

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1298/CHNY/2024

निर्धारण वर्ष/Assessment Year:2018-19

**The Pondicherry State
Co-operative Consumers
Federation Ltd.,**
A-38, Industrial Estate,
Thattanchavady,
Pondicherry – 605 009.

**The Principal Commissioner
of Income Tax,**
Chennai – 3.

PAN: AAAAT 0150B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri M. Karunakaran, Advocate
: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 07.08.2024

घोषणा की तारीख/Date of Pronouncement

: 07.08.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the Revision orders passed by the Principal Commissioner of Income-Tax Chennai-3, in ITBA/REV/F/REV5/2023-24/1063390741 (1) dated 26.03.2024. The assessment was framed by the National e-

Assessment Centre, Delhi for the assessment year 2018-19 u/s.143(3) r.w.s.144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 17.04.2021.

2. This appeal by the assessee society is arising out of the revision order passed by PCIT u/s.263 of the Act revising the assessment framed by the AO u/s.143(3) r.w.s. 144B of the Act dated 17.04.2021 for the reason that the AO has allowed 95% of sundry creditors as genuine without verification of facts. For this issue, assessee has raised 14 grounds which are argumentative, factual and exhaustive and hence, need not be reproduced. The relevant ground No.3 reads as under:-

“The appellant submits that in the order passed by the assessing officer, the issue of increase of sundry creditors was specifically considered and an adhoc disallowance of 5% of the increase in the creditors' balance was added.”

3. Brief facts are that the assessee is a cooperative society registered under The Puducherry Cooperative Societies Act, 1972 deriving income from the business of purchase and sales of groceries, liquor and petrol. The assessee filed its return of income for the relevant assessment year 2018-19 declaring total income at 'nil' after claiming deduction u/s.80P of the Act. The assessee's case was selected for scrutiny assessment and AO after due verification of

facts framed assessment u/s.143(3) r.w.s. 144B of the Act. During the course of assessment proceedings noticed that there is increase in sundry creditors to the extent of Rs.93,71,299/- and therefore, he disallowed 5% of increase in sundry creditors as unexplained and added to the returned income of the assessee amounting to Rs.4,68,565/-. For this, the AO observed in para 8 as under:-

“8. Since the assessee has failed to submit the details of sundry creditors as called for vide para 9 of questionnaire attached to the notice u/s 142(1) of IT Act as reproduced above, the sundry creditors has remained unexplained and hence required to be disallowed as calculated below:

<i>A</i>	<i>B</i>	<i>C=A-B (In Rs.)</i>
<i>Sundry creditors as on 31.03.2018</i>	<i>Sundry creditors as on 31.03.2017</i>	<i>Difference increase</i>
64696814	55325515	93,71,299

Disallowance @5% of increase in sundry creditors, which work out at Rs.4,68,565/- (@5% of Rs.93,71,299) has been made and hence added to the total income and taxed accordingly. Penalty proceedings in accordance with the provisions of section 270A of the I.T. Act 1961 are also initiated for mis-reporting of income.”

4. Subsequently, the PCIT on verification of the assessment records noted that the AO has called for information but the assessee has not submitted any information called for and hence, considering the facts and circumstances of the case, information available on record, AO framed assessment u/s.144 of the Act. But it is noticed that the assessment was framed u/s.143(3) r.w.s. 144B

of the Act. The PCIT noted that the AO in assessment order mentioned that there is increase in sundry creditors to the tune of Rs.93,71,299/- and he disallowed on adhoc at the rate of 5% of the increased amount of Rs.4,68,565/- and added to the returned income of the assessee. According to PCIT, the assessee failed to submit information called for by the AO and even the identity of the creditors, genuineness of the transactions remains unexplained. Therefore, the PCIT issued show cause notice u/s.263 of the Act to revise the assessment order passed by the AO and in the show cause notice, he considered this issue of unsecured loans of Rs.93,71,299/- and the relevant para of the show cause notice reads as under:-

“The records related to the assessment were perused. It is seen that during the year under consideration the assessee has shown increase in sundry creditors of Rs.93,71,299/-. The assessee has not furnished the details of sundry creditors. Hence the AO has disallowed 5% of the increased sundry creditors which works out of Rs.4,68,565/-. As the assessee has not proved the sundry creditors by furnished the details of increase in the sundry creditors, the entire increase which ought to have been brought to tax.”

4.1 Further, the PCIT noted that the AO passed the assessment order without making proper verification of sundry creditors of Rs.93,71,299/- and disallowed only 5% of sundry creditors on adhoc basis. According to PCIT, hence the assessment order passed u/s.143(3) r.w.s 144B of the Act dated 17.04.2021 by the Faceless

Assessing Officer is erroneous and prejudicial to the interest of Revenue in term of clause (a) of Explanation 2 to section 263(1) of the Act. He required the assessee to explain as to why the assessment order passed should not be set aside by treating the same as erroneous and prejudicial to the interest of Revenue. The show cause notice is dated 28.07.2023. The assessee furnished reply and given complete details of sundry creditors which consists of statutory liabilities like EPF, ESI, Income Tax, Sales Tax, etc. The details filed by assessee and noted by PCIT in his order reads as under:-

<i>Sl.no.</i>	<i>Particulars</i>	<i>Open. Bal</i>	<i>Clo. Bal</i>	<i>Increase (Decrease)</i>
1	<i>Sundry Creditors</i>	36623501	39395417	2771916
2	<i>Sale Tax</i>	14718310	18270910	3552600
3	<i>Audit fee</i>	126750	129750	3000
4	<i>Tax Audit fees</i>	36300	48300	12000
5	<i>Stock verification fee</i>	2700	2700	-
6	<i>Income Tax</i>	532	532	-
7	<i>Establishment Charges due</i>	749807	720224	(29583)
8	<i>EPF</i>	2286045	6106845	3820800
9	<i>ESI</i>	93676	22136	(71540)
10	<i>Interest due</i>	687894	0	(687894)
		55325515	64696814	9371299

The assessee explained that except sundry creditors increase of Rs.27,71,916/-, there is no other sundry creditor except statutory liabilities as noted above. The assessee contended that the AO after verifying these details has only made estimated disallowance of

Rs.4,68,565/- which comes to 25% instead of 5% as noted by AO. The assessee further explained in the scrutiny assessment proceedings the AO has considered the issue of business loss and sundry creditors are part of the business and hence, the entire issue was before the AO and detailed enquiry was conducted by the AO. But the PCIT was not convinced and he directed revision of the assessment order by observing in para 14 & 15 as under:-

“14. In this case, the Assessing Officer has made an adhoc addition of increase in sundry creditors by way of estimate @5% of the sundry creditors, on which the assessee is in appeal. However, it is a fact that the Assessing Officer did not cause any verification in respect of the sundry creditors at all. While the issue of 5% of disallowance made by the Assessing Officer is under appeal, the balance amount of Sundry creditors was not considered by the Assessing Officer, which will come within purview of Section 263 of the Income-tax Act, 1961 and it will not be hit by the provisions of sub-section (4) of Section 263 of the Act.

15. Therefore, the order of the Assessing Officer passed u/s 147 r.w.s. 144 of the Income-tax Act, 1961 dated 26/03/2022 vide DIN : ITBA/AST/S/147/2021-22/1041673814(1) is partly set aside and restored back to the file of the Assessing Officer for the limited purpose of verification on the issue of sundry creditors to the extent of balance amount of increase in creditors [i.e., excluding the adhoc addition of 5% on which the assessee is before the CIT(A)] and with direction to pass order in accordance with law after providing due opportunity of hearing to the assessee.

Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee argued that the entire detail of sundry creditors were filed before the AO and the AO

has noted these details and in para 8 of the assessment order, the summary of the sundry creditors is noted and the differential amount. He noted that the major difference is on account of statutory liabilities like EPF, ESI, Income Tax, Sales Tax etc. But the actual difference i.e., increase in sundry creditors is only to the extent of Rs.27,71,916/- which is part of business of the assessee and going by the amount of turnover of the assessee society, it cannot be said that this is substantial because there is substantial partners/members fund of Rs.16,96,12,335/-. Hence, the Id.Counsel argued that the PCIT has erred in revising the assessment as AO carried out verification and even the PCIT has not recorded any finding how the assessment made by the AO is erroneous so far as prejudicial to the interest of Revenue.

6. On the other hand, the Id. CIT-DR heavily relied on the revision order and stated that there is no provision in estimating the disallowance of sundry creditors in case sundry creditors are unexplained. Hence, he supported the revision order passed by PCIT u/s.263 of the Act.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the difference as noted in

above chart at para 4.1 being difference in increase of Rs.93,71,299/- but it actually consists of statutory liabilities like EPF, ESI, Income tax, Sales Tax, etc., but actually difference in increase in sundry creditors is only Rs.27,71,916/-. It is an admitted fact that the assessee society has large turnover and sundry creditors is arising out of the nature of business of the assessee and assessee is maintaining the complete details of sundry creditors. Further, we note from the revision order that there is no finding recorded by the PCIT that how the assessment order making adhoc addition of increase in sundry creditors by way of estimating 5% of sundry creditors of Rs.27,71,916/- is erroneous insofar as prejudicial to the interest of the Revenue. We noted that apart from merits even the PCIT has not given a finding that to how there is error crept in the assessment order or how it is prejudicial to the interest of Revenue.

9. In our view, exercise of power u/s 263 Of the Act is not possible to direct second investigation without finding the order to be erroneous one. The PCIT had no jurisdiction to set aside the order of assessment merely to conduct another purposeless and fruitless enquiry to reach the same result which was arrived at earlier and if any fresh enquiry is held, it will be an empty formality as by going through the motion of making a further

enquiry and reaching the same conclusion no useful purpose would be achieved. Though it is not expected of the PCIT to record his final conclusion in the order passed in revision, he must at least indicate in his order how the order of the AO is erroneous and prejudicial to the interests of the Revenue, The power of revision cannot be exercised as a matter of course, but must be exercised to correct some error in the orders passed by the AO. The revisional power is not meant to be exercised to correct every error of fact, but the error must be of such a nature that it is erroneous and prejudicial to the interests of the Revenue. Thus, the PCIT would have no jurisdiction to revise an order of assessment, if the final conclusion arrived at by the AO would not be different even after considering the particular fact which the PCIT has directed the AO to consider the same. Further, the power of revision is not meant to be exercised for the purpose of directing the AO to hold another investigation when the order of the AO was not found to be erroneous. Similar view has been taken by Hon'ble Madras High Court in the case of CIT v. Sakthi Charities (2000) 244 ITR 226 (Mad). The revisional powers conferred on the PCIT under section 263 are of wide amplitude. It enables the PCIT to revise an order passed by the AO, if he considers it to be erroneous and prejudicial

to the interests of the Revenue. In term of the above, we quash the revision order passed by the PCIT and allow the appeal of assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court at the time of hearing on 7thAugust, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 7thAugust, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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