

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.181/Chny/2023  
निर्धारण वर्ष /Assessment Year: 2017-18

Mr.Gopal Soundararaj,  
255, Avinashi Road, B.R.Puram,  
Coimbatore-641 004.  
[PAN: AMKPS 3188 D]  
(अपीलार्थी/Appellant)

v. The Principal Commissioner-  
of Income Tax-1,  
Coimbatore.  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr.S.Sridhar, Adv. (Erode)
प्रत्यर्थी की ओर से /Respondent by	:	Mr.R.Mohan Reddy, CIT
सुनवाई की तारीख/Date of Hearing	:	16.03.2023
घोषणा की तारीख /Date of Pronouncement	:	06.04.2023

आदेश / ORDER

**PER MANJUNATHA.G, AM:**

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax, Coimbatore-1, dated 15.03.2022 and pertains to assessment year 2017-18.

2. At the outset, we find that there is a delay of 275 days in filing of the appeal before the Tribunal, for which, a petition along with Affidavit explaining the delay in filing of the appeal, has been filed. The Ld.Counsel referring to petition filed by the assessee submitted that the assessee was under **bona fide** belief that there is no necessity to file appeal against the order of the PCIT u/s.263 of the Income Tax Act, 1961 (in short "the Act"),

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because, during the course of assessment proceedings, sufficient details have been filed and the AO accepted the explanation furnished by the assessee and get relief. However, when the PCIT has passed order u/s.263 of the Act, with a direction to the AO, the assessee felt that it is necessary to file appeal against order passed by the PCIT u/s.263 of the Act, because, it has good grounds to challenge said order. In that process, there is a delay of 275 days which is neither intentional nor wanton of any undue benefit, but purely beyond the control of the assessee. Therefore, the delay may be condoned and appeal may be admitted in the interest of natural justice.

**2.1** The Ld.DR present for the Revenue opposed petition filed by the assessee and argued that reasons given by the assessee does not come under reasonable cause as provided under the Act, for condonation of delay and thus, appeal filed by the assessee should be dismissed as unadmitted.

**2.2** We have heard both the parties and considered relevant contents of petition filed by the assessee for condonation of delay and we find that by not filing the appeal within the time allowed under the Act, the assessee neither gets any benefit nor derive any undue benefit. But, in fact, the assessee himself put in a trouble. Therefore, when the assessee has given reasons for not filing the appeal within the time allowed under the Act, and such reasons are ***bona fide***, then, the appellate authority should exercise their discretionary powers and condone the delay in filing of the appeal for advancement of substantial justice. Therefore, considering the reasons

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given by the assessee in his Affidavit, we condone the delay in filing of the appeal and admit appeal filed by the assessee for adjudication.

**3. The assessee has raised the following grounds of appeal:**

*1. The order of the learned PCIT is bad and erroneous in law.*

*2. The learned PCIT erred in invoking Section 263 and passing orders directing the Assessing Officer to re-do the assessment afresh on issues other than the one selected for LIMITED SCRUTINY.*

*3. The learned PCIT exceeded his powers by invoking Section 263, when the appellant filed all the details called for which had been carefully considered and verified by the Assessing Officer.*

*4. The learned PCIT erred in not considering the scope and effect of Section 270AA(4), making the very Section 270AA otiose.*

*And for other reasons that may be adduced at the time of hearing, it is prayed that the delay be condoned, appeal be admitted, considered and justice be rendered.*

**4.** The brief facts of the case are that the assessee is an individual filed his return of income for the AY 2017-18 on 31.10.2017 declaring total income of Rs.10,27,800/-. The case has been selected for limited scrutiny under CASS for verification of cash deposits during demonetization period and mismatching receipts and accordingly, notice u/s.143(2) of the Income Tax Act, 1961, dated 24.09.2018 and notice u/s.142(1) of the Act, dated 15.10.2019 was issued and served on the assessee. The assessment has been completed u/s.143(3) of the Act, on 13.12.2019 and assessed total income of Rs.58,90,777/- by making additions towards interest income of Rs.48,62,977/- received on FD from IOB & SBI. In the assessment order, the AO has discussed the issue of cash deposits during demonetization period and also interest received on Fixed Deposits (in short "FDs") in light of various evidences filed by the assessee and completed the assessment.

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The AO had also issued notice u/s.274 r.w.s.270A of the Act, on 13.12.2019, and called upon the assessee to explain 'as to why' penalty shall not be levied for under reporting of income.

**5.** The case has been, subsequently, taken up for revision proceedings by the PCIT, Coimbatore, and notice u/s.263 of the Act, dated 25.02.2022, has been issued and served on the assessee. In the said show cause notice, the PCIT observed that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue on the issue of initiation of penalty proceedings u/s.270A of the Act, on the ground that the AO has omitted to record reasons for initiation of penalty. The PCIT further observed that although, there is an increase in interest income for the assessment year in consideration when compared to previous assessment year, the source of income for the deposits made with IOB & SBI, for which, interest received was not verified at the time of assessment proceedings. Therefore, the PCIT was of the opinion that the AO has completed the assessment without carrying out necessary enquiries, he ought to have been carried out, which rendered assessment order passed by the AO to be erroneous in so far as it is prejudicial to the interest of the Revenue. In response to show cause notice, the assessee submitted that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue, because, the assessment has been taken up for limited scrutiny to verify certain issues and said issue has been examined by the AO during assessment proceedings u/s.143(3) of the Act,

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which is evident from the assessment order passed by the AO. Therefore, it cannot be said that the AO has not carried out required enquiries he ought to have been carried out in the given facts and circumstances of the case, which rendered the assessment order is erroneous and prejudicial to the interest of the Revenue.

**6.** The PCIT after considering relevant submissions of the assessee and also taken note of certain judicial precedents opined that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, because, the AO has completed assessment u/s.143(3) of the Act, without initiating penalty proceedings u/s.270A of the Act, with a proper satisfaction recorded as required under the law. Although, the AO has initiated penalty proceedings and dropped the same after considering relevant submissions of the assessee, but, fact remains that he ought to have recorded reasons why penalty proceedings have been initiated for under reporting of income. Since, the AO has failed to record satisfaction as required under the law, which caused prejudice to the Revenue. In so far as source for deposits, on which, interest income has been earned by the assessee, although, the AO has made addition towards interest income, but he failed to examine source for said interest. Therefore, non-verification of necessary facts with regard to source of income for deposits caused prejudice to the interest of the Revenue. Therefore, set aside the assessment order passed by the AO and direct the AO to re-examine the issue with regard to initiation of penalty proceedings

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and source for deposits with bank. The relevant findings of the PCIT are as under:

5. The impugned assessment order dated 13.12.2019 passed in the assessee's case for the instant assessment year u/s.143(3) of the Act suffered from certain errors that were required to be rectified as these errors were prejudicial to the interest of revenue. First, the AO while passing the said assessment order, failed to record due satisfaction before initiating the penalty proceedings u/s.270A of the Act, though the penalty notices were served on the assessee. In reply thereto, the assessee stated that the out of the sale proceeds of the land held by him in his capacity as Power of Attorney Holder for the nephews, who are mentally incapacitated and their parents being no more, the proceeds were deposited and interest income was received by him as he had given his PAN to the bank and hence, stated that though he accepted the addition made in the assessment order, there is no revenue loss on this account. The assessee submitted that he did not prefer any appeal against the impugned assessment order and that entire taxes were paid and hence, there is no loss on this account too. With regard to omission on the part of recording the reasons for initiation for penalty, the assessee stated that the penalty proceedings were dropped as per section 270AA(5) and the order u/s 270AA(4) is final. With regard to the above submissions, it is an admitted fact that the addition on undisclosed interest income received by the assessee was made in the assessment order and this is clearly a case of concealing his true income and the AO ought to have recorded satisfaction before initiation of penalty proceedings u/s 270A of the Act. Perusal of the records reveal that the same has not been done by the AO. As held by the CIT vs. Surendra Prasad Agarwal (2005) reported in 275 1TR 113, the Hon'ble Allahabad High Court had held that

"18. It is well-established that the AO has to initiate proceedings for imposition of penalty during the course of the assessment itself. If he fails to initiate or record his satisfaction for the initiation of the penalty proceedings during the course of the assessment proceedings, it would be a case where the assessment order can be said to be erroneous as he has not decided a point nor recorded a finding on an issue which ought to have been done, or decides it wrongly as held by this Court in the case of Saraya Distillery (supra). Thus, the omission of the ITO to initiate penalty proceedings during the course of the assessment renders the assessment order erroneous and prejudicial to the interest of the Revenue."

There are umpteen number of decisions delivered by the Hon'ble Courts and appellate authorities, which categorically state that recording of satisfaction is a prerequisite before issue of notice initiating penalty proceedings. However, perusing the aforesaid submissions and the impugned assessment order reveals that the said assessment order dated 13-12-2019 was passed without considering the above legal proposition. The order so made, suffers in as much as it is erroneous and prejudicial to the interest of revenue, requiring an intervention to cure the order made erroneous and prejudicial to the interest of the Revenue.

6. With regard to the second issue of non-verification of the sources for the interest income earned to the tune of Rs.48,62,977/-, the assessee in the course of present proceedings had stated that the sale proceeds of the agricultural lands belonging to the legal heirs of his sister was deposited in the bank accounts and from out of the interest earned therefrom, the same was detected by the AO from the Form No.26AS and addition made to the returned income. Here again, the submissions of the assessee and the impugned assessment order have been carefully perused and that it is noticed that the AO had made the addition, but it appear that there was no mention about examination of the sources for receipt of such interest income. The assessment order so made without proper investigation and collation of the facts renders it as erroneous and prejudicial to the interest of revenue.

7. In order to remedy the said error in the order of assessment in the instant case made on 13-12-2019 for the assessment year 2017-18, the recourse would be to resort to provisions of sec.263 of the Act. Accordingly, the order of the AO dated 13-12-2019 for the assessment

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*year 2017-18 in the case of the captioned assessee is, set aside, in exercise of the powers vested in me u/s.263 of the Act.*

*8. The Assessing Officer, is hereby, directed to re-do the assessment afresh after verification of the facts discussed above. The assessment order is set aside to consider the issue of proper recording of the satisfaction before initiation of relevant penalty provisions and also to examine the sources for the interest income earned for the instant AY. The AO may satisfy himself in accordance with law and come to a logical conclusion in respect of the above issues and pass appropriate orders in the assessee's case. The Assessing Officer shall give adequate opportunity of being heard to the assessee in this regard before passing the fresh assessment order. The Assessee is also given yet another opportunity to present its case and shall provide the relevant details with material evidence, so as to facilitate the Assessing Officer to arrive at a logical conclusion.*

**7.** The Ld.Counsel for the assessee submitted that the PCIT is erred in assumption of jurisdiction u/s.263 of the Act, on the issue which has not been subject matter of assessment u/s.143(3) of the Act, because, in the limited scrutiny regime, the AO does not have power to go beyond the issues specified in the notice and thus, when the AO cannot question other issues, the PCIT cannot step in and assume his powers on other issue, which was not subject matter of assessment proceedings. In this regard, he relied upon certain judicial precedents, including the decision of ITAT Chennai Bench in the case of Subbunadar Chandra Sekar v. ITO in ITA No.612/Chny/2021 order dated 06.12.2022. The Ld.Counsel for the assessee further submitted that even otherwise, the assessment order cannot be considered as erroneous in so far as it is prejudicial to the interest of the Revenue, because, the issues questioned by the PCIT has been examined by the AO in assessment proceedings, which is evident from the fact that the AO has initiated penalty proceedings u/s.270A of the Act, and dropped the same after considering relevant submissions of the assessee. In so far as source for cash deposits, the AO has made additions towards interest income on very same deposits, which means, the AO was aware of

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the deposits in bank and source for said deposits. Therefore, merely for the reason that the AO was not discussed the issue in the assessment order, it cannot be said that the AO has not considered the issue.

**8.** The Id.CIT-DR, R.Mohan Reddy, supporting the order of the Ld.CIT(A), submitted that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, which is evident from the fact that the AO has completed assessment without carrying out required enquiries, he ought to have been carried out in the given facts of the case. He further submitted that although, the AO has initiated penalty proceedings u/s.270A of the Act, but, such proceedings have been mechanically initiated without recording any satisfaction 'as to how' penalty is leviable in the given facts of the case. Further, it is a well settled principle of law by the decision of the Hon'ble Supreme Court in the case of Daniel Merchants (P) Ltd. v. ITO reported in [2018] 95 taxmann.366 (SC) that if the AO did not make any proper enquiry while making assessment and accepting the explanation of the assessee in so far as receipt of share application money was concerned, Commissioner rightly set aside such assessment order u/s.263 of the Act. The Ld.CIT(A) had also relied upon the decision of the Hon'ble Allahabad High Court in the case of CIT v. Associated Contractors Corporation reported in [2005] 275 ITR 123 (Allahabad) and argued that non-initiation of penalty proceedings by assessing authority in course of assessment proceedings renders order



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erroneous and prejudicial to the interest of the Revenue, and therefore, can be subject matter of revision proceedings u/s.263 of the Act.

**9.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The PCIT has invoked their jurisdiction u/s.263 of the Act, and set aside the assessment order passed by the AO u/s.143(3) of the Act, dated 13.12.2019. According to the PCIT, the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, on the issue of initiation of penalty proceedings u/s.270A of the Act, and further, on the issue of source for FDs with bank, on which, interest income earned by the assessee. The PCIT was of the opinion that although, the AO initiated penalty proceedings u/s.270A of the Act, but, such proceedings have been mechanically initiated without recording satisfaction as required under the law. The PCIT further was of the opinion that although, the AO has made addition towards interest income from FDs with two banks, but, he has failed to verify source for FDs with said banks, which rendered the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue.

**10.** The provisions of Sec.263 of the Act, empowers the PCIT to invoke ***suo moto*** revision proceedings, in case, he satisfies that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue. In other words, before initiating revision proceedings u/s.263 of the Act, the PCIT must satisfy from the records that

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an erroneous order passed by the AO caused prejudice to the interest of the Revenue. In this case, if you go through the reasons given by the PCIT in the order passed u/s.263 of the Act, we find that the PCIT has questioned the assessment order passed by the AO on two issues. The first issue questioned by the PCIT was initiation of penalty proceedings u/s.270A of the Act. If you go through the reasons given by the PCIT on this issue, and the assessment proceedings, we find that the AO has issued notice u/s.274 r.w.s.270A of the Act, on 13.12.2019 and called upon the assessee to explain 'as to why' penalty should not be levied for under reporting of income. From the notice itself it can be ascertained that the AO has satisfied that he has proceeded with initiation of penalty proceedings for under reporting of income. Therefore, we are of the considered view that the PCIT is completely erred in coming to the conclusion that the AO has not initiated penalty proceedings u/s.270A of the Act, with a proper satisfaction. Thus, on this issue, the assumption of jurisdiction by the PCIT fails.

**11.** In so far as the second issue questioned by the PCIT on source for FDs with two banks, we find that the very purpose of scrutiny assessment is to verify interest income reported in Form 26AS with return of income filed by the assessee. During the course of assessment proceedings, the AO has verified interest earned on FDs with two banks and made additions of Rs.48,62,977/- in respect of interest income received from IOB & SBI. From the above, it is very clear that the issue of FDs with two banks was

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in the knowledge of the AO. Although, the AO specifically did not discuss the issue of source for FDs, but, after considering the explanation of the assessee that source for FDs is out of sale proceeds of a property in the capacity of power of attorney holder and said sale of property was assessable in the hands of the original owners of the property, the AO has accepted the claim of the assessee and completed the assessment, which is evident from the fact that the AO has made additions towards interest income from very same FD, but does not made any addition towards source for said deposit. Therefore, we are of the considered view that on this issue also the assumption of jurisdictional by the PCIT fails.

**12.** In so far as various case laws cited by the Ld.Counsel for the assessee and the Ld.DR, we find that the case laws cited by the Ld.Counsel for the assessee are on the issue of limited scrutiny and powers of the PCIT u/s.263 of the Act, and thus, we are of the considered view that there is no necessity to discuss those case laws, because, said case laws are not specifically applicable to the facts of the present case. In so far as case laws relied upon by Ld.DR, we find that in the said case, it was the case of the Revenue that there was no proper enquiry while making assessment, but, in the present case, it is abundantly clear that the AO made necessary enquiries and has taken a view. Therefore, the case law cited by the Ld.DR is not applicable to the facts of the present case. In so far as the case law relied upon by the Ld.DR in the case of Associated Contractors Corporation (supra), we find that said decision is on the issue of non-initiation of penalty

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proceedings by assessing authority in the course of assessment proceedings, but, in the present case, the AO has initiated penalty proceedings and later dropped on being satisfied with explanation of the assessee. Therefore, above case laws is also not applicable to the facts of the present case.

**13.** In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the Revenue. The PCIT without satisfying 'as to how & why' the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, invoked jurisdiction u/s.263 of the Act, and set aside the assessment order. Thus, we quashed the order of the PCIT u/s.263 of the Act.

**14.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 06<sup>th</sup> day of April, 2023, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 06<sup>th</sup> April, 2023.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF