

**आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं  
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं. ITA No.1214/Chny/2024**  
**(निर्धारणवर्ष / Assessment Year: 2020-21)**

<b>Shri Kandaiah Muthukrishnan</b> #161, Rangarajapuram Main Road, Kodambakkam, Chennai-600 024.	<b>बनम/</b> <b>Vs.</b>	<b>DCIT</b> Central Circle-2(4) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AFTPM-5826-Q</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri G. Baskar (Advocate)- Ld.AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03-12-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16-12-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax (Central)-1, Chennai-2 (Pr.CIT) vide impugned order dated 28-03-2024 proposing revision of an assessment framed by Ld. AO u/s.143(3) of the Act on 29-09-2021.

**1.2 The grounds taken by the assessee are as under: -**

1. The order of the PCIT is bad in law as the same is contrary to the facts of the case and the provisions of law.
2. The order of assessment framed by the AO is not prejudicial to the interests of the revenue and the PCIT erred in stating the contrary.

3. The AO having framed both the appellant's and the firm's assessment by considering the entire facts and seized materials on record, the PCIT is not right in stating that the AO has framed the appellant's assessment without application of mind.

4. The AO after due application of mind and consideration of all facts has added the cash found of Rs.33,48,921/- in the premises of the firm, in the appellant's hands, due to the reason that the same was out of unaccounted finance mediation business carried out by the appellant.

5. The AO having carried out the exercise to add the cash found in the firm's premises in the appellant's hands, the PCIT's erroneous contention that the order of assessment is erroneous is incorrect and on an improper piece-meal consideration of the total facts of the case.

6. The income from the unaccounted finance mediation business having been added as unexplained money of the appellant, the order of assessment can by no stretch be stated to be prejudicial to the interest of the revenue.

7. The PCIT has grossly erred in stating that the issue of debtor balance was not considered in the appeal before the CIT(A) when cash of Rs.33,48,921/- found during the search of the partnership firm, added as appellant's unexplained money was disputed in appeal before the CIT(A).

8. The CIT(A) having confirmed the addition of unexplained money by rendering a finding that the appellant was a mediator, arranging loans and the cash found during the search was nothing but the income earned from the same, the entire issue of finance mediation business including the debtor balance was very much considered by the CIT(A).

9. The CIT(A) having concluded that appellant was a mediator for arranging loans and having confirmed income from the same, the PCIT has grossly erred in considering the same issue in the impugned order, without considering the findings of the CIT(A).

1.3 The Ld. AR advanced arguments and drew our attention to the queries raised by Ld. AO during the course of assessment proceedings. The Ld. AR stated that one of the possible views was taken by Ld. AO and therefore, revision was bad-in-law in terms of various judicial decisions. The Ld. CIT-DR also advanced arguments and submitted that the issues as flagged in the revisionary order were inadequately enquired into by Ld. AO. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Facts leading to Impugned Revision**

2.1 The assessee being resident individual was assessed u/s 143(3) on 29-09-2021. The assessment has been framed after considering the outcome of search conducted by the department u/s 132 at the premises

of M/s Sri Ram Studios (a partnership firm of the assessee) on 21-01-2020. On the basis of search proceedings, Ld. AO made addition of cash found and also made addition of jewellery in the hands of the assessee. Upon further appeal, Ld. CIT(A) confirmed addition of cash found but deleted addition of jewellery. The adjudication of Ld. CIT(A) was confirmed by Tribunal in ITA No.1113/Chny/2023 order dated 03-04-2024. During the course of assessment proceedings, notices u/s 142(1) were issued from time to time calling for various details from the assessee. However, the assessee failed to substantiate its claim and finally, the addition of cash found was confirmed by Tribunal.

2.2 Subsequently, Ld. Pr. CIT, upon perusal of case records, alleged that Ld. AO omitted to consider the incriminating search material evidencing the assessee's money-lending business that had outstanding debtors' balance of Rs.34.61 Crores on the date of search. The AO failed to make necessary inquiries or verification to suitably assess the sources for investment made in the money-lending business. The same makes order erroneous and prejudicial to the interest of revenue and hence, liable for revision in terms of Explanation 2(a) to Section 263. Accordingly, the assessee was show-caused on 13-03-2024.

2.3 The assessee defended the assessment on the ground that the debit balance of Rs.34.61 Crores was already considered in the hands of firm M/s. Sri Ram Studio by the AO in the assessment proceedings which had been deleted by the CIT(A) in the appellate order of M/s Sriram Studio. Further, it was also stated that the assessee only mediated for arrangement of finance for a commission of 0.1% and cash addition was on account of unaccounted cash generated out of his commission business. The assessee thus stated that this issue was

already considered in the assessment proceedings and therefore, revision was not justified.

2.4 The Ld. Pr. CIT noted that an appeal was filed by M/s Sriram Studios against the assessment order passed in their own case. The assessment and appeal proceedings in the case of M/s Sri Ram Studios were entirely independent of any revisionary proceedings u/s 263. In the case of the assessee, the Ld. AO only disputed addition of cash seized and jewellery found. The decision made in the case of M/s Sri Ram Studios will not impact or come in the way of Sec. 263 proceedings in the case of the assessee. Therefore, assessee's objection was rejected. The issue of debtors balance added in the case of the firm was never a subject matter of appeal in the assessee's own case. In fact, the deletion of the addition in the firm's case clearly reflects and strengthens the fact of non-application of mind by Ld. AO in not assessing the same in the hands of the assessee.

2.5 During the case of search at the premises of M/s Sri Ram Studios, incriminating material evidencing carrying out of unaccounted finance business by the assessee was found. The seized incriminating material was confronted to Shri. V. Balamurugan (Accountant of M/s. Sriram Studio). In the sworn statement recorded u/s 132(4), he affirmed the fact that he was receiving cash on behalf of the assessee in relation to assessee's money-lending business. This fact was affirmed by the assessee in his statement that the debit and credit entries seen in the notebooks and loose sheets were unaccounted cash credit and cash debit entries relating to his money lending business and such entries were not accounted in his regular books of accounts. Further, he deposed that all the transactions narrated in seized material are done

out of the unaccounted income derived from finance business. Despite the above information being available that the finance business was carried out only by the assessee, the outstanding debtor balance of Rs.34.61 Crores was omitted to be considered in the hands of the assessee. This matter would have warranted much deeper examination by Ld. AO especially regarding the sources for such amounts, opening and closing balances etc. However, AO failed to look into the issue. The Ld. AO did not make necessary enquiries and verification regarding source of huge investment made in such money-lending business. The same makes the order erroneous and prejudicial to the interest of revenue. Therefore, the revision was justified in terms of various judicial decisions. Finally, Ld. AO was directed to modify the assessment order and assess the outstanding debtors balance of Rs.34.61 Crores in the hands of the assessee after making necessary verification on the issue and after giving suitable opportunity to the assessee. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

3. Upon perusal of documents as placed in the paper-book, it could be seen that the assessee was searched and his statement was recorded on 21-01-2020 and 22-01-2020. Subsequently, notices were issued u/s 153C to the assessee for AYs 2014-15 to 2016-17. Another notice u/s 142(1) was issued to the assessee for AYs 2014-15 on 20-02-2021 (Page No.31 of the paper-book). In this notice, the assessee was inter-alia, required to explain the seized documents vide Annexure-ANN/SM/SS/SS/B&D/S1 to S11 and the tally data present in Annexure ANN/SM/SS/ED/S and excel book named as Annexure – SRS daybook ledger. On the basis of the same, it was noted that the assessee was in

the habit of sourcing funds by way of cash loan from the persons who are involved in money lending business un-officially and advancing them to various entities including Vellammal Group. In Point No.13, the summary of debit and credit balances as found in SRS day-book from FYs 2011-12 till 2019-20 was tabulated. The assessee was directed to explain the same and these amounts were proposed to be added as undisclosed income of relevant assessment years. In point nos.15 & 16, the assessee was asked to explain as under: -

15. In addition to the above as per the outstanding balance as per the seized tally data is Rs.35 crore on the date of search. It proves to show that the cash funds given to the third parties namely to Vellammal group as loans by Shri Muthukrishnan as on 21.01.2020 is Rs.35 Crores and the source of such fund is from the income earned by way of un-accounted commission and interest earned over the period of years and the amounts received from M/s Vellammal Group

16. Shri Muthukrishnan has submitted a letter to the investigation wing requesting time to go through the seized materials books of accounts and provide source for Rs.35 Crores outstanding Sundry debtors balance. Shri Muthukrishnan is hereby called upon to submit evidence to prove that the sources for such sundry debtors. Since the copy of the seized material is already taken by you the same may be furnished along with the evidence.

Similar queries were raised in notices issued u/s 142(1) for AYs 2015-16 & 2016-17 on 20-02-2021.

4. The assessee furnished various replies against the same. In reply dated 02-03-2021, it was explained that out of total amount in circulation in money lending, almost 98% represent borrowed funds. The quantification of debits / credits as shown in the notices was not a true reflection of either the gross amount lent or borrowed. Therefore, these amounts could not be considered as income as proposed by Ld. AO. The assessee also explained that the amount outstanding as debtors on the date of search was Rs.35 Crores and the source for this could only be out of the income generated from money-lending business over the period. The Ld. AO failed to take into consideration the corresponding

amount outstanding on the same date in the loan creditors' account. The detail of creditors and debtors as on 21-01-2021 was duly furnished as Annexure-1 and Annexure-2 of the reply.

5. Apparently, convinced with assessee's reply, Ld. AO framed assessment for AYs 2014-15 to 2016-17 accepting the returned income. Similarly, assessment for AY 2020-21 was framed on 29-09-2021 making addition of cash seized and jewellery which ultimately got concluded by Tribunal order in ITA No.1113/Chny/2023 order dated 03-04-2024. Pertinently, all these assessments have been framed by same Assessing Officer, Central Circle 2(4), Chennai. In the light of above factual matrix, it could very well be said that the source of investment in money lending business was duly enquired into by Ld. AO during the course of assessment proceeding. The assessee had furnished the replies to the satisfaction of Ld.AO. It was duly explained that out of total amount in circulation in money lending, almost 98% represent borrowed funds. It was also explained that the quantification of debits / credits as shown in the notices was not a true reflection of either the gross amount lent or borrowed and therefore, these amounts could not be considered as income of the assessee. The assessee also explained that the amount outstanding as debtors on the date of search was Rs.35 Crores and the source for this could only be out of the income generated from money-lending business over the period. The Ld. AO also failed to take into consideration the corresponding amount outstanding on the same date in the loan creditors' account. The detail of creditors and debtors as on 21-01-2021 was duly furnished as Annexure-1 and Annexure-2 of the reply. Thus, the issue of investment in money lending business was duly examined and verified by Ld. AO. The assessee furnished plausible

explanation for the same. Having satisfied with assessee's replies, Ld. AO framed assessment for this year as well as for preceding years. The Ld. AO accepted the claim of the assessee with due application of mind. The view of Ld. AO, in our considered opinion, was one of the plausible views and the same is not opposed to facts to record. This being the case, Ld. Pr. CIT, in our considered opinion, could not have substituted the opinion of Ld. AO with that of his own view unless the view of Ld. AO was shown to be perverse. We find that the view of Ld. AO was a plausible view.

6. The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. vs. CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as **CIT V/s Max India Ltd. (295 ITR 282)**. Similar principal has been followed in **Grasim Industries Ltd. V/s CIT (321 ITR 92)**. The ratio of all these decisions is that where two views are possible and AO has preferred one view against another view, order could not be said to be erroneous or prejudicial to the interest of the revenue.

7. Therefore, on the given facts, the allegation of Ld. Pr. CIT that Ld. AO did not make necessary enquiries could not be accepted. The Explanation-2 to Sec.263 would not apply in the present case. Accordingly, the impugned revision u/s 263 could not be upheld. We order so. The assessment framed by Ld. AO stand restored back.

8. The appeal stands allowed in terms of our above order.

*Order pronounced on 16<sup>th</sup> December, 2024*

<b>Sd/-</b> <b>(MANU KUMAR GIRI)</b> <b>न्यायिक सदस्य / JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(MANOJ KUMAR AGGARWAL)</b> <b>लेखक सदस्य / ACCOUNTANT MEMBER</b>
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चेन्नई Chennai; दिनांक Dated : 16-12-2024  
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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