

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1308/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2018-19

Arihant Retail Private Limited,
29, Namachivaya Chetty Street,
Old Washermanpet,
Chennai – 600 021.

Principal Commissioner of
Income Tax -1,
Chennai – 600 034.

[PAN: AAICS-3648-F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. T. Banusekar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing : 07.08.2024

घोषणा की तारीख/Date of Pronouncement : 09.10.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income Tax (Appeals), Chennai-1, dated 01.03.2024 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

1. *For that the order of the Principal Commissioner of Income Tax is contrary to law, facts and circumstances of the case and at any*

rate is opposed to the principles of equity, natural justice and fair play.

- 2. For that the order of the Principal Commissioner of Income Tax passed u/s.263 is bad in law.*
- 3. For that the provisions of section 263 are not invocable in the facts and circumstances of the case*
- 4. For that the Principal Commissioner of Income Tax failed to appreciate that there was no error or prejudice much less both to warrant the invocation of the powers conferred u/s.263.*
- 5. For that the Principal Commissioner of Income Tax failed to appreciate that 263 proceedings cannot be initiated in the instant case.*
- 6. For that the Principal Commissioner of Income Tax failed to appreciate that the revision proceedings cannot be initiated as the conditions stipulated u/s.263 were not satisfied in the facts and circumstance of the case.*
- 7. For that the Principal Commissioner of Income Tax failed to appreciate that the Assessing Officer has taken one of the views permissible in law.*
- 8. For that the Principal Commissioner of Income Tax ought not to have directed verification of 90% of purchases when the Assessing Officer has already made 10% disallowance thereof.*
- 9. For that the Principal Commissioner of Income Tax failed to consider the explanations and submissions filed by the appellant during the course of revisionary proceedings.*

3. The only issue arises from the above grounds of assessee is revision order passed by the Id.PCIT u/s.263 of the Act has failed to satisfy the twin conditions i.e., for order passed by the AO u/s.143(3) of the Act, is erroneous in so far as prejudicial to the interest of Revenue, which is sine qua non to invoke the powers u/s.263 of the Act on the following issue:-

i) Setting aside the assessment order passed u/s.143(3) by the AO for verification in regard to disallowance of balance 90% of purchases, apart from 10% disallowed by the AO.

4. Briefly stated facts are that the assessee company filed its return of income declaring a loss of Rs.62,76,779/- on 04.10.2018. The assessee is engaged in the business of retail trading in textiles. Subsequently, the assessee's case was selected for complete scrutiny under CASS on the following issues:-

"Assessee has made substantial purchases from suppliers who are either Non-filer(s) or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in GSTR 1 return".

The AO completed assessment and passed order u/s.143(3) r.w.s. 144B of the Act vide order dated 13.09.2021 by disallowing 10% of purchases Rs.10,24,37,338/- u/s.69C of the Act and Rs.8,70,890/- u/s.2(24)(x) of the Act by holding as under:

"5. On perusal of trading and P & L account as on 31.03.2018, it is found that assessee has shown purchases of Rs.1,02,43,73,377/. Accordingly, notice u/s 142(1) has been issued to the assessee to furnish details of purchase made during the year. However, assessee has not filed any details in the form of purchase bill, order invoice, source of income, date of payment, TDS deduction certificates, bills, vouchers etc to substantiate its claim of business purchase.

5.1 As the assessee couldn't provide the requisite details called for, hence it not possible to verify the claim of the purchases made. In absence of the bank statement, source of fund, purchase bill, order invoice. details of TDS deducted on payments made for purchase expenses, bills, vouchers, proofs etc in the form of documentary evidences, thus genuineness of the purchase is not established by the assessee.

5.2 It is pertinent to note that as per tax audit report in Form no.3CD, the tax auditor has made the following observations/comments/discrepancies/ inconsistencies, the relevant part of which is reproduced as under:

"The assessee explains that the nature of business is such that it is not possible to maintain day to day stock register showing quantitative details. Hence these details have not been provided."

5.3 In view of the above discussions, the business purchase for an amount of Rs.102,43,73,377/- remains unexplained and is being treated as "bogus". As the entire amount of Rs.102,43,73,377/- couldn't be disallowed, hence, to protect the interest of revenue, a moderate disallowance of business purchase amounting to Rs.10,24,37,338/- (10% of the total business purchase incurred of Rs.102,43,73,377/- is hereby made and is treated as unexplained expenditure u/s. 69C of-the IT Act and the same is added back to the total income of the assessee under the head "Income from other sources". Penalty u/s 271AAC(1) is being initiated for under-reporting of income. Tax shall be calculated according to section 115BBE of the Income Tax Act, 1961.

6. Disallowances u/s.36(1)(va) r.w.s 2(24)(x): On perusal of the audit report in Form 3CB, it is noticed that the assessee has made delayed payments in respect of employee's contribution to PF/ESIC. The said payments have not been deposited by the due dates prescribed as per the provisions of the Employee's State Insurance Act. As per the proviso to section 2(24)(x) the employee's contribution to PF/ESIC shall be treated as deemed income if the same is not paid within the due date of payment for these funds. The details of the payments of PF/ESIC which are made beyond the due date is as under:

S No	Nature of fund	Sum received from employees	Due date of payment	Actual date of payment to the concerned authorities
1	PF	252562	15.05.2017	24.05.2017
2	PF	250439	15.06.2017	27.06.2017

3	PF	244661	15.04.2018	17.04.2018
4	ESIC	62017	21.05.2017	24.05.2017
5	ESIC	61211	21.06.2017	27.06.2017
	Total	870890		

6.1 On perusal of above table, it is seen that the payments of PF/ESIC amounting to Rs.8,70,890/- has been deposited to the concerned authorities, which have been remitted belatedly. This amount of Rs.8,70,890/- is disallowable and is treated as deemed business income of the assessee because of delayed payments made after the prescribed dates. Therefore the sum of Rs.8,70,890/- being employees' contribution to PF/ESIC is added back to the total income of the assessee u/s. 2(24)(x) r.w.s. 36(1)(va)."

5. Subsequently, the PCIT issued show-cause notice for revising the assessment u/s.263 of the Act vide dated 31.01.2023 to examine the following issue:-

"3. On perusal of the Assessment Record for the Assessment Year 2018-19, the following facts have emerged:

3.1 It is noticed that during the proceedings, the Assessing Officer concluded that the business purchase for an amount of Rs.102,43,73,377/- remains unexplained and was treated as bogus, and it had been stated that the entire amount of Rs.102,43,73,377/- could not be disallowed, hence to protect the interest of revenue, a moderate disallowance of business purchases the extent of 10% i.e., Rs.10,24,37,338/- was treated as unexplained expenditure u/s 69C of the I.T. Act.

3.2 As per Section 69C of the I.T. Act, in any financial year, if an assessee has incurred any expenditure and the assessee offers no explanation about the source of such expenditure or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, the amount covered by the such expenditure may be deemed to be the income of the assessee. Hence, there is no provision in the above section to tax the unexplained expenditure on percentage basis. Hence, the assessee was asked to show cause why balance expenditure of Rs.102,43,73,377 minus Rs.10,24,37,338 should not be brought to tax."

The PCIT accordingly passed revision order u/s.263 of the Act dated 01.03.2024 directing the AO to verify the following issue

- i) Disallowance of entire purchases U/s.69C.

Aggrieved, assessee preferred appeal before the Tribunal.

6. The Ld.AR for the assessee assailing the action of the Ld.PCIT stated that the proper verification of issue and necessary verification was not done by the AO before passing the order U/s.143(3) of the Act was baseless, since the very reason for selection of 'complete scrutiny' under CASS was as under :

"Assessee has made substantial purchases from suppliers who are either Non-filer(s) or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in GSTR 1 return".

The Ld.AR filed a paper book consisting of 103 pages as detailed below:

S.No	Particulars	Page no.
1	Declaration from authorized representative	1
2	Copy of show cause notice issued by Principal Commissioner of Income Tax dated 31.01.2023	2-4
3	Copy of 142(1) notice dated 06.01.2021	5-8
4	Copy of reply filed before NFAC dated 10.03.2021	9-11
5	Copy of reply filed before NFAC dated 05.04.2021	12
6	Copy of show cause notice issued by NFAC dated 17.04.2021	13-17
7	Copy of reply filed before NFAC dated	18-24

	19.04.2021	
8	Copy of 142(1) notice dated 08.06.2021	25-26
9	Copy of reply filed before NFAC dated 19.07.2021	27-28
10	Copy of reply filed before NFAC dated 20.07.2021	29-89
11	Copy of show cause notice issued by NFAC dated 18.08.2021	90-94
12	Copy of reply filed in response to show cause notice on 23.08.2021	95-96
13	Copy of show cause notice issued by NFAC dated 01.09.2021	97-100
14	Copy of reply filed in response to show cause notice on 01.09.2021	101-103

7. Further, the Ld.AR drew our attention to the notice u/s.142(1) of the Act dated 06/01/2021 issued by AO to the assessee to furnish the following details on or before 21/01/2021 (PB page No.6 to 8):

- i) purchase register*
- ii) stock register*
- iii) Name, address, email address, PAN and GST registration number of the parties from whom the purchases have been made*
- iv) date of purchase*
- v) copy of agreement if any*
- vi) product details:*
 - a. Item No.*
 - b. Quantity*
 - c. Amount*

The Ld.AR stated that in response to the notice certain details were filed by the assessee on 10/03/2021 (PB page No.9 to 11) and the details of purchases were filed on 05/04/2021 (PB page No.12). The Ld.AR took us through the show cause notice dated 17/04/2021 issued by the AO, wherein the AO had proposed to disallow the entire purchases debited to P & L A/c.

to the tune of Rs.1,02,43,73,377/- as unexplained expenditure by giving an opportunity to assessee to furnish the details (PB page No.13 to 17).

8. In response to the said show cause notice the Assessee filed a detailed reply on 19/04/2021 by providing the following details in relation to the purchases, stating that the purchases are made from the same suppliers who had supplied in the A.Y. 2017-18 also, which was also selected for scrutiny assessment and accepted the purchases by the AO. Further, the assessee had stated that the payments to suppliers are duly made by account payee cheques or through electronic modes and reflected in the bank statements. These supplies have been declared as turnover in their respective GST returns by the suppliers, which has been extracted from the GST portal to prove the genuineness of purchases. The assessee also had filed the entire list of suppliers along with their GST regn. Nos. and addresses (PB page No.18 to 24) by uploading in the Income Tax Portal.

- List of purchases filed on 05/04/2021

- Bank statements of Standard Chartered bank, Karur Vysya Bank, State Bank of India, Kotak Mahindra Bank, Indian Overseas bank, Axis Bank, Indus Ind Bank
- Purchase register, Debit Notes register, GSTR 2A from July 2017 to March 2018 onwards
- Copies of Purchase Invoices

9. The Ld. AR stated that, the AO again issued notice u/s.142(1) of the Act on 08/06/2021 seeking the details in annexure to be furnished by the assessee on or before 11/06/2021.

"1. Details of unregistered purchases from total purchases made during the year.

2. As per information available, it is found that you have made substantial purchases from suppliers who are either non-filer(s) or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in GSTR 1 return. In this regard, please furnish list of suppliers to whom such purchases has been made by you during the year."

10. The assessee filed the response by providing the following details on 19/07/2021 by uploading the list of Purchases from Sales tax exempted dealers before GST introduction, Purchases from registered dealers and also sample invoices for all kinds of purchases (Paper Book Page No.27 to 89).

"We are in receipt of your above-mentioned notice asking us to submit certain details on or before 11-06-2021. However, we were unable to login the new income tax portal until 14th July 2021. Hence, we are submitting our reply now as under,

1. Details of Unregistered Purchases from Total Purchases made during F.Y.2017-18

In this connection, we submit herewith the breakup of purchases as under,

Particulars	Amount	Annexure
Purchases from Dealers who were not required to be registered under VAT/CST Act till 30.06.2017	4,15,59,063/-	Annexure A
Purchases from Registered Dealers	98,28,14,314/-	Annexure B
Total Purchases as per P&L Account	102,43,73,377/-	

We also wish to inform that we are in the wholesale and retail business of trading in Textiles, Sarees, Readymade Garments, Apparels etc. During the period from 1 April 2017 to 30th June 2017, before the applicability of GST, VAT/CST was not applicable on Textiles, Sarees, Handloom items etc. Hence, the suppliers dealing exclusively in those

items were not required to be registered under the VAT/CST Act. The entire purchases as per list attached in Annexure A pertains to purchases of goods which were exempt from VAT/CST from 01-04-2017 to 30-06-2017 before the applicability of GST. We also wish to inform that almost all of our purchases post GST have been from registered suppliers. We are also attaching herewith a list of sample invoices in Annexure C pertaining to purchases of exempt goods from dealers not requiring VAT/CST registration evidencing the purchase of exempted supplies for your immediate reference and records.

2. As per information available, it is found that you have made substantial purchases from suppliers who are either non-filer(s) or have filed non-business ITR or reflected a substantially lower turnover in ITR as compared to turnover shown in GSTR 1 return. In this regard, please furnish list of suppliers to whom such purchases has been made by you during the year. We wish to reiterate that it is our company policy to purchase goods from registered suppliers only. However, before the applicability of GST many of our supplies like textiles sarees etc., were exempt from

VAT/CST and the suppliers were not required to be registered under VAT/CST Act. Post applicability of GST from 01-07-2017, almost all of our purchases are from registered dealer as evident from GSTR-2A downloaded from the GSTN Portal and submitted vide our reply dated 19th April, 2021. We are not aware N of any suppliers who have not filed their Business ITR or shown substantially lower turnover in ITR as compared to turnover shown in their GSTR 1 return, since that information is neither available with us nor we are concerned about the same.

Based on the above submission, we request you to complete the assessment and oblige. In case you require any further information/clarification, we shall be glad to provide the same on hearing from you."

11. On perusal of replies filed by the assessee, the AO - NFAC again had issued a show causes notice dated 18/08/2021 and 01/09/2021 and in response the assessee had filed the details through income tax portal on 23/08/2021 and 01/09/2021 explaining the entire purchases and other details called for.

12. The Ld.AR summed up his arguments stating that the case selected for complete scrutiny for the specific reason to verify the purchases and the same has been called for by the AO-NFAC on various dates and the assessee had provided the entire details of purchases, registers, all the bank statements to show the corresponding payments made to suppliers along with the sample invoice copies, list of creditors, their GST regn. Nos

along with their addresses during the course of assessment proceedings. These documents, explanations and details were duly considered by the AO while passing the Assessment order U/s.143(3) and drawn the conclusion that the Sale of goods to the tune of Rs.132,12,33,622/- (Net of GST) cannot happen without purchases and hence disallowed 10% of the purchases i.e. Rs.10,24,37,338/-. Hence, the Id.AR vehemently argued that there was no error in the order of the Assessing Authority. These facts which were apparent from the assessment records were ignored and the Principal CIT set aside the assessment order.

13. The Learned Principal CIT failed to take into account the principles laid down in the following decisions which were binding on him:

- i) Carmel Softech Pvt. Ltd., Chennai v. The Income Tax Officer, Corporate Ward 1(3), Chennai (96 ITR (Trib) (S.N.) 34)(Chen Trib) [ITA No. 724/CHNY/2018]
- ii) Benninger India Private Limited vs. The Dy.Commissioner of Income Tax-1(1), Mumbai. (ITA/2360 of 201 7 dated 28.09.2018)
- iii) Sigma Research & Consulting (P) Ltd. v. Commissioner of Income tax [2019] 103 taxmann.com 397.

14. The Hon'ble Supreme Court in the case of CIT vs. M.Chandra Sekhar (151 ITR 433) (SC) has held that the presumption that A.O. has considered the details filed by the assessee was "founded" on the principle that an officer entrusted with a judicial or quasi-judicial duty must be presumed to have discharged his duties in a proper and bonafide manner. This view is confirmed by the full bench decision of the Delhi high court in CIT Vs. Kelvinator of India Ltd (256 ITR 1) (Delhi FB), was upheld by the Supreme court in Commissioner of Income Tax Vs. Kelvinator Of India Ltd (320 ITR 561)(SC). In light of the above arguments, the Ld.AR prayed for setting aside the order of the Ld.PCIT.

15. Per contra, the Ld.DR relied on the order of the Ld.PCIT and prayed for upholding the same by dismissing the appeal of the assessee.

16. We have heard the rival contentions and perused the orders of the AO and that of the PCIT along with the various case laws referred by the Id.AR to claim that the order u/s.263 of the Ld.PCIT is against the law and facts. The jurisdiction u/s

263 can be exercised only when both the following conditions are satisfied:

- (i) the order of the Assessing Officer should be erroneous and
- (ii) it should be prejudicial to the interest of the revenue,

These conditions are conjunctive. In the instant case, there was nothing erroneous and prejudicial. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible as held in the case of Malabar Industrial Company Ltd Vs.CIT (243 ITR 83) (SC) and CIT Vs. Green World Corporation (314 ITR 81)(SC).

17. The Principal CIT can invoke section 263 if on examination of records he forms an opinion that the order passed by the Assessing Authority is erroneous in so far as it is prejudicial to the interest of the revenue. The learned Principal CIT, failed to note that a revision order cannot be passed against an order of assessment merely on the basis that in his opinion, an alternate view is possible. The PCIT, cannot substitute his view in place of that of the Assessing officer merely because the Principal Commissioner of Income Tax thinks that the assessment should have been completed in

another way. It has been held by the Bombay High Court in the case of Gabriel India Ltd. (203 ITR 108)(Bom) as to when an order can be termed as erroneous:

"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of 'substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous..... . There must be some prima facie decision is held to be erroneous material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed..."

18. We have gone through the PCIT's order and noted that on account of purchases for an amount of Rs.102,43,73,377/- remains unexplained and was treated as bogus and made an addition of only 10% of purchases i.e. Rs.10,24,37,338/- as unexplained expenditure U/s.69C of the Act, he has noted the facts and his observation as under:-

"7. In my considered view, this is a fit case to invoke the provisions of Sec. 263 of the Act since the Assessing Officer had failed to make a complete verification and enquiry with respect to the aspects discussed supra and had passed the Assessment Order u/s 143(3) of the Act without evaluating complete evidence. The assessment order so passed, therefore, is considered both erroneous and prejudicial to the interest of the revenue. Accordingly, the assessment order is hereby PARTLY SET ASIDE u/s 263 of the Act, with a direction to the Assessing

Officer to examine 90% of the purchases, as discussed in the order, during the Accounting Year in question and pass a fresh order after granting opportunity to the assessee, within the stipulated time.

8. This is in respect of 90% of purchases which are under verification in Revision proceedings. For the balance 10% of purchases addition made in the Assessment order, the assessee is on appeal. Hence, the Assessment order is partially set aside to verify the 90% purchases for which revisionary proceedings have been initiated. Further, the AO has to clearly bring out whether the addition is under section 68 or 37 and also the AO must clearly bring out the reason for the same (in view of the observations of local committee for grievances against high pitched assessment).

8.1 Further. the Assessing Officer is also directed to take the decision of the High pitched committee into the account issued with reference to the addition made by the AO being 10% of the purchases. As the verification may get linked to the appeal also (for the balance 10% of purchases) the AO is directed to keep the CIT (Appeals) informed."

19. We noted that the PCIT has simpliciter carried out unnecessary exercise by obtaining the information from the AO's order in assessment records, which are entirely considered by the AO in his original assessment u/s.143(3) of the Act. Further, the PCIT without appreciating the fact that the assessee has achieved a turnover of Rs.132,12,33,622/- (Net of GST), proposed to make a disallowance of entire purchases of Rs.102,43,73,377/- is against the basic principal of business. The assessee cannot sell the goods without purchases and hence the AO's action of reasonable disallowance cannot be disapproved under the garb of Section 263 of the Act.

Therefore, the view taken by the AO, after considering the entire details furnished by the assessee sought, obtained and duly considered during the assessment proceedings, cannot be termed as erroneous to invoke the powers u/s.263 of the Act.

20. We, after going through the provisions section 263 of the act and facts of present case, are of the view that the factual matrix stares in the face of the record in the light of the legal requirement of a satisfaction that for invoking the powers u/s.263 of the Act, necessarily presupposes the statutory satisfaction that although there is some error with regard to the completed assessment but the order passed by the officer has to be erroneous in so far as prejudicial to the interest of the Revenue. The plain language of the provision is more than abundantly clear that it is not every error or mistake that should induce the PCIT to resort to exercise the powers u/s.263 of the Act. Where the factual matrix shows that it is a marginal situation and when by a careful and cautious judgment the AO has considered the issue in hand, the exercise of the power u/s.263 of the Act by the PCIT is not proper. Though the provisions of section 263 of the Act vests power in PCIT in subjective terms, the PCIT has blindly considered the issue of

purchases as a reason for invoking the powers of section 263, stating that the order passed by the AO was an estimated percentage of disallowance of expenditure. In view of this discussion and respectfully following the various judicial decisions of Hon'ble courts, we are of the view that the order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue. Thus, we set aside the order of the PCIT. Hence, we quash the revision order passed by the PCIT and allow the appeal of assessee.

21. In the result the appeal of the assessee is allowed.

Order pronounced in the court on 09th October, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**Vice President**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 09th October, 2024

JPV

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