

**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**

1. आयकरअपील सं./ ITA No.1508/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
2. आयकरअपील सं./ ITA No.1509/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2016-17)
&
3. आयकरअपील सं./ ITA No.1510/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
4. आयकरअपील सं./ ITA No.1511/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)
&
5. आयकरअपील सं./ ITA No.1512/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)
&
6. आयकरअपील सं./ ITA No.1513/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2020-21)

Mr. Abdul Munaf Irfanudeen 42, Maraikayar Street, II floor, Near Annai Ayesha Mahal, Chennai-600 001.	बनाम/ Vs.	PCIT (Central) Chennai-1.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAWPI-0038-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Ms. Lavanya (CA) - Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	26-08-2024
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घोषणाकीतारीख /Date of Pronouncement	:	18-09-2024
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आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 In all the captioned appeals, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax (Central), Chennai-1 (Pr.CIT). Facts leading to revision are substantially the same in all the years. First, we take up ITA No.1508/Chny/2024 for Assessment Year (AY) 2015-16 which assails the impugned order dated 30-03-2024 directing revision of an assessment order passed by Ld. AO u/s 153C r.w.s. 144 on 27-03-2022.

1.2 The grounds of appeal read as under: -

1. For that the Order of the Learned Principal Commissioner of Income Tax (Central) - 1, Chennai u/s 263 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case.
2. For that the Learned Principal Commissioner of Income Tax, (Central)-1, Chennai is not justified in invoking the provisions of section 263 of the Act, When the impugned Assessment made u/s 153C r.w.s 144 of the Act is not 'erroneous and prejudicial to the interest of the revenue' and thereby erred In setting aside the Order passed by the Assessing Officer u/s 153C r.w.s 144 of the Act dated 27.03.2022.
3. For that the Learned Principal Commissioner of Income Tax, (Central)-1, Chennai has erred in invoking his jurisdiction u/s 263 of the Act without considering the law laid down by the Apex Court in the case of Max India limited [2008] 166 Taxman 188 (SC) that in a case where two views are possible and Assessing Officer preferred one view against another view, Order could not be said erroneous or prejudicial to interest of revenue.
4. For that the Learned Principal Commissioner of Income Tax, (Central)- 1, Chennai has erred in holding that the Assessing Officer has failed to make necessary enquiry to bring on record all facts without appreciating that the Learned Assessing Officer had duly verified the Issue of credits in the banks accounts and accordingly concluded to assess 8% of the total credits as an estimate income of the appellant.
5. For that the Learned Principal Commissioner of Income Tax (Central)-1, Chennai has set aside the assessment with a direction to examine the issues raised in the Show Cause Notice u/s 263 of the Act, thereby the PCIT is not justified in invoking his jurisdiction u/s 263 of the Act.

1.3 The assessee has filed an additional ground of appeal which read as under: -

6. For that the revision order of the Learned Principal Commissioner of Income Tax, (Central)-1, Chennai passed u/s 263 of the Income Tax Act, 1961 is bad in law since the

base assessment order dated 27.03.0222 passed u/s 153C r.w.s. 144 of the Act itself was bad in law In the absence of any incriminating material and an invalid assessment cannot be set aside u/s 263 of the Act.

The Ld. AR has pleaded for admission of the same which has been opposed by Ld. CIT-DR. However, since the additional ground is merely a legal ground only which do not require appreciation of new facts, we admit the same.

1.4 The Ld. AR advanced arguments by submitting that there was due application of mind and one of the possible views was taken by Ld. AO in the assessment order. The Ld. CIT-DR, narrating the facts, justified the revision of the order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

2.1 From assessment order, it emerges that the assessee being resident individual is stated to be engaged in financing business. The assessee was not assessed to tax earlier. One Shri NatharSahib (a relative of the assessee) was found to be carrying cash of Rs.99.75 Lacs on a two-wheeler and intercepted and accordingly the cash interception was intimated to the Income Tax Department. Since no plausible explanation was furnished by that person, the cash was seized. A sworn statement was recorded from Shri Nathar Sahib who stated that the cash belonged to the assessee. The assessee owned up the same and offered the same to tax in relevant FY 2020-21.

2.2 Considering the same, notice u/s 153C was issued to the assessee for various years after recording requisite satisfaction. However, the assessee did not file return of income despite various reminders. Since no details were forthcoming from the assessee, details of bank accounts

maintained by the assessee were extracted from the portal and bank statements were obtained. It transpired that earlier the assessee was running a provision shop by the name 'M/s Kirani Traders' in Mannady, Chennai. One of the bank accounts was held in the name of this entity. There were credits of Rs.168.72 Lacs in various bank accounts held by the assessee.

2.3 Upon analysis of bank accounts, it was found that there were periodic deposits and withdrawals throughout the year in all forms. The Ld. AO formed an opinion that the assessee was carrying out business activities and the credits and debits in the banks accounts were arising out of business transactions. As per enquiries, the assessee was running a grocery and finance business. Under these circumstances, Ld. AO held that credits in the bank account represent business receipts and accordingly, estimated net profit against the same @8% of gross receipts while finalizing the assessment on *best judgment* basis. During hearing, it emerges that this assessment has attained finality since the assessee has not preferred any further appeal against the same.

Revisionary Proceedings

3.1 Subsequently, Ld. Pr. CIT, upon perusal of case records, observed that Ld. AO without ascertaining the nature of the credits / receipts in the bank accounts erroneously assessed the income @8% of credits. The perusal of bank account would show that substantial amounts were deposited on regular basis which were withdrawn within a short period of time. Therefore, these were not trading receipts. The Ld. AO did not conduct any enquiry to ascertain the nature of credits and erroneously estimated the income @8%. Therefore, the assessment order was held to be erroneous and prejudicial to the interest of the revenue in terms of

Clause (a) of Explanation 2 to Sec.263. Accordingly, the assessee was show-caused.

3.2 The assessee objected to the proposed revision on the ground that the addition was made on presumptive basis @8% of total credits in the bank accounts. Therefore, the assessment order could not be revised. The Ld. AO duly verified the details and documents and took a view of taxing the credits on presumptive basis.

3.3 However, Ld. Pr. CIT rejected the same on the ground that Ld. AO did not make requisite enquiries to ascertain the nature of credits. The assessee did not furnish any explanation to the credits and did not respond to various notices as issued by Ld. AO during the course of assessment proceedings. Accordingly, the assessment was set aside and Ld. AO was directed to conduct necessary enquiries to examine the nature and source of the credits in bank account and reframe the assessment after providing opportunity of hearing to the assessee. Similar directions were given for other years also. Aggrieved, as aforesaid the assessee is in further appeal before us in all the years.

Our findings and Adjudication

4. From the facts, it is quite clear that the assessee was assessed on *best judgment* basis. The assessee remained a non-filer throughout and did not respond to various notices issued by Ld. AO during the course of assessment proceedings. Left with no option, Ld. AO obtained bank statements of the assessee and upon analysis of the same, reached a conclusion that there were credit and debits. The assessee carried out provision shop by the name 'M/s Kirani Traders' in Mannady, Chennai. One of the bank accounts was held in the name of this entity. The bank accounts were analyzed and it was observed by Ld. AO that that there

were periodic deposits and withdrawals throughout the year in all forms. The Ld. AO formed an opinion that the assessee was carrying out business activities and the credits and debits in the banks accounts were arising out of business transactions. As per enquiries made by Ld. AO, the assessee was running a grocery and finance business. Under these circumstances, Ld. AO concluded that credits in the bank account represent business receipts and accordingly, estimated net profit on presumptive basis by applying presumptive rates of estimation of income. The assessment was framed on *best judgment* basis wherein the income is assessed to the best judgment of Ld. AO without considering any of the submissions of the assessee. On these facts, it could not be alleged that Ld. AO did not make proper enquiries before concluding the assessment. The view taken by Ld. AO was one of the possible views and the same could not be held to be opposed to any statutory provisions. The estimation of Ld. AO was based on factual position emerging during the assessment proceedings.

5. The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. vs. CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is

unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as **CIT V/s Max India Ltd. (295 ITR 282)**. Similar principal has been followed in **Grasim Industries Ltd. V/s CIT (321 ITR 92)**. The ratio of all these decisions is that where two views are possible and AO has preferred one view against another view, order could not be said to be erroneous or prejudicial to the interest of the revenue.

6. Therefore, on the given facts, the allegation of Ld. Pr. CIT that Ld. AO did not make necessary enquiries, could not be accepted. The Explanation-2 to Sec.263 would not apply in the present case. Accordingly, the impugned revision u/s 263 could not be upheld. We order so. The assessment framed by Ld. AO stand restored back. The main grounds stand allowed and accordingly, the additional ground as raised by Ld. AR has been rendered merely academic in nature and accordingly, dismissed as infructuous.

7. Facts leading to revision for AYs 2016-17 to 2020-21 are quite identical. The assessment has been framed on similar lines. Therefore, our adjudication as above shall, *mutatis-mutandis*, apply to all these appeals. The assessments as framed by Ld. AO, in all these years, stand restored back.

8. All the appeals stand allowed in terms of our above order.

Order pronounced on 18th September, 2024

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

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

चेन्नई Chennai; दिनांक Dated :18-09-2024
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आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

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