

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

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1542/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2019-2020

Vaidyanathan Kalaivani,
No.5/61, Plot No.43,
II Cross Street,
Sea Avenue, Neelankarai,
Tiruvanmiyur 600 041.
Chennai.

PAN: AGVPK 1515D

Vs. The Principal Commissioner of Income
Tax-3
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. A.S. Sriraman, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. Niay Baran Som, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 26.09.2024

घोषणा की तारीख/Date of Pronouncement : 28.10.2024

आदेश /O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the
Principal Commissioner of Income Tax-3, Chennai in order
No.ITBA/REV/F/REV5/2023-24/1063798645(1),dated 31.03.2024 for
assessment year 2019-2020.

2. Brief facts of the case are that the assessee filed return of income on 18/03/2020 for the AY.2019-20 admitting a total income of Rs.6,45,700/-. The case was selected for complete scrutiny on the issues of i) Salary income, ii) Refund claim, iii) Other income reported in schedule A-OI not credited to profit and loss account. The assessment order was passed by FÃO on 13/08/2021 accepting the income returned. On perusal of the records available, it was noticed that the assessee was in receipt of Rs.3,00,00,000/- as compensation towards termination for her services from her ex- employer. M/s Trimble Information Technologies India Pvt Ltd consequent to an settlement reached with the company after the company moved the Hon'ble Madras High Court against the order of Commissioner of Labour dated 27.03.2017 and the order of Special Deputy Commissioner of Labour dated 01.04.2014. As per the settlement reached, the company to deducted TDS @ 35% on the gross compensation of Rs.3,00,00,000/- paid to the assessee. Accordingly, an amount of Rs.1,04,38,406/- was deducted towards TDS payment. The assessee treated the compensation received as capital receipt in the return of income and claimed the TDS amount as refund.

3. The solitary issue may be formulated as under:-

'Whether the Id. PCIT u/s.263 of the Act erred in directing the Id. Assessing Officer to add back a sum of Rs.3,00,00,000/- received by the assessee as income under the head "income from other sources" in terms of Section 56(2) (xi) of the Income Tax Act, 1961 (in short "the Act") ?'

4. The Id. Ld. Assessing Officer framed reassessment u/s.143(3) r.w.s. 144B of the Act vide order dated 13.08.2021 as under:-

1. The case was selected for complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

S.No.	Issues
i.	Salary Income
ii.	Refund Claim
iii.	Other Income Reported in Schedule A-OI not credited to P&L Account

2. Considering the issue identified for verification, Notice u/s 142(1) of the Income Tax Act, 1961 was issued with detail questionnaire. On the basis of explanation & documents furnished by the assessee and material available on record, the return income of the assessee is accepted.

3. Assessed u/s 143(3) of the I.T. Act, 1961 as per return of income of Rs.6,45,700/-.

5. Subsequently, the PCIT on perusal of assessment records and examination /verification of the assessee for the relevant assessment year 2019-20, issued show cause notice u/s.263 of the Act dated 15.02.2023 setting aside the assessment by revising the assessment as under:-

In your case, the assessment for the A.Y.2019-20 was completed u/s 143(3) on 13/08/2021 accepting the income returned. During the year, you have received a compensation of Rs. 3,00,00,000/- from your ex-employer towards compensation for termination of your services from the company and as per the directions of Hon'ble High Court, the company had deducted TDS @ 35% on the same. You have claimed the compensation received as capital receipt but claimed the TDS deducted as refund.

2. In this regard it may please be noted that as per amended clause (xi) of section 56(2), "any compensation or other payment, due to or received by any person by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto" shall be taxable under the Income-tax Act, 1961. Further, the definition of income under clause (24) of Section 2 of the Income-tax Act, 1961 has been amended with insertion of sub- clause (xvii) that "include any compensation or other payment referred to in clause (xi) of sub-section (2) of section

56 effective from 1.4.2019, i.e. from AY 2019-20 onwards.

3. Hence, as per the above provisions of Income-tax Act, 1961, the entire compensation received by you of Rs.3,00,00,000/- is taxable as Income from Other sources and needs to be brought to tax.

4. However, the Faceless Assessing Officer without verifying the provisions of law and facts has failed to bring the amount of Rs.3,00,00,000/- to tax. Thus, the order passed by the Assessing Officer is erroneous so far as it is prejudicial to the interest of revenue.

5. You are, therefore, requested to show cause as to why the assessment order passed u/s 143(3) of the Income-tax Act, 1961 on 13/08/2021 for the A.Y.2019-20 should not be treated as erroneous and prejudicial to the Interest of Revenue and revised u/s 263 of the Income-tax Act, 1961. In this context, you may file your written submissions through e-mail id (chennai.pcit3@incometax.gov.in) on or before 24.02.2023. If you desire you may appear in person before the undersigned on the above date at 11.30 AM. On failure to do so, it will be presumed that you have no objection to the proposal for revision and the proceedings will be finalized on merits as per law”.

6. The assessee replied to the above show-cause notice dated 15.02.2023, stating that the Id. Assessing Officer in original assessment proceedings examined this issue of receipt of Rs.3,00,00,000/- as compensation towards termination of her services from her employees.

'1. The assessee begs to submit the following explanation for the show cause notice issued under section 263 dated: 15 February, 2023 in ITBA/REV/F/REV1/2022- 23/1049779258(1) for the kind consideration of the Commissioner:

2. The order of assessment sought to be revised was passed u/s 143(3) on 13.08.2021 by the Assessing Officer, National Faceless Assessment Centre, Delhi. The Assessing Officer while passing the order had issued notice u/s 143(2) dated: 31.3.2021 intimating that the assessee's case was selected for complete scrutiny with the following identified issues:

i. Salary Income

ii. Refund Claim

iii. Other Income Reported in Schedule A-OI not Credited to P&L Account

3. A copy of the notice u/s 143(2) is enclosed herewith as Annexure 1. The Assessing Officer had also issued notice u/s 142(1) on 20/05/2021 in ITBA/AST/F/142(1)/ 2021-22/1033005949(1) calling for various particulars. A copy of the notice u/s 142(1) is enclosed as Annexure II.

4. The assessee has responded to the notice u/s 143(2) on 12.04.2021 and furnished the following details and documents:

Sl.No	Particulars	Remarks
1	Detailed Submission narrating the facts of the case	
2	Annexure 1	Order of termination issued by the company from employment dated 24.03.2014 and also the letter dated 25.04.2014 communicating the compensation paid of Rs.7,62,126/-(Net payable after all deductions was Rs.6,08,549/-) in connection with termination of employment
3	Annexure 2	Form 16 and ITR V where the assessee had offered the salary as well as the compensation received in connection with termination of employment.
4	Annexure 3	A copy of the order of the Hon'ble Madras High Court dated 23.04.2018 settling the dispute between the assessee and the company.
5	Annexure 4	The copy of the ITR Form for the AY 2019-20 where the assessee has reported the amount of Rs.3 crores in Part A Of Other Information in page 12 and 13 and under point No. 5 (e) by disclosing that the assessee had considered the said compensation of Rs.3,00,00,000/- as Capital Receipt and not treated as salary and accordingly claimed the Tax deducted of Rs.1,03,85,100/- as refund.
6	Annexure 5	Note forming part of Form 3CD, where the tax auditor had reported the facts and

		treatment with respect to the compensation in Clause 15(e) of Form 3CD. In the reply, the assessee has furnished, among others, the details of amount of
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1. *"The assessee was working with a company by name M/s Trimble Information Technologies India P Ltd (formerly known as At Road software services India P Ltd) for about 14 years since 15.09.2000 at senior management level*

2. *On 21.03.2014, the Management Team compelled to submit assessee's resignation without assigning any reasons TAX DEPAN*

3. *It was a great injustice to an honest employee who had worked for more than 14 years for company and hence the assessee revoked her resignation on 22.03.2014, the next day*

4. *But, on seeing assessee's revocation, the company had issued an order of termination from employment on 24.03.2014 and also paid a compensation of Rs. 7.62, 126/- (Net payable after all deductions was Rs. 6,08,549/-) vide their letter dated 25th April 2014*

5. *The said compensation received by the assessee in connection with termination of her employment was already included and admitted in the return of income filed for the AY 2014-15*

6. *On account of the Company illegally and forcefully terminating the assessee without any reasons and without considering her 14 continuous years of service as also undergoing a great mental agony before the team members and junior colleagues in the company the assessee preferred an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 asking to reinstate her.*

7. *On hearing the entire plea, the Special Deputy Commissioner of Labour, Chennai, passed a speaking order in T.SE No. 1/4/2014, dated 2nd day of April, 2014, wherein the Special Deputy Commissioner, had set aside the order of termination issued by the company dated 24.03.2014 and consequently directed the company to reinstate the assessee in service with full back wages, continuity of service and all other attended benefits, awarded cost and rendered justice.*

8. *The company fought the said appeal and the Appellate Authority, after hearing both sides, had passed order dated 27.03.2017 in TSE Appeal No. 1/4/2014 setting aside the order of termination and directed the company to reinstate the assessee into service with continuity of service and attendant benefits.*

9. Unwilling to reinstate, the Company preferred a Writ in the High Court of Madras Judicature in W.P.No 11550, wherein they had requested to quash the order of the Special Deputy Commissioner of Labour, Chennai in T.S.E.No 1/4/2014 dated 02.04.2014 and dated 27.03.2017.

10. After hearing the company side and also the counter filed by the assessee, the Hon'ble High Court directed the company and the assessee to settle the issue through mutual talks and accordingly referred the matter to the Mediation and Conciliation Centre where no finality was reached.

11. The Hon'ble High Court in the next hearing on 15. 12. 0217 indicated to the company to reinstate the assessee into service for which the company had requested time citing the consultation time required with its management at USA. After sometime, the company categorically decided not to re-instate the assessee into employment and decided to settle the matter through a Memorandum of Settlement

12. During the mediation before the counsels for the company and the assessee, a compensation was agreed at Rs.3 Crores for settling the disputes and however, the company wanted to deduct Tax u/s 1928 of the Income Tax Act, 1961,

13. The assessee had informed the company that section 1928 of the Income Tax Act 1961 is not applicable for the present compensation payable by the Company to the assessee, as the said sum paid is not a salary or perquisite or profit in lieu of salary but was compensation for sufferings

14. However, it was suggested by the court that the company may deduct taxes by recording the objection and views raised by the assessee with respect to tax deduction at source in the Memorandum of Settlement as an abundant caution and also suggested the assessee to claim for refund of tax so deducted from the Income Tax department and take it up with the authorities of the Income Tax Department'.....

5. The assessee filed letter on 20/03/2024 elaborating all her submissions and quoting the order sheet notings, the assessee has submitted that:

..... it is very clear the only basis for issue of Notice u/s 263 was n the reason that the AO did not consider the new provision of law namely clause (xi) of sub-section (2) of section 56 as inserted

by the Finance Act, 2018, while passing the assessment order and thus the order is erroneous.

3. Your assessee humbly submits that she has brought on record about the non-applicability of new provision of law to her case vide para 14 of her submission uploaded on 14.04.2021 submitted before the AO and that the AO had also already considered the said new provision of law namely clause (xi) of sub-section(2) of section 56 of the Act while completing the assessment, applied his mind and taken a particular view, which was approved by Range Head-Assessment Unit and further approved by the AO and Range Head of Review Unit.

4. Hence, your assessee submits that the order passed by the AO is not erroneous and prejudicial to the interest of the revenue and thereby humbly request to drop-by the present proceedings and oblige".

7. The assessee quoted some of the case laws to express that invoking provisions of section 263 in this case does not arise as the Assessing Officer passed the order after considering the materials and submissions of the assessee. The assessee further quoted some case laws to prove that the compensation received is not taxable".

However, the Id. PCIT was not convinced with the reply of assessee and noted as under:-

'29 The Special Deputy Commissioner and the Labour Commissioner ordered reinstatement with back wages. The High Court also suggested reinstatement initially and thereafter, parties came for a settlement. This clearly shows that the compensation is directly related to the period between the termination and the settlement as orders are in her favour for reinstatement with direction for payment of full back wages and all other attended benefits. After receipt of the payment, the assessee cannot claim the same as capital in nature. When the company paid to the compensation in relation to orders as above, it is the duty of Assessing Officer and the review unit to make necessary enquiries which they had failed to On this ground alone, the order is deemed to be erroneous in so far it is prejudicial to the interests of revenue in terms of clause (a) and clause (b) of Section 263 of the Income-tax Act, 1961.

30. As mentioned earlier, clause (xi) was inserted in Section 56(2), w.e.f. 1.4.2019 (applicable for AY 2019-20) to provide that" any compensation or

other payment due to or received by any person by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto to be chargeable to tax under the head, Income from Other sources. Further clause (xviiib) was inserted in section 2(24) so as to include any compensation or other payment referred to section 56(2)(xi) in the definition of income".

31. The amendment in the section 56(2)(xi) clearly lay down that any compensation or other payment due to or received by any person by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto". The Assessing Officer ought to have applied this provision in this case which evidently specifies that the compensation received is taxable under income from other sources. Hence, there is incorrect assumption of facts and incorrect application of law by the AO and hence, the made the order of assessment erroneous and prejudicial to the interests of the Revenue.

32. Since the Assessing Officer has not treated this amount as revenue and not brought the same to tax, the assessee is of the misconstrued view that the same has been verified by the Assessing Officer and hence, the order is not erroneous and prejudicial to the interest of The revenue and necessity to exercise the revisionary powers u/s 263 in the case does not arise

33. In this context, assessee's attention is drawn to the Circular No. 8 of 2018 dated 26.12.2018 Explanatory notes to the provisions of the Finance Act. 2018, explaining the provisions, states as under

13. Taxability of compensation in connection to business or employment

13.1 Before amendment by the Act, the provisions of section 28 of the Income-tax Act provided that certain types of compensation receipts shall be taxable under the head "Profits and gains of business or profession, However, the scope of this section was restrictive since it did not cover a large segment of compensation receipts in connection with business and employment, leading to base erosion and revenue loss.

13.2 Accordingly, section 28 of the Income-tax Act has been amended to provide that any compensation received or receivable, by any person, whether revenue or capital in connection with the termination or the modification of the terms and conditions of any contract relating to his business shall also be taxable under the head "Profits and gains of business or profession". Further, section 56 of the Income- tax Act has also been amended to provide that any compensation received or receivable by any person, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his employment shall be taxable under the head "Income from other sources". Consequential amendment has also been made in clause (24) of section 2 of the Income-tax Act.

13.3 Applicability. These amendments takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years. "[emphasis supplied].

34. The above circular makes abundantly clear the compensation shall be taxable u/s 56(2)(x) of the Income-tax Act, 1961 from AY 2019-20 irrespective of the fact whether the receipt is capital or revenue. The assessee has failed to take this into account in her replies."The faceless Assessing Officer and the review unit have failed to look into the provisions of Section 56(2)(xi) read with section 2(24)(xvii) and also the CBDT circular No. 8 of 2018 dated 26.12.2018. Even the memorandum to the Finance Bill, 2018 explains the reasons behind the insertion of the provisions and stipulates that the compensation shall be taxable even if it is claimed as capital receipt.

35. In view of the above amendment in the Act which is effective from 01/04/2019, the claim of the assessee that compensation received by the assessee is capital in nature will not alter the taxability of the amount under the head "Income from other sources u/s 56(2)(xi) of the Income-tax Act, 1961. The faceless Assessing Officer and also the review unit failed to Bring the amount of compensation received under the provisions of Section 56(2)(xi) of the Act, 1961 and thereby adopted incorrect application of law and allowed the relief without Inquiring into the claim, and the Assessing Officer passed the order and hence, the order passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961 is erroneous in so far as it is prejudicial to the interest of revenue in terms of clause (a) and clause (b) of Explanation 210 Section 263 of the Act.

36. The order passed by the FAO is erroneous in so far it is prejudicial to the interest of revenue in terms of the principles laid down the Hon'ble Supreme Court Judgement in the case of Malabar Industrial Co. Ltd. vs CIT(2000) reported in 109 Taxman 66/243 ITR 83(SC)

37. The assessee quoted many case laws none of which has application to facts of the case especially with reference to the provisions of Section 56(2)(xi) and also since the income even capital receipt is taxable under this provision. The case laws in fact support the provision for taxing the income under this section.

38. It is clearly seen and as admitted by the assessee it is related to the termination in service and therefore, section 56(2)(xi) squarely applicable in this case.

39. In view of the above, the order of the Assessing Officer dated 13/08/2021 is deemed to be erroneous in so far prejudicial to the interests of revenue in terms clause (a) and clause (b) of Explanation (2) to section 263 of the Income-tax Act. 1961. Therefore, invoking the powers of Section 263 of the Income-tax Act, 1961, I hold that the amount of Rs.3,00,00,000 received by the

assessee shall be chargeable to tax under the head, 'Income from other sources and be taxed u/s 56(2)(xi) of the Income-tax Act, 1961.

40. Therefore, the order of the Assessing Officer passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961 dated 13/08/2021 vide DIN ITBA/AST/S/143(3)/2021-22/1034848923(1) is enhanced and the Assessing Officer is directed to give effect to this order and issue demand notice to the assessee accordingly as per law.

41. The order is passed accordingly”.

Aggrieved, assessee is in appeal before the Tribunal.

8. We have heard rival contentions and gone through the facts and circumstances of the case and paper book containing pages (1-220). Before us, the Id. Counsel for the assessee drew our attention to the paper book filed by the assessee and page 13, clause 5(e) of ITR 3, page 69 (note with respect to reporting of capital receipt in clause 16 (e) in form 3CD in respect of notice u/s.143(2) of the Act dated 31.03.2021). Reply to notice dated 31.03.2021, page no.106-107, notice u/s. 142(1) clause 6, page No.110-114 reply to notice u/s.142(1), Page No.214-219 order sheet for the assessment proceedings completed u/s.143(3) r.w.s.144B etc and contended that in original assessment Id. Assessing Officer has looked into all such documents and considered all submissions thereafter only passed assessment order dated 13.8.2021. Hence order is not erroneous, so far it is prejudicial to the Revenue.

9. Per contra, Id. Departmental Representative Shri. Niay Baran Som, - CIT contended that enquiring into claim includes the inquiry of law also. The Id. Assessing Officer was well aware of the provisions of Section 263 and circumstances and under which assessment order would be termed as

erroneous so far it is prejudicial to the Revneue, despite knowing Id. Assessing Officer has passed crypt order. He further contended that the Id. Assessing Officer has not dealt the issue of compensation of Rs.3,00,00,000/- with the relevant provisions of law viz; amended provisions of Section 28, Section 56 and Sect 2(24) of the Act which has effect from 01.4.2019 and are applicable to assessment year 2019-20 and subsequent years. He further argued that the Id. Ld. Assessing Officer even failed to consider circular No.8/2018 (F.No.370142/07/2018-TPL) dated 26.12.2018 which enumerates Explanatory Notes to the provisions of the Finance Act, 2018 hence also violated the clause (c) of Explanation 2 to Section 263 of the Act, and referred to Circular 8/2018 (supra) as under:-

'13. Taxability of compensation in connection to business or employment

13.1 Before amendment by the Act, the provisions of section 28 of the Income-tax Act provided that certain types of compensation receipts shall be taxable under the head "Profits and gains of business or profession". However, the scope of this section was restrictive since it did not cover a large segment of compensation receipts in connection with business and employment, leading to base erosion and revenue loss.

13.2 Accordingly, section 28 of the Income-tax Act has been amended to provide that a compensation received or receivable, by any person, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his business shall also be taxable under the head "Profits and gains of business or profession". Further, section 56 of the Income-tax Act has also been amended to provide that any compensation received or receivable by any person, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his employment shall be taxable under the head "Income from other sources". Consequential amendment has also been made in clause (24) of section 2 of the Income-tax Act.

13.3 Applicability: These amendments takes effect from 1 April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years”.

He also referred Max India Ltd case (2008) 166 Taxman 188 SC; 295 ITR 282 (SC) and contended that the Id. Assessing Officer had not even adopted one of the course permissible in law. He further referred para 6 of the order of the Co-ordinate Bench in ITA No.1394/Chny/2024, dated 14.08.2024 titled Shri Ashok Kumar Jain vs. The PCIT and the same is reproduced as under:-

"6. Another aspect argued by Id. counsel that in term of clause (a) to Explanation 2 to section 263 of the Act, reassessment order is deemed to be erroneous insofar as prejudicial to the interest of revenue. The Id. counsel for the assessee drew our attention to the decision of Hon'ble High Court of Delhi in the case of PCIT vs. Clix Finance India Pvt. Ltd., ITA No.1428/2018, order dated 01.03.2024 and drew our attention to paras 19 & 20 explaining the provisions and particularly Explanation 2(a) as under:-

19. A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two- pronged test to exercise the revisional authority i.e., firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue

20. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order”.

10. Having heard the contention of the both parties and looking into the entire conspectus of matter, we have delineated the following observation as under:-

I. No query has been raised by the AO with regard to the issue of compensation of Rs.3,00,00,000/- with the relevant provisions of law viz; amended provisions of Section 28, Section 56 and Sect 2(24) of the Act which has effect from 01.4.2019 and are applicable to assessment year 2019-20;

II. In this case, Id. AO miserably failed to consider circular No.8/2018 (F.No.370142/07/2018-TPL) dated 26.12.2018 which enumerates Explanatory Notes to the provisions of the Finance Act, 2018 hence, clear violation of the clause (c) of Explanation 2 to Section 263 of the Act;

III. While going through the notice dated 20.05.2021 u/s 142(1) of the Act, we find that no specific question was ever raised by the AO with regard to applicability of circular No. 8/2018 (F.No. 370142 / 07/ 2018-TPL) dated 26.12.2018 to the facts of the case;

IV. The Id. Assessing Officer framed reassessment u/s. 143(3) r.w.s. 144B of the Act vide order dated 13.08.2021 in a perfunctory manner and has not even adopted one of the course permissible in law with regard to the issue of compensation of Rs.3,00,00,000/-;

V. The judgment of the Hon'ble Supreme Court in the case of CIT v. Paville Projects Pvt. Ltd. (2023) 453 ITR 447/ 293 Taxman 38/ 332 is applicable in this case wherein the Hon'ble Supreme Court after taking into consideration the earlier judgment of the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83, held as under:

"7.2 Thus, even as observed in paragraph 9 by this Court in the case of Malabar Industrial Co. Ltd. (supra) that the scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the Income tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the

interests of the Revenue. However, only in a case where two views are possible and the Assessing Officer has adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under section 263.

7.3 Applying the law laid down by this Court in the case of Malabar Industrial Co. Ltd. (supra) to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. Having gone through the assessment order as well as the order passed by the Commissioner of Income Tax, we are also of the opinion that the assessment order was not only erroneous but prejudicial to the interest of the Revenue also. In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under section 263 not vested in it. The erroneous assessment order has resulted into loss of the Revenue in the form of tax. Under the circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under section 263 of the Income-tax Act”.

VI. In the case of CIT v. Toyota Motor Corporation [2008] 174 Taxman 395 (Del.) wherein it was held by the Hon'ble Delhi High Court that when the assessment order passed by the Assessing Officer is cryptic and cannot be sustained, the Tribunal cannot substitute its own reasoning to justify the order passed by the Assessing Officer when the Assessing Officer himself did not give any reason in the order passed by him. On further appeal by the assessee, the Supreme Court in Toyota Motor Corporation v. CIT [2008] 173 Taxman 458 refused to interfere with the order passed by the Delhi High Court after making the following observations:-

“We do not think it necessary to interfere at this stage. It goes without saying that when the matter be taken up by the Assessing Officer on remand, it shall be his duty to take into account all the relevant aspects including the materials, if any, already placed by the assessee, and pass a reasoned order.”

VII. The Hon'ble Delhi High Court in the case of Pr. CIT v. Braham Dev Gupta [2018] 408 ITR 291 wherein reversing the order passed by the

Tribunal, held that the Tribunal cannot re-write Assessing Officer's order and improve upon it.

11. In view of the foregoing discussions, we are of the view that the Id. Pr. CIT was justified in law in passing the impugned revision order as the assessment order passed by the AO is erroneous and prejudicial to the interests of revenue.

12. In result, appeal of the assessee stands dismissed.

Order pronounced in open court on 28th day of October, 2024 at Chennai.

Sd/-

एस.आर. रघुनाथा
(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 28th October, 2024

KV

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.

Sd/-

(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER