

**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.1514/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2021-22)**

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

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

सुनवाईकीतारीख/ Date of Hearing	:	26-08-2024
घोषणाकीतारीख / Date of Pronouncement	:	18-09-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax (Central), Chennai-1 (Pr.CIT) for Assessment Year (AY) 2021-22 vide order dated 30-03-2024 in the matter of an assessment framed by Ld. AO u/s 143(3) 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 only the cash seized as unexplained money u/s 69A of the Act .

5. For that the Learned Principal Commissioner of Income Tax (Central)-1, Chennai having directed the AO to examine the issue of credits in the bank accounts and revise the assessment order by making the additions, ought to have set-aside the assessment, thereby the PCIT is not justified in invoking his jurisdiction u/s 263 of the Act.

6. For that the Learned Principal Commissioner of Income Tax (Central)-1, Chennai ought to have appreciated that the amendment in Section 253(1) of the Act- an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment: or is effective from 01.04.2022 i.e. AY 2022-23 onwards and therefore, the same is not applicable to AY 2021-22.

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

7. 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 itself was bad in law on being passed u/s 143(3) r.w.s. 144 of the Act instead of u/s 153C of the Act for the subject AY 2021-22 in contravention of the applicable provisions where the notice u/s 153C was issued, after recording of satisfaction note, on 17.11.2021, applicable AY being AY 2022-23 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 assailing the revisionary jurisdiction which has been controverted by Ld. CIT-DR. 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 NatharSahib who stated that the cash belonged to the assessee. The assessee owned up the same and agreed to offer the same to tax in relevant FY 2020-21.

2.2 Considering the same, a notice u/s 153C was issued to the assessee on 17-11-2021 after recording requisite satisfaction. However, the assessee did not file return of income despite various reminders. Since no details were forthcoming from the assessee, Ld. AO framed the assessment on *best judgment basis* u/s 143(3) r.w.s. 144 on 27-03-2022 and added the cash seizure of Rs.99.75 Lacs to the income of the assessee. Pertinently, the notice was issued u/s 153C after recording requisite satisfaction as mandated therein, ultimately the assessment has been framed by Ld. AO u/s 143(3) r.w.s. 144 of the Act.

Revisionary Proceedings

3.1 Subsequently, Ld. Pr. CIT, upon perusal of case records, observed that Ld. AO while making addition of cash seized of Rs.99.75 Lacs, did not make verification as to credits in assessee's bank accounts, as done in earlier years. In the earlier years, Ld. AO made addition with regard to

credits in the bank accounts. However, no such enquiries were made for this year. The bank statements were not called for and the assessment was completed without making due enquiries / verifications that should have been made. 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 and the assessee was show-caused. Further Ld. AO failed to initiate penalty u/s 271AAC in respect of addition made u/s 69A and erroneously initiated penalty proceedings u/s 271AAB.

3.2 The assessee objected to the proposed revision on the ground that the bank statements were duly verified and the assessment was concluded thereafter.

3.3 The argument was rejected on the ground that no replies were furnished by the assessee during assessment proceedings. The Ld. AO even did not obtain the bank statements and verified the credits. The bank statements were obtained only up-to 31-03-2020. 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 also initiate penalty proceedings u/s 271AAC after providing opportunity of hearing to the assessee. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that the assessment has been made by Ld. AO on *best judgment* basis since the assessee failed to make any representation during the course of assessment proceedings. The Ld. AO added the cash seized for Rs.99.75 Lacs u/s 69A and finalized the assessment.

5. The Ld. AR has submitted that for this year, a notice u/s 153C was issued to the assessee on 17-11-2021 after recording satisfaction note, with reference to the cash seized. The assessee failed to respond to the same and accordingly, the assessment was completed u/s 143(3) r.w.s. 144 of the Act on 27-03-2022. The Ld. AR stressed the point that the assessment has been framed u/s 143(3) r.w.s. 144 of the Act whereas it ought to have been framed u/s 153C since notice was issued u/s 153C after recording the satisfaction note. The failure to do so would make the assessment itself bad-in-law and consequently, the revision thereof would also be bad-in-law. The Ld. AR pleaded that, in such circumstances, not only the revisionary order but the assessment order itself should be quashed. To support the same, Ld. AR referred to the decision of Kolkata Tribunal in the case of **Classic Flour & Food processing vs. CIT (ITA No.764 to 766/Kol/2014 dated 05-04-2017)**. The Ld. CIT-DR opposed any interference in the assessment order which has already attained finality by relying upon the decision of Hon'ble High Court of Kerala High Court in the case of **CIT vs. Jacob J. Thaliath (11 Taxmann.com 123)** holding as under: -

3. Insofar as ITA No. 1197/2009 is concerned, the Tribunal interfered with section 263 order issued for the year 1992-93 for the reason that the revised assessment issued under section 147, that was the subject-matter of revision under section 263, itself is an invalid order. We do not think that the Tribunal has any such power to consider the validity of any such order, while considering the appeal filed against the order issued by the Commissioner under section 263. The assessee having not challenged the revised assessment, cannot also contest validity of that proceedings before the Tribunal in an appeal filed against the order issued under section 263. The Tribunal, being the 2nd appellate authority, cannot consider validity of an assessment or reassessment order while considering the appeal filed against an order issued under section 263. So much so, the order of the Tribunal is liable to be vacated.

The Ld. CIT-DR also opposed any interference in the proposed revision.

6. Upon perusal of assessment order dated 27-03-2022 as placed on record, it is very clear that though the assessment proceedings got triggered by issuance of notice u/s 153C after recording requisite satisfaction on 17-11-2021 as mandated in law, ultimately the assessment has been framed u/s 143(3) r.w.s. 144 of the Act. In other words, the Ld. AO has thus clearly not fulfilled the jurisdictional requirement of framing the assessment under correct provisions and the same is, therefore, defective. Once jurisdiction has been assumed in one particular statutory provision, the assessment thereof should be completed under the same provision and not under any other provision since the requirement of those provisions would be different. Therefore, the assessment order, prima-facie, is without jurisdiction and consequently all the subsequent proceedings would be rendered invalid and void-ab-initio. On this preliminary issue alone, the impugned order would be unsustainable in the eyes of law and the same is accordingly liable to be quashed. Interference in original assessment order dated 27-03-2022 is beyond the scope of present appeal as per the cited decision of Hon'ble High Court of Kerala in **CIT vs. Jacob J. Thaliath (supra)**.

7. The Ld. AR has also urged that the order could not be revised since due verifications were made by Ld. AO. However, this argument cannot be accepted since it has clearly been brought on record that Ld. AO has even failed to obtain the bank statements for this year and the same are not part of the assessment record. The argument of Ld. AR stand rejected.

8. Finally, the impugned revision of the order cannot be sustained in law and the same is liable to be quashed. We order so.

9. The appeal 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