

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1622/Chny/2024
निर्धारणवर्ष/Assessment Year: 2019-20

M/s. Priya Construction, 1/8 Senthilagam, Kadachannallur, Pallipalayam Post, Iyenthupanai, Tiruchengode TK, Namakkal-638 008.	v.	The PCIT (Central), Chennai-2.
[PAN: AAHFP 8616 N]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Nilay Baran Som, CIT
सुनवाईकीतारीख/Date of Hearing	:	12.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	04.12.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Principal Commissioner of Income Tax, Chennai-2, (hereinafter in short "the Ld.PCIT"), Chennai, dated 20.03.2024 for the Assessment Year (hereinafter in short "AY") 2019-20 passed order u/s.263 of the Income Tax Act, 1961 (hereinafter in short "the Act").



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2. The main grievance of the assessee is against the impugned order of the Ld.PCIT passed u/s.263 of the Act against the assessment framed by the AO u/s.143(3) of the Act dated 24.09.2021.

3. The brief facts are that the assessee is a partnership Firm engaged in the business of undertaking civil construction/real estate. The assessee firm converted itself into a Private Company in the name & style of M/s.Priya Engineering Projects Pvt. Ltd., (hereinafter in short 'M/s.PEPPL/ Company') which was incorporated on 28.03.2019; and the partners of the Firm, became the Directors of the Company. And the Company has taken over the business of the Firm and commenced its operations w.e.f.01.07.2019 [*the assessee Firm discontinued its business w.e.f.30.06.2019 and transferred all the business to the Company*]. The assessee Firm had filed its return of income [RoI] for AY 2019-20 admitting total income of Rs.6,00,08,400/-. There was a survey u/s.133A of the Act conducted on 05.02.2020 in the business premise of the company (M/s.PEPPL); and during the course of search, vouchers/receipts for some of the expenses claimed in the books of accounts of the Firm/Company couldn't be found/discovered in its premises. In such a situation, the managing partner of the erstwhile assessee Firm [who was the Managing Director of the company (M/s.PEPPL)] agreed to declare 8% of the total turnover as profit and agreed to declare the net profit on the basis of such an undertaking after claiming interest on partners' capital



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and partners remuneration for AY 2019-20. Pursuant to the survey, during the assessment proceedings, the AO called for various details by issuing statutory notices on 30.09.2020, 05.05.2021, etc., and he noted that as per the survey report gross contract receipts for AY 2019-20 was to the tune of Rs.105,65,00,710/- and computed the total income of the assessee u/s.143(3) of the Act by order dated 24.09.2021 as under:

	Profit 8% of gross contract receipts of Rs.105,65,00,710/-		8,45,20,056
Less:	Interest on capital	60,00,000	79,50,000
	Remuneration to partners	19,50,000	
	Net Profit		7,65,70,056
Less:	Additional income offered in the hands of the partners		1,25,75,000
	Assessed income		6,39,95,057

4. The aforesaid action of the AO has been interfered by the Ld.PCIT exercising his revisional jurisdiction u/s.263 of the Act by observing that assessee-firm had in addition to its income from contract receipts had "other income" of Rs.43,60,829/- comprising of (i) Interest on deposits of Rs.11,70,534/- ; (ii) Discount receipt of Rs.14,999/- and (iii) Creditors written off of Rs.31,75,296/-. But the AO while completing the assessment for the AY 2019-20 on 24.09.2021, had only considered the contract receipts for arriving at the net profit but omitted to bring the entire "other income" of Rs.43,60,829/- for tax. Therefore, the Ld.PCIT was of the view that the omission on the part of the AO to assess the other income of Rs.43,60,829/- which was reflected in the P & L a/c resulted in the assessment being erroneous as well as prejudicial to the



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interest of the Revenue. And the Ld.PCIT issued notice u/s.263 of the Act and gave an opportunity to the assessee; and assessee filed its reply/objection vide letter dated 16.03.2024 before the Ld.PCIT which is reproduced as under:

We never admitted the 8% estimated income other than turnover/gross contract receipts. Based on this clarification and explanations only the assessment was completed. It was a clear and very simple order that the income was 8% on the contract receipts of that year amounted to Rs 105,65,00,710/- worked out to Rs 8,45,20,056 only. It is quite shocking and unwarranted to rectify the said order as a mistake apparent on the records without referring to the statement recorded, and a subsequent letter was filed to AO as well JC immediately after the survey.

The question is whether turnover includes the written off old creditors, discount, and bank interest on margin deposits amounted to Rs 31,75,296, Rs 14,999 and Rs 11,70,534 respectively.

Our simple submission is that -

1. The assessment was completed on an estimated basis by rejecting the books of accounts and tax audit reports.
2. The estimated income admitted, and orders passed for 8% on the gross contract receipts and same correctly adopted in the orders passed by the AO.
3. The written off creditors pertaining to the earlier years and discount allowed were not at all part and parcel of the turnover of the year.
4. The bank interest income for the BG deposits was part of the business Income. We filed a detailed reply in this connection and the same was considered in the assessment proceedings.
5. The detailed reply filed for the rectification under section 154 proposed by the AO.

We request you consider the facts and the utmost cooperation given by us in discharging the additional liability which arises on account of the sworn statement and the income admitted on the estimated basis on the turnover only. The remission of the liability and bank interest shall not be the part and parcel of the turnover to arrive the estimated income @ 8% as per the sworn statement.

Alternatively, to close the issue, without further proceedings, we admit for the additional income to the assessed income of Rs 2,55,224/-



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being the 8% on the written off creditors and the discount totaled to Rs 31,90,295/-. The bank interest receipts were well within the estimated income.

We are enclosing the copy of the letter filed and the relevant portion of the sworn statement for kind perusal and request you to close the proceedings.

5. The Ld.PCIT after considering the assessee's reply, passed the impugned order modifying the Assessment Order by making an addition of Rs.43,60,829/- to the income earlier assessed by the AO by holding as under:

6. The main contention of assessee's objection is that the bank interest income for bank guarantee deposits is part and parcel of business income as submitted in the detailed reply during the course of assessment proceedings. Further the written off creditors pertaining to earlier years and discount allowed were not at all part and parcel of turnover. Hence the remission of liability and bank interest shall not be part and parcel of turnover to arrive the estimated income @ 8% as admitted in sworn statement. Alternatively, the assessee agreed to offer additional income of Rs.2,55,224/- being 8% on the written off creditors and the discount aggregating to Rs.31,90,295.

7. The assessee's submission was carefully considered. The Managing partner of the assessee firm agreed to offer 8% of total turnover since vouchers/bills could not be produced for examination. Hence, the assessing officer has worked out 8% of gross contract receipts of Rs.105,65,00,710/- as assessed income. Apart from that there are other receipts in the form of bank interest, written off creditors, discount which will not form part of the total turnover of the business.

7.1 The entire other receipts ought to have been assessed as income of the assessee. Bank interest, even if earned during the course of business cannot be taxed at 8% of gross receipts, treating it on par with contract receipt. This is entirely fallacious Contract receipts necessarily mean incurring of corresponding expenditure on men, materials for execution of the contracted work. On the other hand bank interest does not involve any such cost involved and therefore allowing a deduction of 92% is entirely erroneous. Further written off creditors has the effect of cessation of liability and the entire amount had to be assessed as income. Similarly discounts received as income will not form part of total turnover of the assessee. Hence, the entire other income of Rs.43,60,829/- reflected in the profit and loss account ought to have been treated separately and not taxed at 8% of the gross.



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7.2 The AO, while passing the assessment order made only a cryptic observation that the other income of Rs.11,70,534 is part of business income, without any reasoning as to how it was part of business income. The assessing officer had committed a gross error in not adopting the correct other income admitted by the assessee in the P&L account that is of Rs.43,60,829/-. Examination of order sheet entries, case history notings and other materials on the assessment records do not contain any mention as to how these other incomes were excluded. As a revisionary authority, it has been not possible to discern from the record and assessment folder, the reasoning which weighed with the officer to assess the "other income" in the manner described above. In view of these facts this becomes an error of omission and renders the assessment order erroneous and prejudicial to revenue.

8. The assessment order is squarely covered by the decision of the Hon'ble Delhi High Court in the case of CIT v. Toyota Motor Corporation [2008] 174 Taxman 395 (Del.) holding that order being cryptic is erroneous and prejudicial to interest of revenue. In the instant case as the order dated 24.09.2021 is a non-speaking one and sheds no light upon how the Assessing Officer excluded the other receipts in the Profit and loss account while arriving at taxable income. In view of the above, the order is definitely erroneous and prejudicial within the meaning of section 263. Reliance is also placed on the Hon'ble Supreme Court decision in the case of M/s. Daniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017, wherein it was held that it was entirely permissible for the PCIT/CIT under section 263 to set aside the assessment and direct the AO to make necessary enquiries, where the proper enquiry had not been made while making the assessment.

9. On a careful consideration of the facts on record, the arguments and details submitted by the assessee as well as the concatenation of judgements relied herein, it is held that the impugned assessment order dated 20.04.2021 passed by the Assessing Officer for the AY 2019-20 is erroneous and prejudicial to the interest of revenue. Accordingly, in exercise of powers conferred u/s.263(1) of the Act, the assessing officer is directed to modify the assessment order dated 24.09.2021 by making addition of Rs.43,60,829/- to the income earlier assessed towards other income representing bank interest, creditors written off and discount receipts reflected in the profit and loss account.

6. Aggrieved by the aforesaid action of the Ld.PCIT, assessee is before us.

7. We have heard both the parties and perused the records. There is no dispute regarding the facts stated above, therefore, the same is not



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repeated for the sake of brevity. The Ld.AR of the assessee is only contesting the Ld.PCIT's order directing the AO to modify the assessment order dated 24.09.2021 by making addition of Rs.43,60,829/- to the income earlier assessed by the AO being the other income representing bank interest of Rs.11,70,534/-, written off to the tune of Rs.31,75,296/- and discount receipts of Rs.14,999/- [total Rs.43,60,829/-]. According to the Ld.AR, it can be noticed that out of total addition ordered to the tune of Rs.43,60,829/-, the items shown as (i) creditors written off as well as the (ii) discount receipts [Rs.31,75,296/- & Rs.14,999/-] were inextricably linked with the business income of the assessee and it is trite law that neither entry made in the books of accounts nor the nomenclature would determine the character of the income. According to him, both these entries i.e. creditors written off & discount receipts are business income even though assessee has shown it mistakenly under the head "other income"; and pointed out that assessee itself offered before the Ld.PCIT, 8% of Rs.31,90,295/- [Rs.31,75,296/- + Rs.14,999/-] which comes to Rs.2,55,224/-. However, according to the Ld.AR, the Ld.PCIT erred in directing the addition of Rs.31,90,295/- along with bank interest to the tune of Rs.11,70,534/- [total Rs.43,60,829/-]. Therefore, he prayed that impugned direction/modification ordered by the Ld.PCIT is erroneous and needs to be interfered with and suitable direction be given



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by us. Per contra, the Ld.DR fully supported the action of the Ld.PCIT and doesn't want us to interfere with the impugned action of the Ld.PCIT.

8. We note that the assessee Firm which is into civil construction has filed its RoI for AY 2019-20 on 24.09.2019 declaring total income at Rs.6,00,08,400/-; and later, during the course of survey which took place on 05.02.2020, the assessee failed to produce vouchers/receipts in respect of expenses claimed in the books of accounts. In such a scenario, the managing partner of the erstwhile firm [Managing Director of the Company M/s.PEPPL] offered 8% of the total turnover of Rs.105,65,00,710/- which works out to Rs.8,45,20,056/- and after allowing deduction of interest on capital, remuneration to partners, net profit came to Rs.7,65,70,056/- and after deducting the additional income offered in the hands of the partners to the tune of Rs.1,25,75,000/-, the AO assessed the income of the assessee at Rs.6,39,95,057/-, which action of the AO has been interfered by the Ld.PCIT exercising his jurisdiction u/s.263 of the Act by observing that even though assessee has shown in its P & L A/c "other income" to the tune of Rs.2,3,60,829/-, the AO while framing assessment order, omitted to consider assessing the other income shown separately by the assessee to the tune of Rs.43,60,829/- which omission on the part of the AO makes the assessment order erroneous as well as prejudicial to the Revenue; and after hearing the assessee, the Ld.PCIT has passed the impugned order



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directing the AO to make the addition of Rs.43,60,829/- [*which includes "other income" representing bank interest of Rs.11,70,534/-, creditors written off to the tune of Rs.31,75,296/- and discount receipt of Rs.14,999/-*].

9. Since the Ld.AR has contested only the directions/modifications of the Ld.PCIT to the AO to make an addition of Rs.43,60,829/-, we confine ourselves to such a plea and find considerable merit in the submissions of the Ld.AR that the creditors written off to the tune of Rs.31,75,296/- as well as discount receipts to the tune of Rs.14,999/- [coming to total of Rs.31,90,295/-] is income inextricably linked with that of the business of the assessee and note that even though, the assessee has voluntarily offered 8% of the same before the Ld.PCIT, still he didn't consider the same and has not bothered to examine/determine the character of the income and simply brushed aside the same and directed the addition of Rs.31,90,295/-, which can't be countenanced and since we find that said amount is linked inextricably with that of the business income, and therefore, only profit embedded in it needs to be added which is adopted at 8% of Rs.31,90,295/- i.e. Rs.2,55,224/-. Hence Rs 29,35,071 need not be added.

10. Coming to the bank interest shown by the assessee in its P & L A/c to the tune of Rs.11,70,534/- though the Ld.AR asserted that the same



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also have the character of business income, but, no evidence was adduced to support such a contention. Therefore, the action of the Ld.PCIT to direct the AO to add Rs.11,70,534/- as "other income" is upheld. Thus, we modify the impugned order of Ld PCIT and direct the AO to add Rs.11,70,534/- + Rs.2,55,224/- [total Rs.14,25,758/-] in place of Rs.43,60,829/-.

11. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 04th day of December, 2024, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 04th December, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

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