

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.416/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Golden Vats Private Limited New No.272, 3 rd floor, Avvai Shanmugam Salai, Gopalapuram , Chennai-600 086.	बनाना / Vs.	ACIT Central Circle-3(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCG-9782-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri T.S. Lakshmi Venkatraman (FCA)- Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri V. Nandakumar (CIT)- Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	01-11-2023
घोषणाकी तारीख / Date of Pronouncement	:	09-01-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails the invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax (Central), Chennai-1 (Pr. CIT) vide impugned order dated 16.03.2023 in the matter of an assessment framed by Ld. AO u/s.153C r.w.s 144 of the Act on 30.09.2021. The grounds taken by the assessee are as under: -

1. The order of PCIT (Central), Chennai-1 dated 16.03.2023 is opposed to the facts of the case and is not legally maintainable.
2. The PCIT has not considered the following issues raised before him with respect to legality:

a) The sanction made by the competent authority u/s 151 of the Act was without application of mind. Therefore, the proceedings-initiated u/s 147 of the Act is bad in law.

(b) The matter for which proceedings u/s 263 of the Act was invoked is a subject matter of appeal Pending before the First Appellate Authority. As per clause (c) of explanation-1 to Section 263(1) of the Act, the provisions of section 263 cannot be invoked when the subject matter is pending before the First Appellate Authority.

3. In view of the above grounds and other submissions to be made at the time of appeal hearing, the order u/s 263 passed by PCIT (Central), Chennai-1 may be cancelled and justice rendered.

2. The Ld. AR advanced arguments and submitted that the assessment proceedings, in totality, was already subject matter of adjudication before first appellate authority at the time of revision and therefore, doctrine of merger would apply. Reliance has been placed on the decision of this Tribunal in **Kathiravan Ananthalakshmi (ITA Nos.340/Chny/2022 & ors. order dated 03.08.2022)** wherein Tribunal, on similar facts, held that the assessee's case was covered under Clause (c) of Explanation-1 to Sec. 263 which puts a bar on initiation of revision u/s 263 when an appeal is pending before Ld. CIT(A). The Ld. AR submitted that considering this decision, the revision would be bad-in-law. The Ld. CIT-DR, on the other hand, controverted the arguments of Ld. AR and submitted that no addition was made on two issues which were flagged to reopen the case of the assessee and therefore, the revision was justified. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The facts in brief are that the assessee being resident corporate assessee is stated to be engaged in manufacturing of Indian Made Foreign Liquor. The assessee filed its return of income for AY 2017-18 admitting total income of Rs.16.75 crores which was scrutinized u/s

143(3) on 16.12.2019. However, during the course of search proceedings in the office premises of Devi Bottles group of companies & others on 06.08.2019, certain incriminating material was found containing details of transaction of that group with the assessee. The same led to initiation of proceedings u/s 153C against the assessee and notice u/s 153C was issued to the assessee on 26.07.2021. The assessee filed return of income on 28.09.2021 on the basis of which impugned assessment was framed.

3.2 It also transpired that on the date of issue of notice u/s 153C, reassessment proceedings u/s 147 was pending against the assessee for this year. The assessment framed u/s 143(3) was already reopened and notice u/s 148 was issued to the assessee on 30.03.2021 to make disallowance u/s 40(a)(ia).

3.3 In the present proceedings, Ld. AO, considering the submissions of the assessee, made disallowance u/s 40(a)(ia) for Rs.88.46 Lacs and completed the assessment u/s 153C r.w.s 144. No other addition / disallowances were made by Ld. AO. The assessee assailed this order before learned first appellate authority.

Revisionary Proceedings

4.1 Subsequently, Ld. Pr. CIT sought revision of this order on the ground that the assessment was reopened to make disallowance u/s 40(a)(ia) and also to make disallowance of donation and CSR expenditure for Rs.201.84 Lacs and Rs.21 Lacs respectively. The assessment order, though considered the issue of disallowance u/s 40(a)(ia), did not consider the issue of disallowance of donation and CSR expenses which make the order erroneous and prejudicial to the

interest of the revenue. Accordingly, the assessee was show-caused as per the requirements of Sec.263.

4.2 The assessee submitted that notice u/s 148 was without jurisdiction since the original assessment was completed u/s 143(3). There was no fresh material before Ld. AO to reopen the assessment proceedings. Since the proceedings initiated u/s 147 were bad-in-law, the scope of present assessment u/s 153C would not include scope of reassessment u/s 147 of the Act. The assessee also contended that the jurisdiction u/s 263 could be invoked only on initial assessment order passed u/s 143(3) and not on an order passed u/s 153C. Another contention was that provisions of Sec.263 could be invoked only with respect to matters coming within the purview of Sec.153C subject to outcome of appeal which was pending before CIT(A) and not on matters which were recorded as reasons for reopening the assessment u/s 147.

4.3 However, rejecting assessee's submissions, Ld. Pr. CIT held that the reasons recorded for issuance of notice u/s 148 were duly supplied to the assessee. There was escapement of income since the assessee did not disallow the donations and CSR expenses which were not incurred for the purpose of business. The two components were taxable and the assessee had not disclosed the true and full material facts in the return of income. Therefore, the reassessment proceedings were valid one and within the framework of law. Further, the reassessment proceedings got abated consequent to search assessment proceedings. The other arguments made by the assessee were also rejected. It was further observed that Ld. AO omitted to consider the two issues for which the assessment was opened and the same make the order erroneous

and prejudicial to the interest of the revenue. Accordingly, the assessment order dated 30.09.2021 was set aside to the file of Ld. AO with a direction to disallow both these items. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

5. From the stated facts, it emerges that original assessment was completed in assessee's case u/s 143(3) on 16.12.2019. However, the case was reopened on the allegation of escapement of income and notice u/s 148 was issued on 30.03.2021. In the meanwhile, proceedings u/s 153C were issued against the assessee consequent to search action on certain group on 06.08.2019 and accordingly, the assessee's case was centralized and notice u/s 153C was issued to the assessee on 26.07.2021. Finally, an assessment was framed on 30.09.2021 making disallowance u/s 40(a)(ia). The assessee challenged this assessment on legal grounds as well as on merits before first appellate authority which is stated to be pending on the date of proposed revision.

6. Upon perusal of Form 35, grounds of appeal as well as additional grounds of appeal as filed by the assessee before Ld. First appellate authority challenging assessment order dated 30.09.2021, it could be seen that in the pending appeal against order passed u/s 153C r.w.s. 144, the assessee has questioned the legality of reassessment proceedings u/s 147, inter-alia, on the ground that no fresh material came into the possession of Ld. AO so as to form an opinion of escapement of income. Since the proceedings u/s 147 was bad in law, the scope of assessment u/s 153C would not include the scope of reassessment u/s 147. The assessee also assailed the proceedings on

the ground that sanction issued u/s 151 was given in a mechanical and casual manner. The assessee has also challenged the legality of proceedings u/s 153C. Since the larger issues including legal issues are already pending before first appellate authority, the order passed by Ld. AO, in our considered opinion, could not be subjected to revision u/s 263. The assessee's case, in such a situation, would be covered under Clause (c) of Explanation-1 to Sec. 263 which puts a bar on initiation of revision u/s 263 when an appeal is pending before Ld. CIT(A). Even otherwise also, the powers of Ld. CIT(A) are co-terminus with those of the AO and he can do what AO could do and can also direct the later to do what the later has failed to do so.

7. On the given facts, the ratio of decision of Hon'ble Madras High Court in the case of **Smt. Renuka Philip vs. ITO (409 ITR 567)** would apply wherein it was held by Hon'ble Court as under: -

22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction under Section 54 of the Act should be accepted.

23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the Commissioner could not exercise power under Section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous.

24. As noticed above, the Assessing Officer while completing the re-assessment proceedings has assigned certain reasons for coming to a conclusion that the assessee is entitled for deduction under Section 54F and not under Section 54 of the Act. This reason assigned by the Assessing Officer has been found by us to show due application of mind. As observed, we cannot expect an Assessing Officer to write a judgment. In such circumstances, the view taken by the Commissioner in

his order under Section 263 of the Act has to be termed as a change of opinion, or in other words, the Assessing Officer adopted one of the two views possible and in such circumstances, it cannot be stated that the order is prejudicial to the interest of the Revenue as well as erroneous. For the purpose of exercise of jurisdiction under Section 263 of the Act, the twin tests are to be satisfied and even assuming, the re-assessment order is to be held as erroneous, it cannot be stated to be prejudicial to the interest of Revenue as every erroneous order cannot be subject matter of Revision under Section 263 of the Act. Further more, if the order passed by the Commissioner under Section 263 of the Act as confirmed by the Tribunal is allowed to stand, then the very purpose of the remand order against the original re-assessment proceedings would become a fait accompli.

25. Thus, for the above reasons we are fully satisfied that the assumption of jurisdiction by the Commissioner under Section 263 of the Act was wholly without jurisdiction as the twin tests have not been satisfied and consequently, the order dated 14.03.2012 as confirmed by the Tribunal by order dated 13.07.2012 calls for interference.

26. In the result, the appeal filed by the assessee is allowed and the order passed by the Commissioner dated 14.03.2012, under Section 263 of the Act as confirmed by the Tribunal by order dated 13.07.2012 are set aside, and it is left open to the assessee to pursue her claim before the Assessing Officer. Accordingly, the Substantial Questions of Law are answered in favour of the assessee. Since, the matter has been pending for a quite long number of years and there has been repeated orders of assessment, we direct the Assessing Officer to give effect to the re-assessment order dated 31.12.2009, wherein the Assessing Officer had granted the benefit of Section 54F of the Act to the assessee. No costs.

The Hon'ble Court thus held that when larger issue was pending before CIT(A), the revisionary authority could not exercise jurisdiction u/s 263. Following this decision, similar ratio has been laid down by Hon'ble Allahabad High Court in **CIT vs. VAM Resorts and Hotels Pvt. Ltd. (418 ITR 723)**. The cited decision of Chennai Tribunal is also on similar lines and supports the case of the assessee.

8. Therefore, considering the facts of the case and respectfully following the binding judicial precedent as aforesaid, we would hold that the impugned revision u/s 263 was bad-in-law and the same is therefore, liable to be quashed. We order so.

9. The appeal stand allowed in terms of our above order.

Order pronounced on 9th January,2024

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 09-01-2024
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आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

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