

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

**माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND  
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकरअपील सं./ ITA No.1557/Chny/2024  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

<b>Shri Nagarajan</b> Old No.74A, New No.26, Thenpalli Village& Post Katpadi Tk, Vellore Dist.-632 515.	<b>बनाम/ Vs.</b>	<b>Pr. CIT (Central)</b> Chennai-1.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AACPN-0012-F</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Y. Sridhar (FCA) - Ld. AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Nilay Baran Som (CIT) -Ld. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	22-08-2024
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	03-09-2024

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax Chennai-3 (Pr.CIT) vide impugned order dated 26-03-2024 in the matter of an assessment framed by Ld. AO u/s.153C of the Act on 21-04-2021.

The grounds taken by the assessee are as under: -

1. The order of the Ld. PCIT (Central) is contrary to law, facts and opposed to the principles of natural justice and fair procedure.
2. The Id. PCIT has failed to appreciate the fact that as per Explanation 2 (a) to Section 263, "...an order passed by the AO shall be deemed to be erroneous, if the order is passed without making inquiries or verification which should have been made". In the

instant case, a thorough scrutiny has been carried out by the Ld. AO, being a search assessment, after giving enough opportunities to the appellant to appear and explain the case during the assessment proceedings. Hence, invoking Section 263 is not justified.

3. The Ld. PCIT has erred in passing the order without considering the detailed submissions filed by the appellant in response to notice u/s 142(1) dated 17/03/2021.

4. The Ld. PCIT has erred in passing the order by ignoring the findings of AO that total gross income of the applicant for the Last 7 years is 7.91 crores.

5. The Ld. PCIT has erred in passing the order by ignoring the plausible explanation given by the appellant the source for jewellery and cash seizure is out of income generated from business over a period of time.

6. When elaborate explanation is offered by the appellant accepted by AO and taxed the additional income as business income @ 30%, no revisional power vest with CIT to invoke the provision u/s 69 of IT Act.

7. Where AO has carried out adequate enquiries in original assessment proceedings and accepted the contentions of the assessee by allowing the additional income as business income, and passed a well-reasoned order, revision proceedings u/s 263 merely based on audit objection on similar subject, could not be invoked.

8. Further, once the suppressed income of the assessee has been assessed as "Income from business", the question of invoking section 68 r.w.s 115BBE of the Act, does not arise, which is the main and sole reason for invoking the provision 263 of IT Act.

9. If two views are legally possible and the AO adopts one of the plausible views assessment order can't be said to be erroneous for the CIT to invoke jurisdiction u/s 263 of the IT Act.

2. The Ld. AR advanced arguments assailing the impugned revision of the order whereas Ld. CIT-DR has submitted that no enquiries were conducted by Ld. AO on the flagged issues while framing the assessment and therefore, revision was justified in law. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. From case records, it emerges that during this year, the assessee engaged in contract work of State Highways Department and PWD department. Pursuant to search action u/s 132 on M/s SPK & Co. on 16-07-2018, notice u/s 153C was issued to the assessee. The assessee admitted income of Rs.205.50 Lacs after including certain additional income of Rs.70.60 Lacs to cover up for cash and Jewellery. The Ld. AO, after making requisite enquiries, accepted the returned income of

the assessee. In the assessment order, issues of cash and jewellery arose in assessee's case and Ld. AO accepted the claim of additional income as offered by the assessee, against both the items.

4. Subsequently, Ld. Pr. CIT, upon perusal of case records, observed that the source of additional income was not explained by the assessee. The Ld. AO did not call for assessee's explanation regarding the same. The additional income ought to have been taxed u/s 69 r.w.r. 115BE of the Act instead of taxing the same at normal rates. To that extent, the order was erroneous and prejudicial to the interest of revenue in terms of Clause (d) of Explanation-2 to Sec.263. Accordingly, the assessee was show-caused.

5. The assessee assailed the same on the ground that the provisions of Sec.69 would apply to unexplained credits, money, investment, expenditure etc. Once a satisfactory explanation is provided, the income would be covered under appropriate head of income. As per the admission made in sworn statement dated 23-08-2018, cash of Rs.30 Lacs was stated to be earned from business over the years. Similarly, the assessee duly explained the source of jewellery. Further, requisite enquiries were made by Ld. AO, in this regard, during the course of assessment proceedings itself and the same was duly addressed by the assessee. However, Ld. Pr. CIT alleged that the copy of letter addressed to DDIT (inv.) was not available in the assessment record. The assessee nowhere admitted the source of business income. The Ld. AO did not conduct any enquiry to verify the source of cash & jewellery. Finally Ld. AO was directed to cause necessary enquiries and invoke the provisions of Sec.69A, if found applicable. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

6. It is quite clear that cash was seized and certain jewellery was found from the assessee and a sworn statement was also recorded from him, on these aspects. The assessee admitted additional income to cover up for the shortfall in cash and jewellery in the return of income which has been accepted by Ld. AO. The said income was offered as business income since the assessee was engaged in contract work. During the course of assessment proceedings, Ld. AO issued notice u/s 142(1) along with a detailed questionnaire, inter-alia, to furnish explanation of cash seized and jewellery found during the course of search and seizure operations. The assessee furnished the requisite details and explanations vide reply dated 05-04-2021. There is no finding in the assessment order that the assessee failed to furnish any details as called for by Ld. AO. The Ld. AO also considered the sworn statement of the assessee. A finding was also rendered that some gold jewellery belonged to the three daughters of the assessee whereas the remaining Jewellery was purchased out of withdrawals, drawings of earlier years out of agricultural income, rental income and interest income. To make-up for shortfall in cash and Jewellery, the assessee offered additional business income of Rs.70.60 Lacs. Except for business income and agricultural income, the assessee is not shown to have any other substantial sources of income. Upon these facts, it could very well be said that a plausible view was taken by Ld. AO in the matter with due application of mind. The same could not be said to be opposed to facts or law. Simply because, the revisionary authority holds a different view in the matter, the same could not be a good enough reason to invoke the powers u/s 263 which is as per settled legal position laid down by higher

judicial forums. The case law of Hon'ble High Court of Gujarat in **Pr. CIT vs. Dharti Estate (TCA No.72 of 2024 dated 23-01-2024)** is on identical set of facts and the same favors the case of the assessee. The case law of Jaipur Tribunal in **Smt. Rekha Shekhawat vs. Pr. CIT (ITA No.7/JP/2021 dated 16-08-2022)** is also on identical lines and supports the case of the assessee. Therefore, in our considered opinion, the revision of the order could not be upheld. By quashing the same, we allow the appeal of the assessee.

7. The appeal stand allowed.

*Order pronounced on 3<sup>rd</sup> September, 2024*

**Sd/-**  
**(ABY T. VARKEY)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :03-09-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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