of the Act, i.e., for initiating revision or assuming jurisdiction by the Id. PCIT, to call for the records and after examining of the same, having satisfied that it is a fit case for inquiry in enhancing the assessment. In the present case, the Id. PCIT held the Assessing Officer has omitted to consider share profits of the assessee in the original assessment proceedings and invoked the jurisdiction under section 263 of the Act. Therefore, the contention of the Id. AR that the unsigned and non-service of order

vitiates the entire proceedings under section 263 of the Act is not justified. Thus, the first issue raised in this regard is dismissed.

10. On merits, we note that a search was conducted on 10.08.2017 in the case of Shri K. Murugesan and his group entities. The assessee is one of the partners in the group concern M/s. Cholan Auto Finance. According to the Id. PCIT, the assessee did not respond to the notice issued under section 153C of the Act and the Assessing Officer has completed the assessment under section 143(3) r.w.s. 153C of the Act, inter alia, making addition on account of unexplained money under section 69A of the Act dated 27.12.2019. On an examination of the assessment record and materials seized during the course of search, the Id. PCIT has observed that M/s. Cholan Auto Finance in which, the assessee is one of the partners, accepted unaccounted profits in the hands of its partners and the Assessing Officer proposed addition to the extent of ₹.11,70,00,000/-.

11. On an examination of the assessment records, the Id. PCIT found that on one of the partners i.e., Shri R. Sathyan (the assessee), the Assessing Officer has omitted to add the said share of profit of ₹.45,56,962/- in his hands. Accordingly, the Id. PCIT issued notice

under section 263 of the Act. We note that the assessee filed his submissions in response to the show-cause notice, which is reproduced by the Id. PCIT in the impugned order from page Nos. 5 to 7. On perusal of the same, we note that the assessee categorically pleaded that the proposed addition in respect of share of profits is exempt under section 10(2A) of the Act as it was separately assessed in the hands of the firm M/s. Cholan Auto Finance. Further, in para 5 of the impugned order, we note that the Id. PCIT has taken reference of statement of Shri Vijayan, who is partner-cum-employee of M/s. Cholan Auto Finance that the funds introduced are own unaccounted money, which were admitted by other partners. Further, the Assessing Officer of M/s. Cholan Auto Finance claimed to have made a total addition of ₹.11,70,00,000/- as unaccounted profits in the hands of each partners as their share. According to the Id. PCIT that the assessee is one of the partners of M/s. Cholan Auto Finance and the Assessing Officer of the assessee has omitted to add his share of profit of ₹.45,56,962/- in the hands of the assessee. On examination of the assessee's submissions, which were reproduced in the impugned order at para 4 of page 6, wherein, the assessee has stated that the profits are divided into two categories i.e., profits of the firm allocated to

partners and balance of profits. The balance of profits was assessed in the hands of the firm and profits allocated in the form of loans to partners. Therefore, it is not clear on the submissions of the assessee before the Id. PCIT as to whether profits allocated in the form of loans to partners and balance profits were assessed in the hands of the firm, are actually part of total addition proposed in the hands of M/s. Cholan Auto Finance as unaccounted profits to an extent of ₹.11,70,00,000/-. The Id. AR did not bring on record any evidence to show that the profits allocated in the form of loans to the partners were also part of total addition made in the hands of the firm M/s. Cholan Auto Finance for our ready reference.

12. Further, as rightly pointed out by the Id. AR that the proposed addition, as referred by the Id. PCIT, is exempted under section 10(2A) of the Act because the firm was assessed separately, consisting share of partners in its total income. When it taxed in the hands of the firm, the same cannot form part of total income of the partners. Therefore, the fact of whether the proposed share of profit of assessee of ₹.45,56,962/- was assessed in the hands of the firm being part of total income is not established. Further, the details of profits claimed to have been given to the assessee as loans, is also not established clearly.

Thus, finding in order of Mumbai ITAT in the case of Aiswhwarya Rai Bachan reported in [2022] 135 taxmann.com 335 (Mumbai – Trib) as relied on by the Id. AR is not applicable.

13. The Id. AR raised another issue that the Id. PCIT, based on mistake of fact, directed the Assessing Officer the share of profit in the previous year relating to the assessment year under consideration. In this case, no evidence whatsoever was brought on record to show that the share of the profit as computed by the Id. PCIT was the share of profit of earlier assessment years. We note that no reference was even made before the Id. PCIT by furnishing relevant evidence and therefore, the submissions of the Id. AR are rejected.

14. Further, the Id. AR drew out attention to the reference of decision of the Hon'ble High Court of Calcutta in ITA/96/2007 & ITA/173/2007 dated 05.01.2023 and argued that the Hon'ble High Court held the order of the Tribunal without any application of mind and suffers from utter perversity for not recording the submissions of the Id. Authorized Representative. In the present case, we observe that the assessee has given submissions before the Id. PCIT, which were considered by the Id. PCIT, which are clear from para 5 to 7 of the impugned order.

Therefore, the order of the Id. PCIT is not cryptic and has no application of ratio laid down by the Hon'ble High Court of Calcutta.

15. Therefore, we find no infirmity in the order of the Id. PCIT in directing the Assessing Officer to conduct fresh verification in this regard. The Id. PCIT rightly held that the order dated 27.12.2019 passed by the Assessing Officer under section 143(3) r.w.s. 153C of the Act is erroneous as far it is prejudicial to the interest of the Revenue by giving specific finding that the Assessing Officer omitted to have added ₹.45,56,962/- in the hands of the assessee. Thus, the grounds concerning the merits fails, are dismissed.

16. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 12th June, 2024 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 12.06.2024
Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.