

आयकरअपीलीयअधिकरण,ए,न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीयश्रीमनुकुमारगिरि, न्यायिकसदस्यएवं
माननीयश्रीएस.आर. रघुनाथा, लेखासदस्यकेसमक्ष

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

आयकर अपील सं./ITA No.1803/CHNY/2019

निर्धारण वर्ष/Assessment Year:2013-2014.

M/s. T.V. Sundram Iyengar &
Sons Private Limited,
No.7B, TVS Building,
West Veli Street.
Madurai 625 001.

Vs.

The Deputy Commissioner
of Income Tax,
Corporate Circle 2,
Madurai.

PAN: AABCT 0159K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri N.V. Balaji, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. Nilay Baran Som, IRS, CIT

सुनवाईकीतारीख/Date of Hearing

: 25.09.2024

घोषणाकीतारीख/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, Madurai-1 (in short "the Id.PCIT) in C.No.401/55/PCIT/MDU-1/2017-18, dated 27.03.2019. The assessment was framed by the DCIT, Corporate Circle-2, Madurai for the assessment year

2013-14 u/s.143(3) rws 92CA of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 30.12.2016.

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

"1. That the order of the learned Principal Commissioner of Income Tax [PCIT] is contrary to the facts and circumstances of the case and against the principles of equity and natural justice.

2. The PCIT erred in invoking the provisions of section 263 of the Income Tax Act, 1961 ['Act'].

3. The Learned PCIT failed to appreciate that the assessing officer had allowed the deduction of Interest and Bank Charges and demerger expenses after considering the submissions of the appellant.

4. The learned PCIT is imposing his view over the view taken by the assessing officer.

5. The learned PCIT erred in holding that the assessing officer had allowed the brought forward loss without proper enquiry.

6. The learned PCIT failed to appreciate that the details of the brought forward loss and unabsorbed depreciation were provided during the course of assessment.

7. The learned PCIT erred in holding that the net profit of the appellant should have been Rs.11,498.15 lakhs as against Rs.4438.96 lakhs admitted by the appellant. The PCIT ought to have appreciated that the appellant had rightly reduced the loss of Rs.7059.19 lakhs of the demerged undertaking in computing its income.

8. The learned PCIT erred in that the net profit of the appellant should have been Rs.11,498.15 lakhs as against Rs.4438.96 lakhs admitted by the appellant. The PCIT had arrived at this conclusion although the show cause notice was not issued in connection with the same.

9. The Appellant crave leave to reserve itself the right to add, alter, amend or vary any ground(s) at or before the time of hearing'.

3. The brief facts of the case are that the assessee company is involved in sale of vehicles, spare parts and servicing of vehicles. The original return of income and revised return of income for Assessment Year 2013-14 were e-filed by the assessee on 30.11.2013 and 30.03.2015 respectively. It admitted a total income of Rs.40,85,32,320/-. The assessment was completed under section 143(3) of the Act, 1961 on 30.12.2016 determining the total income at Rs.40,85,32,320/-. On verification of assessment records for the impugned Asst. Year, it was revealed that M/s TVS Inter Connect Systems Ltd. a wholly-owned subsidiary company of the assessee company, had consisted of telecommunication and networking division and investment division. The assessee by virtue of demerger u/s 391 to 394 of the Companies Act, 1956 had transferred the telecommunication and network undertaking units to the assessee M/s T.V. Sundaram Iyengar & Sons Ltd., with effect from 01 April 2012 as per the scheme of demerger which was sanctioned by the Hon'ble High Court of Madras vide order dated 19.08.2013. A further perusal of assessment of records shows that the assessee had debited an amount of Rs.1,099.56 lakhs towards demerger expenses in the profit and loss account. But in the computation of total income, the assessee had added a sum of Rs.76.86 lakhs viz., Rs. 15.37 lakhs u/s 35DD. The Id. PCIT noted that the method adopted by the assessee to claim deduction u/s 35DD was not correct. The assessee has to claim a deduction u/s 35DD of an amount equal to one-fifth of such expenditure for each of the five successive previous years

beginning with the previous year in which the amalgamation or demerger takes place. But in the case under reference, the assessee had not added the entire demerger expense of Rs. 1099.56 lakhs. While finalizing the assessment, based on the above legal positions, the Assessing Officer ought to have disallowed the whole demerger expenditure of Rs.1099.56 lakhs and then allowed one-fifth of the above expenditure of Rs 219.91 lakhs towards amortization u/s 35DD. The Id. PCIT further noted that a perusal of the assessment records shows that on demerger, the assessee was allowed to carry forward and set off of the losses of the demerged company M/s TVS Inter Connect Systems Ltd. pertaining to the AY 2009-10 to 2012-13 without apportioning the same between Investment division and the demerged division of Telecommunication and Networking division and hence the Assessing Officer ought to have verified whether the above loss pertains to demerger divisions of Telecommunication and Networking and if not the same ought to have been allowed. However, this aspect was not examined by the Assessing Officer, during the course of assessment proceedings. Hence, the Id.PCIT issued a show cause notice u/s 263 dated 14.03.2018 to explain the aforesaid issues raised.

4. The assessee filed comprehensive reply as incorporated in the order of the Id. PCIT from Pg 4 to 26 dated 12.02.2019 along with copy of Scheme of Arrangement (Demerger), extract of the financial statements, the break-up of expenditure as per Note 23c in the financial statements in response to a show

cause notice u/s 263 dated 14.03.2018. The assessee in sum and substance has made following submissions before the Id. PCIT:

i. The interest and bank charges expenses amounting to Rs.1022.70 pertaining to the operations of the 'Telecommunication and Networking Division' is allowable u/s 36(1)(iii) of the Act and such expenditure cannot be covered within the ambit of expenses incurred 'wholly and exclusively' for the purpose of demerger. Therefore, provisions of section 35DD of the Act are not applicable;

ii. The Company has only carried forward the losses and unabsorbed depreciation directly relatable to the 'Telecommunication and Networking Division' as per section 72A(4)(a) of the Act. The appellant also submitted that the benefit of section 72A(4)(a) of the Act has not been claimed by the Company hence apportionment of the loss pertaining to the 'Investment Division' is not warranted;

iii. The assessment order under section 143(3) of the Act, 1961 dated 30.12.2016 passed after application of mind and inadequate inquiry cannot lead to revision u/s 263 of the Act;

iv. Legal submissions on jurisdiction to initiate proceedings u/s 263.

5. The Id. PCIT has dealt with the issue of interest and bank charges and demerger expenses elaborately in his order u/s 263 from para 5 Page 26 to para 5.3 Page 30. The Id. PCIT observed that the AO did not make any query on these points viz; interest and bank charges and demerger expenses. The

Ld. PCIT held that there is no note or query or questionnaire born out from the assessment record regarding interest and bank charges or demerger expenses on which the AO has formed any opinion. The Id. PCIT also dealt with the issue of brought forward loss and unabsorbed depreciation in his order u/s 263 at Paras 5.4-5.5, Page 30-31. The Id. PCIT observed that the AO did not examine this important issue with reference to section 72(1) of the Act during the course of assessment. The Id. PCIT further dealt with the issue of item No.23(c) of the annual report in his order u/s 263 at Paras 5.3, Page 28-29. As per Para 10.7 of the Scheme of Demerger, the Id. PCIT observed that the assessee ought to have kept the financials of the demerged undertaking separately without incorporating the same in P&L Account and came he came to the conclusion that the assessee had understated its profit.

6. The Id. Counsel Mr. N. V. Balaji, Advocate for the assessee read out the entire impugned order and vehemently argued that the impugned order is against the principles of equity and natural justice. The Id. Counsel further submitted that the Id. PCIT failed to appreciate that the assessing officer had allowed the deduction of Interest and Bank Charges and demerger expenses after considering the submissions of the assessee during the assessment proceedings. The Id. Counsel strenuously argued that the Id. PCIT wrong in holding that the assessing officer had allowed the brought forward loss without proper enquiry and verification. He furthermore argued that the Id. PCIT failed to appreciate that the details of the brought forward loss and unabsorbed

depreciation were provided during the course of original assessment. The Id. Counsel challenged the impugned order by submitting that the Id. PCIT erred in holding that the net profit of the appellant should have been Rs.11,498.15 lakhs as against Rs.4438.96 lakhs admitted by the appellant and the PCIT ought to have appreciated that the appellant had rightly reduced the loss of Rs.7059.19 lakhs of the demerged undertaking in computing its income. The Id. Counsel furthermore proceeded with his argument that the Id. PCIT erred in holding that the net profit of the appellant should have been Rs.11,498.15 lakhs as against Rs.4438.96 lakhs admitted by the appellant. The Id. Counsel referred Page 40 of paper book which speaks of 'Note on Demerger submitted during the course of original assessment' and submitted that the same was filed during assessment proceedings hence Id. AO has taken into consideration, formed a view and passed assessment order which is not amenable to revision u/s 263 of the Act. The Id. Counsel also relied upon the judgments which were referred by the assessee before the Id.PCIT.

7. Per contra, the Id. DR, Mr. Nilay Baran Som, CIT has submitted his detailed written submission as under:

The learned PCIT considered that the assessment order passed by the Assessing Officer dated 30.12.2016 was erroneous and prejudicial to the interest of revenue. He has demonstrated in his order why he considers the order so passed as erroneous as well as prejudicial to the interest of revenue. That the assessment order meets the twin test of being erroneous and prejudicial to the interest of revenue becomes apparent on consideration of Explanation 2 below section 263 of the Act. In the instant case, the Id. Assessing Officer passed the order without making enquires and verification concerning the issues of

(i) deduction of interest and bank charges and demerger expenses and

(ii) claim of brought forward losses. In this context, it is worthwhile to mention that the Learned PCIT has come to a conclusion in the light of the facts of the case, the provisions of law and the material information available on records vide detailed discussion vide para 5, page 26-32 of the order. The gist of the comment of the Id. PCIT in page 32 of his order is as follows:-

On examination of assessment records including order sheet, it is revealed that the Assessing Officer did not call for details of demerger and the set off of brought forward losses and in the assessment order none of these issues were touched upon by the Assessing Officer. For this reason and in view of the discussion made in the foregoing paragraphs, all those case laws are not at all relevant to the assessee's case and hence the assessee's contention that the proceedings u/s 263 are not required to be invoked is not acceptable and is rejected.

Submission with regard to deduction of interest and bank charges and demerger expenses:

It is seen that no query regarding Interest and Bank Charges was ever made by the Assessing Officer in the notice under section 142(1) (ii) of the Income Tax Act. The section head of Section 142(1) is Inquiry before Assessment. Absence of any item of query in the notice under section 142(1) of the Act bears testimony to the fact that the Assessing Officer failed to make any enquiry on the matter. It has been stated that the assessee had made submissions on the point of Interest and Bank Charges and demerger expenses, Be that as may be, from the order sheet noting also, it is found that the Assessing Officer did not make any query on the points concerned. In fact, failure to make inquiry on the point is that makes this order erroneous and prejudicial to the interest of revenue. There is no note on the Assessment Record that the Assessing Officer has formed any opinion or taken any view, whatsoever, on the issues under discussion. In this context, it may be mentioned that the learned PCIT has dealt with the issue of interest and bank charges and demerger expenses elaborately, from Para 5, pages 26 up to end of Para 5.3 in page 30 of the order.

Submission with regard to 'the learned PCIT is imposing his view over the view taken by the assessing officer':

As is evident from the perusal of the assessment order and assessment record, as already stated in the earlier paragraph, the Assessing Officer did not take any view, positive or negative, on the issue of Interest and Bank Charges and demerger expenses. There is no note in the form of

'Note: Not for the assessee' that the submissions on the impugned points have been considered and no adverse view is drawn. On consideration of all the above factors, the above ground is not tenable.

Submission with regard to 'the PCIT erred in holding that the assessing officer had allowed the brought forward loss without proper enquiry':

The PCIT has dealt with the issue in Para 5.4-5.5, Page 30-31 of the order u/s 263. He has mentioned in Para 5.4 that while the assessee has claimed that only the losses pertaining to the merged division alone has been carried forward, the same was not supported by evidences like copy of return filed in respect of the demerged company. Further, the AO did not examine this important issue during the course of assessment. In Para 5.5, the Ld PCIT has observed that set off of loss under the head business has also been allowed from income from house property which is not permissible under the law. The Assessing Officer failed to examine this claim with reference to section 72(1) of the Income Tax Act, 1961. Therefore, such lack of enquiry and allowance of incorrect claim renders the assessment order erroneous as well as prejudicial to the interest of revenue.

Submission with regard to the 'learned PCIT failed to appreciate that the details of brought forward loss and unabsorbed depreciation were provided during the course of assessment':

Like in the case of interest and bank expenditure, the undisputed fact is that, the Assessing Officer did not make any inquiry either at the stage of preparing questionnaire under section 142(1) of the Income Tax Act, 1961, or during the course of subsequent proceeding.

Submission with regard to 'the learned PCIT erred in holding that the net profit of the applicant should have been Rs 11,498.15 as against Rs 4438.96 lakhs admitted by the appellant. The PCIT ought to have appreciated that the assessee has rightly reduced the loss of Rs 7059.19 lakhs of the demerged undertaking in computing the income':

The learned CIT (A) has discussed the issue at length vide Para 5.3, pages 28-29 of the order u/s 263. As per Para 10.7 of the Scheme of Demerger, the assessee ought to have kept the financials of the demerged undertaking separately, without incorporating the same in P&L Account. With the above observation and analysis of data already on record, the Ld. PCIT came to the conclusion that the assessee had understated its profit. However, it may also be submitted that the set aside the assessment order for framing assessment, de novo, after

making necessary enquires and allowing reasonable opportunities being heard to the assessee.

Submission with regard to 'the learned PCIT erred in that the net profit of the appellant should have been Rs 11, 498.15lakhs as against Rs 4438.96 lakhs admitted by the appellant. The PCIT has arrived at the conclusion although the show cause notice was not issued in connection of the same:

The observation of the Ld. PCIT regarding understatement of profit is based on financial data on record not inquired into by the Assessing Officer. This observation is a corollary of his observation regarding interest, bank charges and demerger expenses and there was no necessity of mentioning this point separately in the show cause notice. This submission finds support from the ruling of the Hon'ble Apex Court in the case of Commissioner of Income-tax, Mumbai versus Amitabh Bacchan reported in 384 ITR 200 (SC). The Hon'ble Apex Court held that Section 263 does not require any specific show cause notice detailing specific grounds on which revision of assessment order is tentatively being proposed He need not confine himself to the terms of notice and foreclosing consideration of any other issue or question of fact. He is free exercise his jurisdiction on consideration of all relevant fact, provided an opportunity of being heard is afforded to contest assessee to contest facts on basis of which he exercise jurisdiction.

Further, the Id. CIT-DR referred paras 7.2 & 7.3 of the judgment of the Hon'ble Apex Court in the case of Pavelie Projects and submitted that the order of AO is rightly revised u/s 263 of the Act.

8. We have heard the rival submissions and gone through the record, order sheet of AO during assessment proceedings, paper book, additional paper book, written submission filed by revenue and impugned order. We have perused the assessment order passed u/s 143(3) read with section 92CA of the Act and find that the issues raised by the Id. PCIT were not at all questioned by the AO during assessment. We have also perused the entire order sheet entry, particularly order sheet dated 17.10.2016 of the AO. In the

order sheet dated 17.10.2016 of the AO, we nowhere find therein the submission dated 17.10.2016 as alleged by the Id. Counsel for the assessee. We have also perused the notice dated 07.01.2016 u/s 142(1) of the Act alongwith attached questionnaire and find that there are no questions raised pertaining to the issues raised by the Id. PCIT. We further gone through the Page 40 of paper book which speaks of 'Note on Demerger submitted during the course of original assessment' and find that there is no date mentioned on the same. On Page 40 'Annexure-2' is find mentioned which runs from Page 40 to 53 which speaks of Demerger. Even before us no purported submission dated 17.10.2016 has been filed in the paper book. Therefore, we endorse the aforesaid submissions of the Id. CIT-DR, Mr. Nilay Baran Som in toto and reject the arguments of the Id. Counsel for the assessee as not tenable in law. The case law relied upon the Id. CIT-DR in the case of CIT vs. *Pavile Projects (P) Ltd*, 293 Taxmann 38 (SC) is aptly apply in this case. The Hon'ble Supreme Court after taking into consideration the earlier ruling of the Hon'ble Apex Court in the case of Malabar Industries in the case of Pavile Projects (P) Ltd, 293 Taxmann 38 (SC) 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 circum- stances 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”.

9. Therefore, following the judgment of Hon'ble Supreme Court in the case of Pavile Projects (P) Ltd, (supra) we are of considered view that the Id. PCIT is right in invoking jurisdiction u/s 263 of the Act. Hence, we are fully concurring with the view take by the Id. PCIT, therefore, impugned order is upheld.

10. 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

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER