IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.17456 of 2022
& W.M.P.Nos.16755 & 16757 of 2022

Pioneer Services,
Rep. by its Partner Mr.I.Mohamed Khalifathullah,
56-57, Rajaji Salai,
George Town,
Chennai - 600 001. ... Petitioner

Vs.

1.The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 002.

2.The Principal Commissioner
of Income Tax,
Ayakar Bhawan,
Uttamar Gandhi Salai,
Chennai - 600 034.

3.The Assistant Commissioner
of Income Tax,
Uttamar Gandhi Salai,
Ayakar Bhawan,
Chennai - 600 034. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling upon the entire records pertaining to the order No.ITBA/REV/F/REV5/2020-21/1031648685(1) dated 22.03.2021 on the file of the second respondent and the order No.ITBA/AST/S/147/2021-22/1042171712(1) dated 30.03.2022 on the file of the third respondent and quash the same.

For Petitioner	:	Mr.J.V.Niranjan
For Respondents	:	Dr.B.Ramaswamy, Senior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned orders dated 22.03.2021 & 30.03.2022 passed by the respondents 2 & 3, respectively.

2. The main issue that arises in the present writ petition is whether the proceeding initiated under Section 263, Income Tax Act, 1961 is barred by limitation.

3. The case of the petitioner is that the petitioner is engaged in the business of clearing and forwarding goods on behalf of importers and exporters. The third respondent passed an assessment order dated 20.06.2017 for the Assessment year 2015-2016. Thereafter, a revised assessment order was passed on 10.12.2019, by merging the earlier assessment order dated 20.06.2017. This being so, a show cause notice dated 13.03.2020 was issued to re-open the assessment order dated 20.06.2017, and without considering the objection of the petitioner, the second respondent passed an order dated 22.03.2021, to re-open the same, which was not communicated to the petitioner. In the interregnum, the third respondent issued another notice dated 03.02.2022, seeking certain details in respect of earlier show cause notice dated 07.09.2017, for which the petitioner has filed its reply. Thereafter, the respondent has issued another show cause notice 23.03.2022, requiring any objection. However, without providing any opportunity of hearing or filing its objection, the third respondent respondent passed an assessment order dated 30.03.2022. Challenging

the assessment order dates 22.03.2021 & 30.03.2022 passed by the respondents 2 & 3, respectively, the present writ petition has been filed.

4. Learned counsel for the petitioner would submit that the assessment order was originally passed on 20.06.2017 and thereafter, the revised assessment order was passed on 10.12.2019. Any revision under Section 263(2) of the Income Tax Act, shall be made within two years from the end of the relevant financial year. In such view of the matter, the period of limitation would commence from 31.03.2018 and would come to an end on 31.03.2020. Therefore, the impugned order dated 22.03.2021, re-opening the assessment order ought to have been passed on or before 31.03.2020. However, in this case, the order was passed on 22.03.2021 i.e., beyond the time contemplated in Section 263(2). Subsequently, another assessment order was also passed by the third respondent on 30.03.2022. Therefore, without any jurisdiction, the respondents 2 & 3 have passed the impugned assessment orders and the same have to be set aside by this Court.

5. Learned Senior Standing Counsel appearing for the respondents strongly opposed for the submission of the learned counsel for the petitioner and referred his counter affidavit dated 07.07.2023. For better appreciation, the relevant portion of the same is extracted hereunder:

> *"3. Subsequently, the assessee petitioner's premise was covered under survey u/s 133A of the IT Act, 1961 on 10.10.2018. During the course of survey the assessee petitioner admitted additional income of Rs.1,07,52,930/- towards bogus expenses relating to Clearing and Shipment Charges for the A.Y.2015-16. As the time for filing a revised return was barred by limitation, the case was reopened with prior approval of the Higher Authorities and notice u/s 148 of the IT Act, 1961 dt.11.03.2019 was issued and served on the assessee petitioner. In response to the notice issued, the assessee petitioner filed its Return of Income on 1.03.2019 declaring total income of Rs.1,53,03,210/- including an additional income of Rs.53,76,465/-. The assessment order u/s*

143(3) r.w.s. 147 of the IT Act, 1961 was passed on 10.12.2019 accepting the income returned by the assessee petitioner.

Hence, in this regard proposal u/s 263 was submitted by the third respondent before the PCIT-8, Chennai. The PCIT-8, Chennai vide order u/s 263 of the IT Act, 1961 in DIN & Order No:ITBA/REV/F/REV5/2020-21/1031648685(1) dt.22.03.2021 on the issues of allowability of expenditure claimed such as clearing & shipment expenses to the extent of Rs.1.07 Crores in P & L account held that the issue was duly examined by the assessing officer and on this issue the assessment order dt.20.06.2017 does not call for any interference. For the other issues discussed above, the assessment order dt.20.06.2017 passed u/s 143(3) of the IT Act, 1961 was set aside by the PCIT-8, Chennai vide its order u/s 263 of the IT Act, 1961 dt.22.03.2021.

4. The Assessment Order dt.20.06.2017 passed u/s 143(3) of the IT Act, 1961 does not exist and the same is merged with the order u/s 143(3) r.w.s. 147 of the Act passed on

10.12.2019 and the Order u/s 263 of the IT Act, 1961, dt.22.03.2021 and the order u/s 147 r.w.s. 263 of the IT Act, 1961 dt.30.03.2022 are wrong and illegal, it is hereby submitted that the assessee petitioner has partiipated in the proceedings u/s 263 of the IT Act, 1961 and made submissions. In its submissions the assessee petitioner objected only on the issue of allowability of expenditure claimed such as clearing & Shipment expenses to the extnet of Rs.1.07 Crores and not on the non-existence of Order u/s 143(3) of the IT Act, 1961 dt.20.06.2017. Based on the submissions made by the assessee petitioner and after accepting the assessee's objection/reply on the issue of allowability of expenditure claimed such as clearing & Shipment expenses to the extent of Rs.1.07 Crores and agreeing with the same, the order u/s 263 of the IT Act, 1961 was passed by the PCIT-8, Chennai. Objection regarding the existence of order u/s 143(3) of the IT Act, 1961, on assessee petitioner's part should have been filed during the pendency of proceedings u/s 263 of the IT Act, 1961 only, but during the *proceedings u/s 263 the assessee did not file its objection regarding the non-existence of Order u/s 143(3) of the IT Act dt.20.06.2017 and also did not file any objection regarding the proceedings u/s 263 of the IT Act, 1961 and filed its submissions and after considering the assessee's submissions only the Order u/s 263 of the IT Act was passed on 22.03.2021 by the second respondent. The assessee petitioner filed its objections only on the receiving of the Notice u/s 142(1) of the IT Act, dt. 03.02.2022 issued as per the direction of the PCIT-8, Chennai before 3rd respondent only and the same were rejected vide the show cause notice issued in DIN & Notice No: ITBA/AST/F/147(SCN)/2021-22/1041356391(1) dt.23.03.2022 by the third respondent."*

6. Heard the learned counsel on either side and perused the materials available on record.

7. In this case, the issue is pertaining to the limitation for revision. At this juncture, it is pertinent to extract the provision of section 263(2)

of the Income Tax Act, 1961 and the same reads as follows:

> *"2) No order shall be made under sub-section 1 after the expiry of two years from the end of the financial year in which the order sought to be revised was passed."*

On perusal of the above provision, it is evident that the respondents can re-open the assessment order within a period of two years from the end of the relevant financial year. In the present case, the assessment order was passed on 20.06.2017 and the said two year period came to an end on 31.03.2020. Therefore, on or before 31.03.2020, the second respondent should have passed the *suo motu* revision order. But in the present case admittedly, the *suo motu* order was passed by invoking section 263 on 22.03.2021, clearly after the expiry of limitation of two years. Thereafter, another assessment order was passed on 30.03.2022 by the third respondent. Therefore, it is a clear case that the entire proceeding is a violation of Section 263(2) of the Income Tax Act, 1961. Hence, the assessment orders passed by the respondents 2 & 3 stands quashed.

8. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.06.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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