

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1306/CHNY/2019
निर्धारण वर्ष /Assessment year : 2014-2015

Smt. Padmavathi,
No.36A/66, Keezhapallivasal Street,
Tisayanvilai,
Tirunelveli Dist. 627 657

Vs. The Income Tax officer,
Ward -3,
Tirunelveli.

[PAN BSVPP 4320E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. G. Baskar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 28-11-2019
घोषणा की तारीख /Date of Pronouncement : 02-12-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee directed against the order of the Principal Commissioner of Income Tax-2, Madurai, ('PCIT for short) dated 18.03.2019 for the Assessment Year (AY) 2014-2015 passed u/s.263 of the Act.

2. The Assessee raised the following grounds of appeal:

'1.1 The impugned order of the Commissioner of Income Tax u/s.263 of the Income Tax Act is wrong, illegal and opposed to facts.

1.2 The CIT ought to have seen that the Order of Assessment is neither erroneous nor prejudicial to the interest of the Revenue warranting revision.

1.3 The CIT ought to have seen that the Return of Income had been picked up for limited scrutiny for the purpose of verification of sources for the purchase of immovable property, which the Assessing Officer did; and as such the order of assessment does not suffer from any illegality.

1.4 The CIT erred in stating that there was lack of enquiry, when the Show Cause Notice as well as the Order u/s 263 clearly use the words "not properly enquired into".

2.1 The CIT went wrong in invoking the provisions of Section 56(2)(vii)(b)(ii) of the Income Tax Act. The CIT failed to note that the said provision is applicable only w.e.f. 01.04.2014 for purchases, and cannot be made applicable for this transaction.

2.2 The CIT erred in observing that it is not discernable from the records that the assessee had made a request for reference to valuation officer, without considering that such request will be made only when the AO proposes to make an addition.

2.3 The CIT having cancelled the assessment ought not to have directed a fresh Assessment. The assessment once cancelled cannot be revived by directing him to pass a fresh order of assessment.

3. Any other ground that may be adduced at the time of hearing".

3. The brief facts of the case are as under:

The appellant is an individual and partner in Sri Ram Associates. The return of income for the AY 2014-15 was filed on 27.10.2015 disclosing total income of ₹2,58,110/-. Against the said return of income, the case was selected for limited scrutiny in order to verify the source of funds used for purchase of immovable property to the extent of ₹77,19,00/-. During the course of assessment proceedings, assessee had explained the source for acquisition of property purchase of ₹41,50,000/- and registration and other charges of ₹5,75,000/-. The Assessing Officer completed the assessment vide order dated 28.12.2016 passed u/s.143(3) of the Act after making addition of ₹3,00,000/- disbelieving the receipt of gift received from his brother Shri. Lakshmanan and accepting the explanation for the balance sources of money for purchase of immovable property.

4. While the matter stood thus, the Id. PCIT, Madurai-2 on examination of the records found that the Assessing Officer had not enquired into issue of applicability of Section 50C of the Act in the hands of the assessee, as the assessee had purchased the immovable property for a consideration of ₹41,50,000/- against stamp duty value of the property of ₹77,19,000/-. Accordingly, issued show cause

notice dated 26.10.2018 u/s.263 of the Act. In response to the show cause notice, assessee had filed detailed explanation contending that provisions of Section 50C of the Act has no application in the hands of the purchaser of the property and the provisions of Section 56(2)(vii) (b) of the Act has no applicability to the present case and the issue was examined during the course of assessment proceedings. However, the Id. PCIT considering the submissions made held that no enquiry was conducted by the Assessing Officer into the difference of ₹35,69,000/- between the value adopted for stamp duty purpose and apparent consideration had set aside the assessment vide order dated 18.03.2019.

5. Being aggrieved, the assessee filed an appeal before us. Ld. Authorised Representative submitted that assessee's case for assessment year 2014-15 was taken for limited scrutiny assessment to verify the source for funds for purchase of immovable property to the tune of ₹77,19,000/-. Considering the evidence filed before him, the Assessing Officer passed the assessment order. Therefore, it cannot be said that Assessing Officer had not made any enquiry into the issue which is sought to be revised. Further, it is submitted that when the case was taken up for limited scrutiny, the Assessing Officer is barred to look into the matter other than the issue for which the case was taken up. In support of this, he placed reliance on CBDT

Instruction No.20/2015, dated 29th December, 2015 and the following case laws.

- 01 *'ITO vs. Pericles Foods, 17 SOT 602.*
- 02 *Gift land Handicraft vs. CIT, 108 TTJ 0312.*
- 03 *Nayek Paper Converters vs. ACIT, 93 ITR 144.*
- 04 *Ajit Gupta vs. ITO, 108 TTJ 301.*
- 05 *CIT vs. Narayana P. Dedhia, 270 ITR 572*
- 06 *DCIT vs. Sunita Finlease Ltd, 330 ITR 491*
- 07 *Kwalpro Exports vs. ACIT, 110 ITD 59*
- 08 *CIT vs. Amal Generators Ltd 84 DTR 0045.*
- 09 *CIT vs. Howrah Flour Mills Ltd, 236 ITR 156.*
- 10 *CIT vs. PVP Ventures 211 Taxman 554*
- 11 *Jai Commercial Co. Ltd vs. JCIT, 76 ITR 65 and*
- 12 *Andhra Valley Power Supply Co. Ltd vs. DCIT, 55 ITD 24".*

Thus, the Id. Authorised Representative submitted that Id. PCIT ought not have exercised the power of revision in the instant case.

6. On the other hand, the Id. Departmental Representative submitted that the Assessing Officer had not looked into the issue of applicability of provisions of Section 56 (2) (vii)(b) of the Act, therefore the Id. PCIT was justified in exercising the power of revision.

7. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the validity of the revision order passed by the Id. PCIT, u/s.263 of the Act. Admittedly, the assessment was taken up under limited scrutiny in order to verify the source for purchase of property to the tune of ₹77,19,000/-. After considering the materials placed before him, the Assessing Officer had completed the assessment after making addition

of ₹3,00,000/- treating the gift received from his brother as unexplained cash credit. But it appears that the Assessing Officer had looked into issue of source only to the extent of ₹41,50,000/- which is apparent consideration paid for the purchase of property. The value adopted for stamp duty purpose is taken as deemed consideration u/s.56(2)(vii) (b) of the Act and this is only deemed provision and there is no occasion for the assessee to explain the source for deemed consideration paid. It is settled position of law that while completing the assessment under limited scrutiny, the Assessing Officer cannot look beyond the issue for which the case was selected for scrutiny. It is beyond the power of the Assessing Officer to look into any other issue which has come to his notice during the course of assessment proceedings. Then the issue that comes up for our consideration is whether the Id. PCIT could exercise the power of revision to look into any other issue which the Assessing Officer himself could not look. In our considered opinion, the answer is an emphatic "No". In the circumstances, the impugned order passed by the Id. PCIT cannot be sustained in the eyes of law.

8. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 2nd day of December 2019, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:2nd December, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |