

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:353/CHNY/2024

निर्धारण वर्ष/Assessment Year:2017-18

The Income Tax Officer,
Non-Corporate Ward -10(3),
Chennai.

Ms.Rajkumari,
Vs. 38, Thiyagappa Street,
Kilpauk Garden,
Chennai - 600 010.

PAN: AAEPR 6866R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Nilay Baran Som, CIT

प्रत्यर्थी की ओर से/Respondent by

: Shri D.Anand, Advocate

सुनवाई की तारीख/Date of Hearing

: 09.10.2024

घोषणा की तारीख/Date of Pronouncement

: 25.10.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1058671182 (1) dated 12.12.2023. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 10(5), Chennai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act,

1961 (hereinafter the 'Act') vide order dated 20.12.2019. The impugned Corrigendum for assessment order u/s.143(3) of the Act was framed by the Income Tax Officer, Non-Corporate Ward 10 (5), Chennai vide order dated 21.12.2019.

2. The only issue in this appeal of Revenue is as regards to the order of CIT(A) holding that the AO has no power either to withdraw or modify or substitute one assessment order passed by him earlier with another assessment order. For this, Revenue has raised the following four grounds which are relevant to the issue:-

- 1. The CIT(A) erred in allowing the appeal of the assessee by holding that the AO has no power to either withdraw or modify or substitute one assessment order passed by him earlier with another assessment order subsequently.*
- 2. The CIT(A) failed to appreciate the fact that there are typographical mistakes crept in the assessment order of some different persons was mistakenly entered into the system. Subsequently the mistake was rectified by the AO through corrigendum dt.21.12.2019, thus allowable under the provisions of the Act.*
- 3. The CIT(A) failed to appreciate that corrigendum dt.21.12.2019 does not amount to withdrawal or modification or substitution of assessment order.*
- 4. The CIT(A) failed to appreciate the show cause notice dt.26.11.2019, wherein the various additions were proposed by the AO, and which base for the corrigendum dt.21.12.2019.*

3. Brief facts are that the assessee is an individual and filed her return of income for the relevant assessment year 2017-18 u/s.139 of the Act on 31.03.2018. This return of income was processed u/s.143(1) of the Act. Subsequently, assessee's case was selected

for scrutiny assessment under CASS and accordingly, notices u/s.143(2) & 142(1) of the Act were issued. The assessee furnished all the required details including balance sheet, profit & loss account, cash book, wealth tax returns, bank statements, gift deeds, confirmation from sundry loan creditors, valuation report etc. The AO completed assessment u/s.143(3) of the Act vide order dated 20.12.2019 and issued computation sheet and demand notice u/s.156 of the Act dated 20.12.2019. Vide the assessment order dated 20.12.2019 passed u/s.143(3) of the Act, the AO accepted the returned income at Rs.6,37,862/-. One fact here is to be noted that the assessee in her return of income filed admitted total income at Rs.3.25 lakhs and not the returned income noted by the AO at Rs.6,37,862/- in the assessment order. Subsequently, the AO issued corrigendum i.e., corrigendum for assessment order u/s.143(3) of the Act for the relevant assessment year 2017-18 and the corrigendum was dated 21.12.2019. The AO in the corrigendum order u/s.143(3) of the Act dated 21.12.2019 computed the assessed income at Rs.2,28,54,344/- by making an addition of Rs.2,25,29,344/- under various heads. The assessee challenged the corrigendum passed by the AO to the order u/s.143(3) dated 21.12.2019 before CIT(A) by challenging that the corrigendum issued by AO is completely against the assessment order passed

u/s.143(3) of the Act and hence, is bad in law and is against the principles of natural justice.

4. The CIT(A) after going through the grounds raised by AO held that as per provisions of the Act, the AO has no power to either withdraw or modify or substitute one assessment order passed by him earlier with another assessment order subsequently. Accordingly, he quashed the corrigendum passed by AO. Aggrieved, now Revenue is in appeal before us.

5. Before us, the Id.CIT-DR argued that the return of income was filed on 31/3/2018 admitting total income of Rs.3,25,000/-. The assessment order dated 20/12/2019 was issued stating that the return of income was e-filed on 7/11/2017 admitting total income of Rs.6,37,862/-. The total income determined in the assessment order is Rs.6,37,862/-, whereas, the computation sheet dated 20.12.2019 shows a total income of Rs.2,28,54,340/-, and the demand notice dated 20.12.2019 was issued raising a demand of Rs. 1,11,55,972/-. The Assessing Officer issued a corrigendum dated 21.12.2019 correcting the total income as Rs.2,28,54,340/-. The CIT(A)-NFAC quashed the assessment following the decision of Delhi Bench of this Tribunal in the case of DCIT Vs Mondon Investments Ltd. in ITA No.4014/Del/2018 dated 25/7/2023. The Id.CIT-DR further stated

that the assessment order dated 20.12.2019 mentions the date of filing of return of income as 07.11.2017 and the income returned as Rs. 6,37,862/-. Both of these are at variance with the facts of the present case where the return of income was filed on 31.03.2018 vide acknowledgement No.596294740318 admitting returned income as:

	Rs.
i. Salary	1,36,000
ii. House Property	10,920
iii. Capital Gain	12,52,750
iv. Other Sources	3,28,080
v. Loss to be set-off against Capital Gain	12,52,750
Gross Total Income	<u>4,75,000</u> (-)
Less: Chapter VIA	1,50,000
Total Income	<u>3,25,000</u>

He further submitted that the computation sheet dated 20.12.2019 issued in the present case correctly shows the income returned by the assessee under the heads Salary, House Property, Capital Gain and Loss claimed under Capital Gain. The deduction under Chapter VIA is also allowed. The income under Other Sources is shown at Rs.2,28,57,424/-. The demand payable is quantified in the computation sheet at Rs.1,11,55,972/-. A demand notice dated 20.12.2019 was issued to the assessee raising the same demand. Thus, it is proved that the additions made which were omitted to be mentioned in the assessment order dated 20.12.2019 have been correctly captured in the computation sheet dated

20.12.2019 and the consequent demand was also raised simultaneously. Upon receipt of the assessment order and computation sheet and demand notice dated 20.12.2019, the assessee will clearly be aware that the details of date of filing Return of Income and income returned mentioned in the assessment order are incorrect. The assessee will further be aware that the subject matter discussed in the assessment order dated 20.12.2019 regarding the deposit of SBNs is also not relevant to the case of the assessee as no such issue was raised by the Assessing Officer in the present case. The Id.CIT-DR stated that the Assessing Officer had issued a show cause notice dated 26/11/2019 to the assessee on the following issues:

- i. Unexplained Investment in precious stones
- ii. Unaccounted investment u/s.69
- iii. Negative cash balance treated as unexplained investment
- iv. Bogus claim off opening cash balance and realization of Sundry debtors.

5.1 Subsequently, on 21.12.2019, the Assessing Officer issued a corrigendum to the assessment order where he mentioned that the assessment order dated 20.12.2019 should be read as mentioned in the corrigendum. The corrigendum mentions the date of filing of Return of Income and income returned under various heads by the

assessee correctly. Further, the additions made are on the same points raised in the show cause notice dated 26.11.2019 and the total income determined is Rs. 2,28,54,344/- which is the same as in the computation sheet dated 20.12.2019. The Id.CIT-DR submitted that no prejudice was caused to the assessee by the Assessing Officer issuing a corrigendum dated 21.12.2019 and correcting the errors in the assessment order dated 20.12.2019 as the income quantified was the same as per computation sheet dated 20.12.2019 and demand raised was also same as per demand notice dated 20.12.2019. The Id.CIT-DR stated that the decision relied upon by CIT(A) in the case of Mondon Investments Ltd., *supra*, the ITAT has held that the Assessing Officer has no power to cancel/recall/withdraw the assessment order or declare it null and void. In the present case, the Assessing Officer has not cancelled or withdrawn the assessment order. The assessment made on 20.12.2019 and the income determined and demand raised on 20.12.2019 have not been modified by the corrigendum dated 21.12.2019. Thus, the decision relied upon by the Id.CIT(A) has no application to the present case.

5.2 He relied on the decision of the Hon'ble Madras High Court in the case of Dr.Bharani R. Paluvai in WP No.10817 & 10818 of 2018 dated 30.06.2021 upheld the validity of notice u/s. 148 dated

31.03.2018 mentioning AY 2010-11 and Corrigendum dated 31.03.2018 correcting the notice u/s.148 as A Y 2011-12. He further relied on the decision of Bangalore Bench of the Tribunal in the case of I Brands Beverages Pvt. Ltd., in ITA 882/Bang/2019 dated 13/07/2021, wherein the Tribunal directed the Assessing Officer to read the corrigendum issued by the valuer as part of the valuation report. He stated that the facts of the present case are covered by this decision as in the present case only, certain errors in the assessment order dated 20.12.2019 have been corrected by issue of corrigendum dated 21.12.2019 by the AO. Thus, he submitted that the corrigendum dated 21.12.2019 has to be read as part of the assessment order dated 20.12.2019 and the assessment order dated 20.12.2019 has not been withdrawn or cancelled/recalled.

5.3 The Id.CIT-DR further relied on the decision of Hon'ble High Court of Madras in the case of Prathyusha Educational Trust vs. PCIT reported in [2019] 416 ITR 129 (Mad) and the decision of Delhi Bench of this Tribunal in the case of ITO vs. Ramesh Chander Rajput in ITA No.1189/Del/2022, order dated 03.05.2024.

6. On the other hand, the Id.counsel for the assessee relied on the decisions of Delhi Bench of this Tribunal in the case of DCIT vs. Mondon Investments Ltd., in ITA No.4014/Del/2018, order dated

25.07.2023 and the Kolkata Bench of this Tribunal in the case of Philips India Ltd., vs. ACIT in ITA No.2308/Kol/2019, order dated 06.02.2023 and also the decision of Hon'ble High Court of Madras in the case of BVM Global Education Trust in WP No.10834 of 2024, order dated 25.04.2024.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee has filed her return of income admitting total income at Rs.3.25 lakhs whereas in the assessment order passed by AO dated 20.12.2019 u/s.143(3) of the Act, the returned income accepted is at Rs.6,37,862/- but along with this, the demand notice issued u/s.156 of the Act and computation sheet dated 20.12.2019 categorically states additions to the tune of Rs.2,25,29,344/- under various heads and in Form No.156 issued on 20.12.2019, the total tax payable was Rs.1,11,55,972/-. We noted that in the assessment order originally issued dated 20.12.2019 u/s.143(3) of the Act, the presumable issue relates to cash deposits made during demonetization period in SBNs and the relevant text of the assessment order reads as under:-

"The assessee e-filed his return of income for the AY 2017-18 on 07/11/2017 admitting an income of Rs.6,37,862/-. The case was selected for scrutiny under CASS.

Notice u/s.143(2) dated 09/08/2018 was issued through e-proceedings and was duly served to the assessee on 11/08/2018. Notice u/s.142(1) dated

15/07/2019 was issued through e-proceedings calling for details. Subsequently notice u/s.142(1) r.w.s.129 dated 19/10/2019 was issued to the assessee. In response to the notices, the assessee e-filed the details such as branch-wise bank accounts statements, explanations in respect of sources for the cash deposits made during demonetization period along with details of deposit of SBNs.

After perusing the details submitted by the assessee, the assessment is computed as under:-

Returned Income	Rs.6,37,862/-
Assessed Income	Rs.6,37,862/-

7.1 Subsequently on 21.12.2019, the very next day and that also within the limitation period, the AO issued corrigendum order dated 21.12.2019 wherein the AO has made additions under the following heads:-

- i) Unexplained investment in precious stones amounting to Rs.53,14,00/-.
- ii) Unaccounted investment u/s.69 of the Act amounting to Rs.55,43,320/-
- iii) Negative cash balance treated as unexplained investment amounting to Rs.7,51,527/-
- iv) Bogus claim of opening cash balance and realization of sundry creditors amounting to Rs.1,02,52,572/- and
- v) Bogus liability claimed in balance sheet of Rs.6,67,925/-

Thereby making total addition of Rs.2,25,29,344/-. We further noted that in the assessment order issued originally dated

20.12.2019, which mentions date of filing of return of income as 07.11.2016, whereas the assessee filed return of income on 31.03.2018 and the returned income as per the original assessment order is Rs.6,37,862/- whereas there is variance in the returned income filed by assessee at Rs.3,25,000/- vide acknowledgement No.596294740318. We noted that the computation sheet dated 20.12.2019 issued in the present case correctly shows the returned income by the assessee under various heads i.e., salary, income from house property, capital gains claimed under the head 'capital gain' and deductions claimed under Chapter VIA of the Act. We noted that the assessment order in this case was framed by AO only on 20.12.2019 but it was under mistaken notion or mistaken belief or may be under new technical effect of cut paste has pasted the relevant assessment order of some other assessee while issuing original assessment order dated 20.12.2019. The corrigendum issued on 21.12.2019 to the assessment order i.e., immediately on next day is exactly matching with the computation sheet and demand notice issued on 20.12.2019. For this, the Id.CIT-DR has relied on various case laws including the case law of Hon'ble Supreme Court in the case of Kalyankumar Ray vs. CIT reported in [1991] 191 ITR 634 (SC), wherein the Hon'ble Supreme Court has defined the integrated process of assessment "*Assessment is one integrated process involving not only the assessment of the total income but also the*

determination of the tax. The latter is as crucial for the assessee as the former. Section 144, which also describes the same process, makes no distinction. The I.T.O. has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and that the demand notice under Section 156 has to be issued in consequence of such an order. The statute does not, however, require that both the computations should be done on the same sheet of paper, the sheet that is superscribed "assessment order". It does not prescribe any form of the purpose. Once the assessment of the total income is complete, the calculation of the net tax payable is a process which is mostly arithmetical but generally time consuming. If, therefore, the I.T.O. first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the I.T.O. that the process described in Section 143(3) will be complete. The practice is that after the "assessment order" is made, the tax is calculated and the necessary columns of I.T.N.S. 150 are filled up showing the net amount payable in respect of the assessment year. This form is generally prepared by the staff but it is checked and signed or initialed by the I.T.O. and the notice of demand follows thereafter. The statute does not, in terms, require the service of the assessment order or the other form on the assessee and contemplates only the service of a notice of demand while the "assessment order" (ITNS 65) used to be generally sent to the assessee, the other form was retained on file and a copy occasionally sent to the assessee. I.T.N.S. 150 is also a form for determination of tax payable and when it is signed or initialed by the I.T.O., it is

certainly an order in writing by him, determining the tax payable, within the meaning of Section 143(3). It may be only a tax calculation form for departmental purposes, but this does not detract from its being considered as an order in writing determining the sum payable by the assessee. There is no reason why this document, which is also in writing and which has received the imprimatur of the I.T.O., should not be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of Section 143(3). In the instant case, the I.T.O. has signed the form I.T.N.S. 150. Therefore, the statutory provision has been duly complied with and that the assessment order was not, in any manner, vitiated. Judicial decisions also emphasise that all that is need is that there must be some writing initialed or signed by the ITO before the period of limitation prescribed, for completion of the assessment has expired in which the tax payable is determined and not that the form usually styled as the "assessment order" should itself contain the computation of tax as well." We noted that the Hon'ble High Court of Madras in the case of Prathyusha Educational Trust, *supra* has also considered exactly identical issue in paras 14 to 16 as under:-

14. We have noted the averments set out in paragraph 4 of the assessment order dated 28.03.2013, from which, it is seen that notice under Section 142(1) of the Act was issued as early as on 12.02.2013, wherein details were called for from the assessee, the assessee did not respond, summons under Section 131 of the Act was issued directing the Chairman of the assessee Trust to be present, the Chairman did not honour the summons nor submitted any details, subsequently the General Manager (Finance) of the assessee appeared but did not submit any details and subsequently, the Chairman appeared and stated that he will give the details by 21.03.2013 which commitment he did not honour. Before all these events could happen the assessee received notice under Section 153A of the Act, filed his return of income on 09.11.2011, responded to the subsequent notice issued under Sections 143(2) and 142(1) of the Act, appointed a Chartered Accountant

who appeared in the matter but subsequently had withdrawn his appearance by letter dated 13.03.2013.

15. Section 144 of the Act deals with best judgment assessment. Three contingencies have been contemplated under Sub-Section (1) of Section 144 of the Act which empowers the Assessing Officer to proceed on best judgment basis. The case of the assessee would fall with Clauses (b) and (c) of Section 144(1) of the Act, which reads as follows:

144.(1). If any person

*(a) ***

(b) fails to comply with all the terms of a notice issued under sub-section (1) of Section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143.

16. The assessee failed to comply with the notice under Section 142(1) of the Act dated 12.02.2013. The summon which followed the notice under Section 131 of the Act was also ignored. The assessee having filed his return of income on 09.11.2011 failed to comply with the terms of the notice issued under Section 143(2) of the Act. In such contingency, the Assessing Officer after taking note of the particulars available on record, seized the documents and statements recorded during the course of search completed the assessment. This has been clearly brought out in paragraph 4 of the assessment order. Therefore, we are of the clear view that the assessment for the year under consideration were under Section 144 of the Act and mentioning of Section 143(3) of the Act in the preamble of the assessment order is an error which is apparent on the face of the order and requires to be rectified. Therefore, the corrigendum dated 22.01.2015 is legal and valid.

7.2 We noted from the above judgment of Hon'ble High Court of Madras that the Hon'ble High Court has held the corrigendum issued in rectifying the error in preamble of the assessment order as legal and valid. Considering the facts of the present case before us, we noted that the AO while issuing original assessment order has

wrongly noted the details of some other assessee as is apparent from the assessment order issued on 20.12.2019. The fact is that the corrigendum issued thereafter i.e., immediately on next day on 21.12.2019 carries the correct assessment order which was issued as a correct assessment order. Admittedly, the assessment order issued vide corrigendum is matching with the computation sheet and demand notice issued along with the original assessment order dated 20.12.2019. The decision of Hon'ble Supreme Court rather support the case of Revenue for the reason that the ITNS 65 and ITNS 50 i.e., Form for determination of tax payable and demand notice (in old scheme), now in computerization the computation sheet and demand notice is generated on the system which was created itself on 20.12.2019. In our view, the AO has made mistake in issuing original assessment order and subsequently rectified the mistake by issuing corrigendum which is a valid assessment order and hence, we reverse the finding of CIT(A) on this issue.

8. Since the CIT(A) has not adjudicated the issues on merits, the matter is restored back to the file of the CIT(A) for adjudication on merits after allowing reasonable opportunity of being heard to the assessee.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 25th October, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th October, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.