

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुकला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.746/Chny/2024
निर्धारण वर्ष /Assessment Years: 2017-18

Shanthi Gold House,
No.72, Usman Road, T.Nagar,
Chennai -600 017.
[PAN: AAASF1612C]

Income Tax Officer,
Non-Corporate Ward-1(6),
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri S.Girish Kumar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri V.Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 18.07.2024

घोषणा की तारीख /Date of Pronouncement

: 30.08.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/REV/F/REV5/2023-24/1062238416(1) dated 08.03.2024 of the Learned Principal Commissioner of Income Tax [herein after "PCIT, Chennai-1, for the assessment years 2017-18. Through the aforesaid appeal the assessee has challenged order u/s 263 dated 08.03.2024 passed by PCIT, Chennai-1.

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2.0 Through the grounds of appeal No.1 to 11 the appellant has contested the revisionary order u/s 263 dated 08.03.2024 passed by the PCIT-1, Chennai. In principle, all the grounds of appeal 2 to 11 are centering around the only controversy of action taken by PCIT Supra, therefore all the grounds are adjudicated together. Ground of appeal No.1 is general in nature and hence not deemed worthy of any adjudication.

3.0 For the purposes of absolute clarity of the facts of the case, it is deemed necessary to reproduce the order dated 07.03.2024 of PCIT-1 Chennai.

“.....The assessee firm M/s. Shanthi Gold House is engaged in the business of trading in jewellery. The assessee filed its original Return of Income for AY 2017-18 on 24.10.2017 declaring a total income of Rs.1,15,040/-, The case was selected for complete scrutiny under CASS on the issue of cash deposits made into its Bank account during demonetization period and assessment was completed u/s 143(3) of the Act on 21.12.2019 determining the assessed income of Rs.4,10,765/- by making disallowance of Rs.2,95,725/- towards unsubstantiated purchases reported during the month of March 2017. Subsequently, the case was taken up for revision u/s. 263 of the Income Tax Act by issuing notice for hearing on 14.03.2022. As the assessee did not respond to the notice issued and also has not filed written submissions called for, an ex-parte order u/s. 263 of the 1.T. Act, 1961 was passed on 23.03.2022 setting aside the assessment

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order u/s. 143(3) dated 21.12.2019 and directing the Assessing Officer to examine the following aspects:-

2.1. From the copy of ledgers produced it appeared that the assessee had made some payment in cash in excess of Rs.20,000/-. These were interest of Rs.6.10.101/-, compensation paid to employees of Rs.5,92,170/- and repairs and maintenance of Rs.1.97,544/-. Section 40A(3) of the Income tax Act, 1961 provides that payments made in cash in excess of Rs.20,000 were not to be allowed as deduction. Since this aspect was not examined by the Assessing Officer, the above payments amounting to Rs.13,99,815/- could not be taxed.

2.2. In Form 3CD, certain loans were stated to have been received/made in cheque. But the loan confirmation statement for loan of Rs.1,01,001/- obtained from Mr. Ramasamy and the loan repayments made to Mrs.Megala and Mrs. Shanthi amounting to Rs.50,799/- and Rs.51,500/- respectively are seen to be in cash. The assessee, it appears, had not complied with the provisions of Sec. 269SS and 269T. Penalty u/s. 271D equivalent to the amount of loan obtained/made amounting to Rs.2,03,300/- was, therefore, attracted.

3. Aggrieved by this order, the assessee-firm has filed an appeal before the Hon'ble ITAT 'B' Bench, Chennai. As it did during the proceedings

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u/s. 263 of the Act, the assessee did not appear for the appellate proceedings before the Hon'ble ITAT too. However, the Hon'ble ITAT vide its order in ITA No. 368/Chny/2022 dated 21.07.2022 has considered the assessee's appeal ex-parte and directed the Principal CIT to grant another opportunity of hearing to the assessee.

4. Accordingly, the assessee was given another opportunity to defend its case vide this office letters dated 13.02.2023 and 01.03.2023. Since the assessee has failed to appear or make any submissions in response to the above and also as there was a change in the incumbency of this office, the assessee was given two more opportunities vide this office letters dated 11.01.2024 and 31.01.2024. Finally, the assessee has filed its written submissions vide its letter dated 23.02.2024.

Discussion & Decision:

5.1 The assessee has stated that the disputed payments were made through cash only on account of business expediency and due to business complexities and compulsion. The assessee has not specified what are the business expediency, business complexities and compulsion. In fact, the payments in cash are interest of Rs.6,10,101/- compensation to employees of Rs.5,92,170/- and repairs and maintenance of Rs.1,97,544/-. These payments by their

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nature do not give any scope for any business expediency, complexity or compulsion as these payments are made to the known persons/entities who have provided services to the assessee.

5.2 Further, the assessee has referred to the proviso to Section 40A(3) which specifies the circumstances under which no disallowance can be made for cash transactions and having regard to the nature and extent of banking facilities available. In the instant case, the assessee's place of business i.e. Usman Road, T. Nagar is a commercial hub in a Metro city, Chennai where all Nationalized Banking institutions as well as private sector Banking institutions are operating their branches. As such, the said proviso is not at all applicable to the assessee's case.

5.3 The assessee further claimed that (i) the assessing officer was satisfied with the genuineness of the disputed expenses while passing the assessment order, (ii) where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of revenue unless the view taken by the ITO is unsustainable.

6. In the instant case, the assessment order u/s. 143(3) of the Act, passed by the ITO, Non-Corporate Ward 1(6), Chennai is a single page order with a four line para referring to assessee's inability to

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substantiate purchases made during March 2017 while disallowing a of Rs.2,95,725/-, The Assessing Officer has not mentioned even a single word about the cash payments. In such case, the assessee's argument about the satisfaction of the assessing officer and possibility of two views on the aspect of cash payment is nothing but a fiction brought on by the assessee, As the assessee doesn't have any credible point to defend its case, the assessee could not appear or file its submissions during the earlier revisionary proceedings or appellate proceedings and also avoided to respond to the earlier three notices for hearing during the latest revisionary proceedings.

6.1. Under these facts and circumstances of the case, in my considered view, this is a fit case to invoke the provisions of Sec. 263 of the Act.

7. I have considered the submissions made and the arguments put forth by the AR and Conclude as under:

7.1 It is seen that the Assessing Officer had failed to make a complete verification and enquiry with respect to the findings made at para 2.2 and 2.3 supra and had passed the Assessment Order u/s 143(3) dated 21.12.2019 of the Act without application of mind. The assessment order so passed, therefore, is considered both erroneous and prejudicial to the interest of the revenue.

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7.2 Accordingly, the assessment order is hereby partly set aside u/s 263 of the Act, with a direction to the Assessing Officer to take action as above and pass a fresh assessment order (and to consider initiation and levy of consequential penalty as per the law) after granting opportunity to the assessee, within the stipulated time....”.

4.0 The first issue that arises from grounds of appeal is that the PCIT has passed an ex-parte revisionary order u/s 263. Ld. Counsel for the assessee would like to make us believe that it was not given any opportunity of defending its case. On the issue of appellant assessee not being provided adequate opportunity, the revisionary order extracted supra clearly shows that the assessee is a habitual defaulter as far as compliance to statutory notices issued by lower authorities are concerned. It has been noted that the present revisionary order has arisen only on account of an order issued by this tribunal to the PCIT to readjudicate the matter. Needless to say the appellant had not complied with the notices of the tribunal also. Coming to the principle controversy as to whether the PCIT has passed an ex-parte order without providing adequate opportunity, it is seen that in Para-4 of his impugned order the PCIT has clearly mentioned that “...finally the assessee has filed its return submissions dated 23.02.2024...” . The Ld. DR submitted that there is nothing on record to indicate that

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assessee's right to natural justice of being heard was violated and that it is the assessee which is a habitual defaulter. Thus the PCIT has duly considered the defence offered by the assessee and the blame of passing an ex-parte order without affording adequate opportunity of being heard cannot be rested on his shoulder. The argument of the assessee therefore fails.

5.0 Another issue raised by the assessee is that the impugned order was passed beyond available statutory time and without jurisdiction and hence deserves to be quashed. The Ld. DR argued that no such controversy is existing in this case when compared with the material available on records. After hearing the arguments of the Ld. Counsel for the assessee we are of the view that the impugned order was passed within available statutory time and by an authority having lawful jurisdiction. Section 263 of the Act empowers a PCIT to exercise his revisionary powers in respect of orders passed under any proceedings of the Act if he holds the view that the impugned order is erroneous in so far as it is prejudicial to the interest of the Revenue. The only limitation imposed upon is that no order can be passed after the expiry of two years from the end of the Financial Year in which the order sought to be revised was passed. Facts of the case indicate that the assessment order u/s 143(3) was passed by the AO on

21.12.2019. Thus the relevant financial year ended on 31.03.2020. Further material available on record shows that the first revisionary order was passed by the PCIT on 23.03.2022 well before the end of statutory time limit on 31.03.2022. The revisionary order dated 08.03.2024 presently contested by the appellant is on account of directions of this tribunal in ITA No.368 / Chny/2022 dated 21.07.2022. Thus no case of revisionary action taken by the PCIT beyond the available statutory time limit is made out against the Revenue.

6.0 As regards the issue of the revisionary order suffering from the want of jurisdiction. It is seen that no case could be made out by the appellant assessee. Revisionary Jurisdiction gets vested in a PCIT if the order to be revised is found to be erroneous in so far as it is prejudicial to the interest of the Revenue. Material on records indicate that the case selected for complete scrutiny under CASS on the issue of cash deposits made in its bank accounts during demonetization period. The PCIT noted that copies of ledger of the assessee showed cash payments in excess of Rs.20,000/-. Section 40A(3) of the Act mandates disallowance of expenses cash expenses in excess of Rs.20,000/-. It was noted that payments amounting to Rs.13,99,815/- were not examined by the AO. It was further noted from perusal of Form-3CD that loan of Rs.1,01,001/- was received from one

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Mr.Ramasamy and loan repayment of Rs.50,799/- and Rs.51,500/- was made to Ms. Megala and Ms.Shanthi respectively in cash. Thus violation of section 269SS / 269D r.w.s 271D was made out.

7.0 The assessee had admitted before the PCIT in revisionary proceedings that it had entered into cash transactions exceeding the limits prescribed u/s 40A(3) but its case was falling within the exemption clause of business expediency. The order of the Ld. AO nowhere indicates that any of the issues discussed by the Ld. PCIT in the revisionary order were enquired into by him during assessment proceedings. The Ld. AO has passed a very cryptic order alluding towards lackadaisical approach. There is nothing in the order to indicate as what was to be examined and how was it examined. There is not even a whisper of evidence to suggest that the cash transactions for which complete scrutiny was ordered was at all examined by the Ld. AO. To the extent the order of the Ld. AO falls within the mischief of an order being erroneous in so far as it is prejudicial to the interest of the Revenue as mandated in section 263.

8.0 The arguments of the Ld. Counsel for the assessee qua existence of element of business expediency have been adequately countered by the PCIT in his revisionary orders. Material available on records indicate that this was a case of complete scrutiny under CASS

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to examine the issue of cash deposits. Consequently, it was incumbent upon the Ld. AO to have examined assessee's affairs carefully, inter-alia, including inspection and examination of Form-3CD enclosed with the return of income. The Ld. CIT(A) has drawn his conclusions indicating that the same was not enquired into by the Ld. AO. To the extent the order suffers from "erroneity" of being an order prejudicial to the interest of Revenue. Further, the copies of the ledger examined and discussed by the PCIT in his revisionary order were produced before the Ld. AO during assessment proceedings and evidently they were not examined qua cash payments of about Rs.13,99,815/-. Thus once again the order of the Ld. AO becomes erroneous in so far as it is prejudicial to the interest of the Revenue and the PCIT would be rightly assuming its revisionary powers. We are therefore hold the view that the PCIT had lawful revisionary jurisdiction to be exercised in the case. The arguments of the appellant therefore fails.

9.0 Another issue raised by the appellant is that the matter concerning applicability of section 40A(3) was considered by the Ld. AO in original proceedings. The Ld.DR held view that no such fact is available in the assessment order. Upon hearing the Ld. Counsel for the assessee we hold the view that the impugned assessment order is

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totally silent that the Ld. AO considered any matter concerning applicability of section 40A(3). The only addition made by the Ld.AO was an account of unsubstantiated purchases of Rs.2,95,725/-. The arguments of the appellant therefore fails on this aspect as well.

10.0 Another issue raised by the appellant is that the examination of applicability of penal provisions in terms of 269SS and 269T could not be subject matter of revisionary proceedings and that in the absence of satisfaction recorded in the original order, the same cannot be substituted by way of a revisionary order. The Ld. AR argued that PCIT has no powers to add new dimensions, which were not part of the original order, through revisionary proceedings. The Ld. DR relied upon the revisionary order passed by the PCIT. It is noted that the PCIT has, in principle, pointed towards two mistakes firstly being that expenses amounting to Rs.13,99,815/- were falling under the purview of disallowance of u/s 40A(3) and repayment of loan was done by cash leading to presumption of application of provisions of section 269SS and section 269T r.w.s 271D. It is pertinent to note that PCIT has merely concluded that the above were the mistakes which contributed to the order falling in the category of an order being erroneous in so far as it is prejudicial to the interest of the Revenue and thus he exercising his revisionary authority u/s 263, set aside the order dated 21.12.2019

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of the Ld. AO directing him to pass a fresh assessment order, inter-alia, including initiation of any consequential penalty as per law. In this view of the matter we hold the view that the PCIT has not transgressed his jurisdiction and the order under section 263 dated 08.03.2024 passed by him does not require any interference by us at this stage. Accordingly, all the grounds of appeal being 2 – 11, raised by the assessee are dismissed.

11.0 In the result, the appeal of the assessee is dismissed.

Order pronounced on 30th, August 2024 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS Viswanethra Ravi)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(श्री अमिताभ शुक्ला)

(Amitabh Shukla)

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 30th, August-2024.

KB/-

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