

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:2365/CHNY/2019  
निर्धारण वर्ष /Assessment Year: 2014 - 2015

Smt. E. Santhakumari,  
No.44-D, Thomson Street,  
Duthie School Junction,  
Nagercoil – 629 001.  
Kanyakumari District.

**PAN : AUDPS 5620H**

(अपीलार्थी/Appellant)

The Income Tax Officer,  
Vs. Ward – 4,  
Nagercoil – 629 001

(प्रत्यर्थी/Respondent)

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

: Mr. S. Sridhar, Advocate  
: Mr. ARV. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 04.05.2022  
घोषणा की तारीख/Date of Pronouncement : 06.05.2022

**आदेश /ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the Assessee is arising out of the revision order passed u/s.263 of the Income Tax Act, 1961 (hereinafter "the Act") by the Principal Commissioner of Income Tax, Madurai-2 vide order No.C.No.114/3/PCIT-2/MDU/2018-19; dated 19.03.2019. The assessment was framed by the Income Tax Officer, Ward-4, Nagercoil for the Assessment Year 2014 – 2015, u/s.143(3) of the Act vide order dated 14.06.2016.

2. At the outset, it is noticed that this appeal is time barred by 79 days and the Assessee has filed a petition for condonation of delay supported by an affidavit stating the reasons. We noted that the revision order was received by the Assessee on 03.04.2019 but the Assessee's regular Chartered Accountant who appeared before the PCIT on 19.03.2019, Shri C. Bose Ebenezer, F.C.A advised the Assessee not to file an appeal but consequently a new Chartered Accountant was appointed and the newly appointed Chartered Accountant, Shri. E. Raja Jeya Sekar, Nagercoil advised the Assessee to file an appeal against the revision order immediately before the Tribunal and accordingly an appeal before the Tribunal was filed on 28.08.2019 and thereby there was a delay of seventy-nine days. According to the learned Counsel for the Assessee, a wrong advice given by the Chartered Accountant is the reasonable cause. When these facts were confronted to the Senior Departmental Representative, he could not controvert to the above stated facts.

3. After hearing to the rival contentions, we are of the view that the wrong advice is a reasonable cause for condonation of delay and hence we condone the delay and admit the appeal for adjudication.

4. The first jurisdictional issued raised by the Assessee is that the Assessing Officer during the course of the assessment proceedings

completed the assessment after conducting an enquiry into the source of cash deposits as now the revision is not possible on the same set of facts because the Assessing Officer has formed an opinion which is a possible view as per law. Further, this cannot be called as a lack of enquiry and hence the revision is not valid. The Counsel for the Assessee drew our attention to ground nos.2 & 3, as under:

*"2. The PCIT erred in settling aside the assessment completed on scrutiny u/s.143(3) of the Act, dated 14.06.2016 for conducting fresh enquiry into the source for the cash deposits on the application of section 263 of the Act without assigning proper reasons and justification and ought to have appreciated 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.*

*3. The PCIT failed to appreciate that the twin conditions of error and prejudice causing to the revenue were not satisfied concurrently while vitiating the order of the revision under various facets and ought to have appreciated that the distinction between the lack of enquiry and inadequate enquiry was completely overlooked while the powers of revision was erroneously exercised on the presumption of inadequate enquiry on the part of the Assessing Officer in completing the scrutiny assessment."*

5. The learned Counsel for the Assessee first of all took us through the show-cause issued by the PCIT for revision of assessment u/s.263 of the Act and stated that the PCIT after examination of the assessment records noted that the Assessing

Officer during the course of the assessment proceedings has not examined the cash deposits of Rs.30.00 lakhs deposited on 28.02.2014 in the bank account maintained with the Axis Bank. The learned Counsel for the Assessee drew our attention to the relevant portion of paragraph No.2 of the show-cause notice which states as *"Your husband's bank account through which the above DD was encashed was not obtained and enquired into by the Assessing Officer. Other aspects of the source for the cash deposit were also not properly enquired into."* Further, the learned Counsel for the Assessee stated that even the source of cash deposit of Rs.10.00 lakhs deposited on 09.01.2014 in the Tamilnad Mercantile Bank Limited [TMB Ltd.], the Assessing Officer has not properly enquired into the source and the learned Counsel for the Assessee drew our attention to paragraph no.3 of the show-cause notice and the relevant portion states that *"This cash deposit of Rs.10 lakhs and the source for it was not properly enquired into by the Assessing Officer."* The learned Counsel for the Assessee took us through the revision order and stated that the revision proceedings were carried out just to further enquire into the sources. The learned Counsel for the Assessee drew our attention to the relevant finding given by the PCIT in paragraph No.7 and the relevant portion reads as under:

*"7. .... In the assessment order, the Assessing Officer has failed to discuss as to why and as to how the source of cash deposit of Rs.30,00,000/- in the Axis Bank A/c.*

*No.405010100020624 and of Rs.10,00,000/- in the Axis Bank A/c. No.005100050309160 was accepted as explained and therefore the revisional powers under section 263 would be justified in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Raja Industries also (340 ITR 344).*

6. The learned Counsel for the Assessee then took us through the assessment order and stated that this case was selected for limited scrutiny under the Computer-Aided Scrutiny Selection [CASS] for the reason of cash deposit at the saving bank account and accordingly a notice u/s.143(2) of the Act was issued. The Assessee, before the Assessing Officer produced the books of accounts and bank accounts and statements and the Assessing Officer after verifying the cash deposit of Rs.30.00 lakhs and Rs.10.00 lakhs framed the assessment by observing in paragraph No.3, as under:

*"3) When the Assessee's representative was asked to explain the reason for the cash deposits exceeding the turnover of the Assessee, the Assessee stated that the cash deposits amounting to Rs.30,00,000/- was received from her husband as gift, and also submitted the copy of the return of income and statement of accounts of her husband, the same is verified. She also stated that Rs.5,09,000/- was the amount deposited by her husband in her account for meeting the day-to-day household expenses and the same is verified. And for the balance amount of Rs.6,95,900/-, the Assessee stated that she used to deposit the receipts from the courier services in his savings bank account and accepted to treat it as her business receipts and offered to admit 14.5% (Gross Profit Ratio) of Rs.6,95,900/- as his additional income from business. After verification of the books of accounts and*

*particulars submitted by the Assessee, the Assessment is completed....”*

7. The learned Counsel for the Assessee stated that, once the cash deposits is explained before the Assessing Officer that the same was received by the Assessee from her husband as a gift and which was examined by the Assessing Officer and verified, the cash deposits of Rs.30.00 lakhs and Rs.10.00 lakhs respectively were found genuine. On the same set of facts, the PCIT cannot revise the assessment framed u/s.143(3) of the Act for the reason that it is a case of complete enquiry in the source of cash deposits, as the cash was received from her husband as a gift and also that the Assessee had submitted the copy of the return of income and statement of the bank account of her husband which were verified as noted by the Assessing Officer.

8. On the other hand, the learned Senior Departmental Representative heavily relied on the revision order passed by the PCIT and stated that the Assessee has changed her stand before the PCIT and he stated that the amount received is on account of the sale of the immovable property. He stated that even now the new version was added that it is a gift by the Assessee's husband which was out of the savings made out of the income earned by him during his foreign stay as a Non-Resident Indian [NRI]. Hence, according to him, the PCIT has simply directed the Assessing Officer to allow an opportunity and

after verifying, make a fresh assessment. According to the learned Senior Departmental Representative there is no harm in verifying the source of cash deposits and urged the Bench to uphold the revision order.

9. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Assessing Officer while framing the assessment has gone into the details of the cash deposits of Rs.30.00 lakhs and the other two more amounts of Rs.5,09,000/- and Rs.6,95,900/-. She stated before the Assessing Officer that the cash deposits is out of the gift received from her husband of Rs.30.00 lakhs and also Rs.5,09,000/- and the Assessing Officer has verified the return of income of the Assessee's husband and the bank accounts. We noted that the Assessee's husband sold one immovable property located at Uthandi, Chennai to one Smt. Mangaiyarkarasi who has paid a sum of Rs.65,34,000/- to the Assessee by way of demand draft on 28.02.2014. It was claimed that the husband has gifted a sum of Rs.30.00 lakhs and Rs.10.00 lakhs to the Assessee and the same was deposited in the above said bank accounts, i.e. Axis Bank account maintained in the name of the Assessee. The date of the sale of this property, the date of depositing the demand draft and the date of the gift is the same, i.e.28.02.2014.

10. We find that the Assessing Officer has examined the same facts and reached to a conclusion that the transactions of gift are genuine and explained. Hence, we find no merit in the revision order passed by the PCIT and hence the same is quashed as the Assessing Officer had a reasonable view while framing the assessment. Thus, the revision order is thereby quashed and the appeal of the Assessee is allowed.

11. In the result, the appeal of the Assessee in I.T.A. No.2365/Chny/2019 is allowed.

Order pronounced in the court on 6<sup>th</sup> May, 2022 at Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य /ACCOUNTANT MEMBER

**Sd/-**

(महावीर सिंह )  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated, the 6<sup>th</sup> May, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकर आयुक्त (ं पील)/CIT(A)  
4. आयकर आयुक्त/CIT  
5. विभागीय प्रतिनिधि/DR  
6. गार्ड फाईल/GF