

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1137 to 1139/Chny/2024
निर्धारण वर्ष/Assessment Years: 2018-19 to 2020-21

M/s. Anitha Texcot (India) Pvt. Ltd., 10/14, Bridge Way Colony Extension, Lakshmi Nagar, Tiruppur-641 607.	v.	The DCIT, Central Circle-1, Coimbatore.
[PAN:AAJCA 4205 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.Suraj Nahar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.R. Clement Ramesh – Kumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	30.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	25.09.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Principal Commissioner of Income Tax (Central), Chennai-2, dated 05.03.2024 for the Assessment Years (hereinafter in short 'AY') 2018-19 to 2020-21 passed u/s.263 of the Income Tax Act, 1961 (hereinafter in short 'the Act').

2. At the outset, the Ld.AR of the assessee submitted that on wrong assumption of fact, the Ld.PCIT has invoked his revisional jurisdiction u/s.263 of the Act and therefore, the impugned order can't be sustained



:: 2 ::

in the eyes of law and therefore, it needs to be interfered by this Tribunal and prayed that it be cancelled.

3. The brief facts are that the assessee company had undergone search and seizure operation u/s.132 of the Act on 17.03.2021 and pursuant to which, the case was centralized with the DCIT, Central Circle-1, Coimbatore, who issued notice u/s.153A of the Act to the assessee company for AYs 2015-16 to 2020-21 on 30.10.2021 and pursuant to it, assessee filed return of income (RoI) for AY 2018-19 on 31.01.2022 declaring total taxable income of ₹16,07,55,090/-. Likewise, for AY 2019-20, pursuant to the notice u/s.153A of the Act, the assessee filed RoI declaring total taxable income of ₹25,97,75,910/-. Similarly, for AY 2020-21, the assessee filed return pursuant to notice u/s.153A of the Act declaring a total taxable income of ₹31,58,43,390/-. Thereafter, the AO made the following additions for the three assessment years (reflected in the captioned appeals) by assessment order dated 02.08.2022 u/s.153A r.w.s.143(3) of the Act:

4. The Ld.PCIT on 15.11.2023 issued show cause notice u/s.263 of the Act conveying his desire to invoke his revisional jurisdiction against the assessment order framed for the aforesaid three assessment years dated 02.08.2022 on the ground that the additions made for the aforesaid three assessment years, attract the penalty u/s.270A of the Act, which



:: 3 ::

was omitted to be initiated by the AO i.e. on the issues on which additions were made by the AO, which for easy reference is captured in form of Chart given below:

Assessment Year	Particulars of addition in respect of which PCIT has directed invocation of provisions of section 270A
2018-19	1. Undisclosed interest income of Rs.1,00,000/- 2. Difference in income reported from sale of yarn of Rs.7,35,770/-
2019-20	1. Undisclosed interest income of Rs.1,26,000/- 2. Difference in income reported from sale of yarn of Rs.2,93,319/-
2020-21	Difference in income reported from sale of yarn of Rs.8,85,816/-

5. Referring to the chart (supra), it was pointed out that the Ld.PCIT was of the opinion that the AO erred in passing these assessment orders without initiating the relevant penalty proceedings u/s.270A of the Act, which omission on the part of the AO was erroneous in so far as prejudicial to the interest of the Revenue and therefore, he justified his action to interfere u/s.263 of the Act. The assessee objected to the impugned action of the Ld.PCIT invoking revisional jurisdiction to initiate penalty proceedings and cited the decision of the Hon'ble jurisdictional High Court in the case of CIT v. CRK Swamy reported in [2002] 254 ITR 0158 (Mad.), wherein the Hon'ble Madras High Court was pleased to uphold the action of the Tribunal holding that revision of assessment by the Commissioner on the ground that the penalty proceedings hadn't been initiated was unsustainable by relying on the decision of the Hon'ble Delhi High Court in the case of CIT v. Sudershan Talkies reported in



:: 4 ::

[1993] 200 ITR 153, wherein, it was held that failure on the part of the AO to initiate penalty proceedings would not give rise to the Ld.PCIT to pass order u/s.263 of the Act and direct initiation of such proceedings. However, the Ld.PCIT wasn't convinced by the contention of the assessee and he relied on the decision of the Hon'ble Madras High Court in the case of CIT v. CMRL dated 30.01.2018 reported in [2018] 92 taxmann.com 329 (Mad.) wherein, the Hon'ble Madras High Court observed at Para Nos.14 & 15 as under:

14. In view of Section 271(1) read with Section 263 of the Act, the Principal Commissioner might pass such order as the circumstances of the case might justify, which could include an order enhancing or modifying the assessment or cancelling the assessment or directing a fresh assessment/Directing fresh assessment would, in our view, include assessment of penalty. It cannot, therefore, be said that the Principal Commissioner had no jurisdiction to pass such order. The issue has been decided by a Division Bench of the High Court of Allahabad in CIT v. Surendra Prasad Agrawal [2005] 142 Taxman 653. However, the Principal Commissioner, we find, has recorded a finding that "on examination of the records, it is found that the Assessing Officer had in the assessment order established that the Assessee had concealed his income by filing inaccurate particulars". There is no such finding in the order of assessment. The Principal Commissioner seems to have distorted the order of assessment. The finding of the Principal Commissioner is to that extent perverse.

15. In our view, in the absence of any finding of the Assessing Officer with regard to concealment of income or with regard to furnishing of inaccurate particulars of income, the Commissioner clearly erred in holding that omission to record satisfaction to initiate penalty proceedings was erroneous or prejudicial to the interest of Revenue. The learned Tribunal rightly set aside the direction of the Principal Commissioner directing the Assessing Officer to initiate penalty proceedings although we may not agree with the reasoning in its entirety.

6. And thereafter, the Ld.PCIT was of the view that since the order of the Hon'ble Madras High Court in the case of CMRL (supra) was the latest judgment vis-à-vis that of the decision cited by the assessee i.e. CIT v. CRK Swamy (supra), he was of the view that he had jurisdiction to invoke



:: 5 ::

the revisional jurisdiction and therefore, he held that the assessment order passed by the AO u/s.143(3) of the Act dated 02.08.2022 for AYs 2018-19 to 2020-21 as erroneous in so far as prejudicial to the interest of the Revenue to the extent that the assessment order framed by the AO has omitted initiation of penalty u/s.270A of the Act and he modified the assessment passed by the AO on 02.08.2022 with a direction to the AO to invoke penalty proceedings u/s.270A of the Act for all the three assessment years.

7. Aggrieved by the aforesaid action of the Ld.PCIT, the assessee is in appeals before this Tribunal.

8. We have heard both the parties and perused the material available on record. The Ld.AR submitted that the Ld.PCIT erred in relying on the observations made by the Hon'ble Madras High Court in the case of CMRL dated 30.06.2018 (supra), because, firstly in the later decision, the Hon'ble Madras High Court hasn't taken note of the co-ordinate Division Bench decision in the case of CRK Swamy (supra). Further, according to the Ld.AR, even if the order passed by the Hon'ble Madras High Court in the case of CMRL (supra) is carefully read, it can be seen that the Hon'ble Madras High Court has clearly pointed out in the last two Paragraphs of the order i.e. Para No.14 in the case of M/s.CMRL (supra), the Hon'ble High Court noted that Ld.PCIT has recorded a finding of fact that "on



:: 6 ::

examination of the records, it is found that the AO had in the assessment order established that the assessee had concealed his income for filing inaccurate particulars". However, the Hon'ble Madras High Court after going through the records of that case [M/s.CMRL (supra)], found that there was no such finding recorded by the AO in the order of assessment. Therefore, the Hon'ble Madras High Court held that the Ld.PCIT seems to have distorted the order of the assessment and to that extent, the findings of the Ld.PCIT was held to be perverse and therefore, the Hon'ble High Court held that in the absence of any findings of the AO with regard to concealment of income or about furnishing of inaccurate particulars of income, the Ld.PCIT erred in holding that omission to record satisfaction to initiate penalty proceedings was erroneous or prejudicial to revenue. In such factual matrix, the Hon'ble Madras High Court is noted to have upheld the action of the Tribunal setting aside the direction of the Ld.PCIT to initiate penalty proceedings.

9. According to the Ld.AR, in the present case also (as in the case of M/s.CMRL (supra)], it can be seen at Para No.5.2, wherein, the Ld.PCIT has made a similar factual finding (quote) "in this case, it can be seen that the assessment order has a clear finding that the additions made in the order attract penalty as per the provisions of Sec.270A". The Ld.AR drew our attention to the assessment orders in question and made us scan through it and pointed out that there was no such finding in the



ITA Nos.1137 to 1139/Chny/2024
(AYs 2018-19 to 2020-21)
M/s. Anitha Texcot (India) Pvt. Ltd.

:: 7 ::

order of the assessment as asserted by the Ld.PCIT. Therefore, in this case also as in the case of M/s.CMRL, according to the Ld.AR, the Ld.PCIT seems to have distorted the order of assessment and therefore, the findings of the Ld.PCIT to that extent is perverse and therefore, in the absence of clear finding of the AO that there was underreporting or misreporting of income u/s.270A of the Act, the Ld.PCIT erred in holding that omission to initiate penalty u/s.270A of the Act was erroneous in so far as prejudicial to the interest of the Revenue. We find considerable force in the submission of the Ld.AR and find that the Ld.PCIT erred in recording a finding of fact in his impugned order u/s.263 of the Act that in the assessment orders in question, the AO has given a clear finding that the additions made in the assessment order attracted penalty as per the provisions of Sec.270A of the Act. Further, it is noted that it is not the case of the Ld.PCIT that the AO erred in initiating penalty u/s.271AAB(1A) of the Act for all the three assessment years i.e. AY 2018-19 to 2020-21. It is also noted that the AO in the assessment orders (under consideration) hasn't given any finding that the assessee has underreported or misreported its income. Therefore, the Ld.PCIT erred in holding that omission to record satisfaction to initiate penalty proceedings u/s.270A of the Act was clearly erroneous being perverse. Therefore, relying on the decision of the Hon'ble Madras High Court in the case of CIT v. CRK Swamy & the case of CIT v. CMRL (supra), we set aside the



ITA Nos.1137 to 1139/Chny/2024
(AYs 2018-19 to 2020-21)
M/s. Anitha Texcot (India) Pvt. Ltd.

:: 8 ::

impugned order of the Ld.PCIT on the peculiar facts and circumstances of the case.

10. In the result, appeals filed by the assessee for all the assessment years are allowed.

Order pronounced on the 25th day of September, 2024, in Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 25th September, 2024.

TLN, Sr.PS

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

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