

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T. VARKERY, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **351/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2017-18

Sai Organic Farms
105, K K Nagar,
Madurai – 625 020.

[PAN: ADGFS-1287-E]

The Principal Commissioner of
v. Income-tax,
Madurai-1,
Madurai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. S. Sridhar, Advocate
: Shri. M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 22.03.2023

घोषणा की तारीख/Date of Pronouncement

: 24.03.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by the Principal Commissioner of Income Tax, Chennai, dated 24.03.2022 and pertains to assessment year 2017-18.

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

"1. The order of the Principal Commissioner of Income Tax, Madurai -1 dated 24.03.2022 passed in terms of section 263 of the Act for the assessment year under consideration is contrary to law, facts and in the circumstances of the case.

2. The PCIT erred in assumption of jurisdiction u/s 263 of the Act and consequently erred in passing the revision order by directing the Assessing Officer to frame the assessment afresh without assigning proper reasons and justification.

3. The PCIT failed to appreciate that the order of revision under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The PCIT failed to appreciate that the twin conditions of error and prejudice causing to the Revenue were not satisfied concurrently on the facts and in the circumstances of the case and ought to have appreciated that there was no scope for substituting the decision taken by the Assessing Officer in the revisional proceedings, thereby vitiating the revision order on various facets.

5. The PCIT erred in setting aside the scrutiny /best judgement assessment without taking into consideration the detailed discussion and findings rendered in the assessment order in relation the estimation of income from agricultural activities demonstrating the substitution of the view taken by the Assessing Officer, thereby vitiating the revision order on various facets.

6. The PCIT failed to appreciate that the reply filed to the show cause notice was not considered in proper perspective thereby vitiating the findings recorded from para 5 of the impugned order.

7. The PCIT failed to appreciate that in any event, substitution of one possible view would not lead to the satisfaction of twin conditions which are the essential prerequisite for assumption of jurisdiction under section 263 of the Act, thus vitiating the entire impugned proceedings.

8. The PCIT failed to appreciate that there was no proper / reasonable opportunity given before passing of the impugned

order and any order passed in violation of the principles natural justice would be nullity in law.

9. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

3. The brief facts of the case are that, the assessee has filed its return of income for the assessment year 2017-18 on 09.02.2018, admitting total income of Rs. Nil. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee had admitted agricultural income of Rs. 38,89,052/-. The assessee was called upon to file necessary details including extent of land, type of crop grown, bills for sale of agricultural produce and necessary accounts. The assessee has filed certain details including the nature of agricultural activity carried out during the relevant financial year and also explained that he has carried out vertical farming in green house and grown European Cucumber, tomatoes and Capsicum. The assessee has also filed details of loan borrowed from banks, financial statement for the relevant assessment year and also lease agreement copy with M/s. Rainbow Organic Greens. However, could not file material evidence for income derived from agricultural activities. Therefore, the AO has completed assessment u/s. 144 of the

Act and estimated agricultural income of Rs. 33,16,600/- and made addition of Rs. 5,72,452/- under the head 'income from other sources'. The AO, while estimating agricultural income has obtained data from National Horticultural Board and then compared with extent of land used for cultivation of crops to arrive at a gross receipt of Rs. 52,26,600/-. The AO had also allowed certain expenses including lease rental paid for taking land on lease amounting to Rs. 19,10,000/- and finally arrived at net agricultural income of Rs. 33,16,600/-.

4. The case has been taken up for revision proceedings by the PCIT, Madura-1 and show cause notice u/s. 263 of the Act, dated 25.02.2022 has been issued and served on the assessee. In the show cause notice, the PCIT was of the opinion that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, because the AO has estimated higher yield in respect of Tomatoes ignoring fact that the assessee itself has estimated lower yield of Tomatoes which rendered the assessment order erroneous and caused prejudice to the interests of the revenue. Therefore, the PCIT called upon the assessee to submit necessary reply, if any for proposed

revision of the assessment order. In response, the assessee submitted that the AO has considered necessary details and has passed best judgment assessment by obtaining certain information from public domain while estimation of agricultural income and thus, it cannot be said that the assessment order passed by the AO is erroneous and prejudicial to the interests of the revenue. The PCIT, after considering relevant submissions of the assessee and also taken note of certain facts including income admitted by the assessee in the return of income and also computation of agricultural income opined that although, the assessee has estimated 40 Tons of Tomato yield in the relevant assessment year, but the AO has mistakenly taken the yield of 60.72 Tons, which makes the assessment order erroneous and prejudicial to the interests of the revenue. Therefore, set aside the assessment order with regard to Para 5 to Para 5.1 of revision order on the issue of estimation of income from sale of Tomatoes.

5. The Id. Counsel for the assessee, referring to assessment order and show cause notice issued by the PCIT submitted that, the assumption of jurisdiction by the PCIT is incorrect because the assessment order is neither erroneous nor

prejudicial to the interests of the revenue, because the AO has carried out necessary enquiries and passed best judgment assessment in terms of section 144 of the Act, and thus it cannot be said that the AO has not applied his mind to relevant fact in right perspective of law. The Ld. Counsel for the assessee, further submitted that the PCIT has accepted other two crops grown by the assessee and income estimated by the AO. However, questioned income estimated from Tomato crop only for the reason that while estimating income, the AO has arrived at higher yield ignoring yield estimated by the appellant while computing income from agricultural activity. But, fact remains that when the AO has passed best judgment assessment, it is as good as the AO has applied his mind to relevant fact and arrived at a current conclusion and thus, even if said conclusion is not acceptable to the PCIT, then it is not open for PCIT to invoke his jurisdiction and revise assessment order.

6. The Ld. CIT-DR, Shri. M. Rajan, referring to show cause notice issued by the PCIT submitted that, the assessment order passed by the AO is erroneous and prejudicial to the interests of the revenue, because it is a clear case of lack of

enquiry by the Assessing Officer in the given facts and circumstances of the case, which is evident from facts brought on record by the PCIT in his show cause notice. The Ld. DR, further submitted that although, the assessee has admitted 40 Tons of Tomato yield while estimating agricultural income, but the AO has adopted higher yield of 60.72 Tons by his own judgment without application of mind to relevant details submitted by the assessee which rendered the assessment order to be erroneous and prejudicial to the interests of the revenue. Therefore, the PCIT has rightly set aside the assessment order and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The sole basis for the PCIT to assume jurisdiction u/s. 263 of the Act and set aside the assessment order is estimation of agricultural income derived by the assessee in the impugned assessment year. In the assessment proceedings completed u/s. 143(3) of the Act, the AO has passed best judgment assessment u/s. 144 of the Act and said assessment has been completed on the basis of materials available on record and also necessary information obtained

from public domain. The Assessing Officer has estimated agricultural income by considering the type of crop grown by the assessee and average yield in respect of said crop as per National Horticultural Board information and estimated 60.72 Tons of Tomato crop for two cycles in the relevant assessment year. The AO had also estimated other two crops as per the best judgment in the given facts and circumstances of the case. The PCIT, has accepted estimation of yield and consequent income from Capsicum and European Cucumber, because estimation made by the AO is higher than income estimated by the assessee. But in respect of Tomato crop, the PCIT disputed estimation made by the AO only for the reason that the estimation made by the AO is higher than the estimation made by the assessee. Except this, the PCIT has not brought on record any cognizant reason and also explained how the assessment order passed by the Assessing Officer on the issue of estimation of income from Tomato crop, is incorrect. In our considered view, when the AO has completed best judgment assessment in terms of provisions of section 144 of the Act, it is as good as the AO has applied his mind to relevant facts in right perspective of law and has taken a plausible view. Further, the view taken by the AO may not be

acceptable to the PCIT. However, unless view taken by the AO is unsustainable in law, it cannot be open to the PCIT to assume his jurisdiction and revise the assessment order. It is not a case of PCIT that the AO has not carried out necessary enquiries in the given facts and circumstances of the case, because as per available records, the AO has discussed at length in assessment order and also obtained certain details from the public domain including from National Horticultural Board and arrived at a conclusion that the probable yield of a particular crop grown by the assessee is approximately at particular quantity. Further, when the assessment has been completed in terms of provisions of section 144 of the Act, and income has been estimated, then while estimating income certain degree of assumption will be considered. Further, estimation made by the AO may not be accurate, but if the AO has applied a scientific method for estimation of income in the given facts and circumstances of the case and said estimation is based on certain reliable information available as per public domain, in our considered view, the PCIT cannot exercise his power conferred u/s. 263 of the Act, and set aside assessment order only on the ground that the estimation made by the AO on a particular crop is higher than the estimation

made by the assessee. The PCIT, has conveniently ignored other two crops, where estimation made by the assessee is more than the estimation made by the AO, whereas, questioned one crop where the estimation made by the AO is higher than the estimation made by the assessee. In our considered view, the reason given by the PCIT to term the assessment order as erroneous and prejudicial to the interests of the revenue is not with sound reasoning. Therefore, we are of the considered view that, the assessment order passed by the AO is neither erroneous nor prejudicial to the interests of the revenue and thus, the assumption of jurisdiction by the PCIT is incorrect. Thus, we quash order passed by the PCIT u/s. 263 of the Act.

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

Order pronounced in the court on 24th March, 2023 at Chennai.

Sd/-
(एबी टी. वर्क,)
(ABY T VARKEY)
न्यायिकसदस्य/Judicial Member

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 24th March, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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