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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 04.02.2025

+ **ITA 113/2024 & CM No.47983/2024****PRINCIPAL COMMISSIONER OF INCOME TAX - 1..... Appellant**

versus

M/S CHEMESTER FOOD INDUSTRIES PVT. LTD ... Respondent**Advocates who appeared in this case:**

For the Petitioners : Mr Vipul Agrawal, Advocate.

For the Respondents : Mr Rohit Jain, Mr Aniket D Agrawal and
Mr Abhishek Singhvi, Advocates.**CORAM****HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE TUSHAR RAO GEDELA****JUDGMENT****VIBHU BAKHRU, J.**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 09.06.2023 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No. 3707/Del/2019 captioned *Chemester Food Industries Pvt. Ltd. v. PCIT*. The said appeal was filed by the respondent (hereafter *CFIPL*) assailing the order dated 29.03.2019 passed by the Principal Commissioner of Income Tax-2 (hereafter *PCIT*) under Section 263 of the Act in respect of the assessment year (AY) 2014-15.



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2. The learned PCIT had held that the assessment order dated 20.12.2016 passed by the Assessing Officer (AO) was erroneous insofar as it is prejudicial to the interest of the Revenue and therefore, had set aside the same. Additionally, the AO was directed to frame an assessment order afresh after conducting proper enquiries as specifically directed in the said order.

3. It is material to note that the assessment order dated 20.12.2016 was passed by the Deputy Commissioner of Income Tax, Circle-III, Amritsar in the name of M/s Chemester Food Industry.

4. The learned ITAT had found that the aforesaid assessment order was framed in the name of a firm that was dissolved. Accordingly, the learned ITAT allowed CFIPL's appeal (ITA No. 3707/Del/2019) on the ground that an order framed in the name of a non-existent entity could not be subjected to revision under Section 263 of the Act. Accordingly, the order dated 29.03.2019 was held to be invalid.

QUESTION OF LAW

5. The Revenue had projected several questions for consideration of this court. However, this court had, by an order dated 27.05.2024, confined the present appeal to the following questions:

“A) Whether the Income Tax Appellate Tribunal [**Tribunal**] has erred in not appreciating the fact that there is specific provision in the Income Tax Act [**Act**] to assess Firms dissolved?

B) Whether the Tribunal has erred in relying upon the judgment of the Supreme Court in the case of **Principal Commissioner**



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of Income Tax, New Delhi vs. Maruti Suzuki India Ltd.
[2020 18 SCC 331], which is distinguishable from the present case?”

6. CFIPL has raised a preliminary objection as to the jurisdiction of this court in entertaining the present appeal. It is submitted that since the original assessment order dated 20.12.2016 was passed by the AO in Amritsar, therefore, this court would not have the territorial jurisdiction to entertain the present appeal.

THE CONTEXT

7. CFIPL was incorporated in January, 2014 and took over the business of Chemester Food Industry (hereafter *the Firm*) with effect from 01.04.2014 by the Business Takeover cum Succession Agreement dated 22.03.2014.

8. During the relevant assessment year (AY 2014-15), the Firm (M/s Chemester Food Industry) was engaged in the business of manufacturing and supplying of supplementary nutritious foods such as Amylase rich energy foods to Integrated Child Development Scheme (ICDS). The Firm filed its return of income for AY 2014-15 on 30.09.2014, declaring a total income of ₹34,68,09,650/-.

9. The return was processed under Section 143(1) of the Act. But was, thereafter, picked up for scrutiny under CASS. A notice under Section 143(2) of the Act was issued on 03.09.2015 and duly served upon the Firm on 04.09.2015. Further, notices under Sections 143(2) and 142(1) of the Act, along with a questionnaire, were issued on 05.07.2016 and duly served on 08.07.2016.



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10. The assessment order dated 20.12.2016 passed in the name of the Firm records that in response to the aforesaid notices, the authorized representatives of the assessee (which is reflected in the order as the Firm, M/s Chemester Food Industry), Sh. V.K. Umat, C.A., and Sh. Shashi Pal, C.A., appeared during the course of the assessment proceedings and furnished the required information and details. The Firm produced its books of account along with the relevant bills and vouchers, which were examined on a test-check basis by the AO.

11. The AO assessed the income of the Firm (M/s Chemester Food Industry) for AY 2014-15 at ₹34,72,46,700/- by making an addition of ₹4,37,046/- on account of disallowance of expenditure for personal use.

12. The learned PCIT exercising its powers under Section 263 of the Act, issued a show cause notice dated 25.02.2019 calling upon CFIPL to show cause why the assessment order dated 20.12.2016 not be set aside for the reasons mentioned in the aforesaid notice.

13. CFIPL responded to the show cause notice, *inter alia*, stating that CFIPL was incorporated in January, 2014 and had taken over the business of the Firm – M/s Chemester Food Industry. It emphasised that the return was filed by the Firm (M/s Chemester Food Industry) and not by CFIPL. It is stated that the assessment order was also framed in the name of M/s Chemester Food Industry and not in the name of CFIPL and thus, the proceedings initiated against CFIPL under Section 263 of the Act were invalid.

14. CFIPL also contested the allegations that the AO had not conducted the necessary enquiry in regard to the unsecured loans of



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₹15,16,71,781/- from M/s Dhansamridhi Finance Pvt. Ltd. and ₹31,00,00,000/- from M/s Anukul Commercial Pvt. Ltd. which was alleged to be undisclosed income of CFIPL.

15. The learned PCIT passed an order dated 29.03.2019 under Section 263 of the Act holding that the assessment order dated 20.12.2016 passed by the AO under Section 143(3) of the Act is erroneous insofar as it is prejudicial to the interest of the Revenue and therefore, set aside the said order and directed the AO to frame a fresh assessment order by conducting proper enquiries in respect of the matters that were detailed in the order dated 29.03.2019.

16. Thereafter, the learned ACIT, Circle-6(1), New Delhi who was the AO exercising jurisdiction over CFIPL passed an assessment order dated 13.12.2019

DISCUSSION

17. The first and foremost question to be addressed is whether this court has the jurisdiction to entertain the present appeal under Section 260A of the Act.

18. CFIPL appealed the order passed by the learned PCIT under Section 263 of the Act before the learned ITAT. As noted above, the learned ITAT had allowed the said appeal by the impugned order solely on the ground that the assessment order, which was subject to revision of the learned PCIT order under Section 263 of the Act was passed in the name of the Firm – M/s Chemester Food Industry – which was non-existent. In terms of the Business Takeover-cum-Succession



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Agreement dated 22.03.2014, the business of the Firm was taken over by CFIPL along with its assets and liabilities. The said transfer was compliant of the conditions under Section 47(xiii) of the Act and in effect resulted the conversion of M/s Chemester Food Industry into an incorporated entity – CFIPL. The constituent partners of the Firm had executed a Deed of Dissolution of Partnership on 31.03.2014, whereby the said firm was dissolved with effect from 31.03.2014 (after business hours).

19. As noted above, the assessment order dated 20.12.2016 was passed by an AO in Amritsar as the return for the AY 2014-15 was filed in the name of M/s Chemester Food Industry which on the date of filing of return, that is on 30.09.2014 stood dissolved. However, the return for AY 2014-15 was filed in the name of the Firm, after its dissolution and the AO exercising jurisdiction in respect of the Firm (M/s Chemester Food Industry) had, thus, framed the assessment order.

20. The said order was subject matter of revision under Section 263 of the Act which in turn was the subject matter of appeal before the learned ITAT, Delhi.

21. Insofar as the question as to the jurisdiction of this court is concerned, this issue stands settled by the decision of this Court in ***Seth Banarsi Dass Gupta v. Commissioner of Income Tax: (1978) 113 ITR 817*** as well as by the Supreme Court in ***Pr. Commissioner of Income Tax-I, Chandigarh v. M/s ABC Papers Ltd.: (2022) 447 ITR 1***. In ***Seth Banarsi Dass Gupta v. Commissioner of Income Tax (supra)***, this court held that the High Court within whose jurisdiction the AO has



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passed the assessment order would have the jurisdiction to entertain the appeal under Section 260A of the Act.

22. In *Pr. Commissioner of Income Tax-I, Chandigarh v. M/s ABC Papers Ltd.* (*supra*), the Supreme Court considered the question as to the jurisdiction of the court in cases in which the jurisdiction of the AO had been transferred during the pendency of the proceedings pursuant to an order passed under Section 127 of the Act. In this context, the Court had observed as under:

“45. In conclusion, we hold that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the assessing officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the assessing officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).”

23. In view of the above, this court does not have the jurisdiction to entertain the appeal as it emanates from the assessment order issued by the AO in Amritsar.

24. It was contended on behalf of the Revenue that it is not open for CFIPL to raise this issue as it had filed an appeal before the bench of learned ITAT in Delhi, premised on the basis that the said bench had the jurisdiction to entertain the same. It was further contended that if CFIPL contentions are accepted, the impugned order would also be without jurisdiction as the Delhi bench of the learned ITAT, would not have the jurisdiction to pass orders in respect of orders emanating from



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an assessment order passed by the AO in Amritsar. It is stated that in terms of the Standing Order under Income Tax (Appellate Tribunal) Rules, 1963, the appeal was required to be filed before the Chandigarh Bench of the ITAT.

25. In our view, once it is found that this court does not have the jurisdiction to entertain the present appeal, it would not be apposite to examine any other question relating to the merits of the dispute including whether the learned ITAT had jurisdiction to entertain the appeal preferred by CFIPL.

26. In view of the above, the present appeal is disposed of. Needless to state that this order would not preclude the Revenue from instituting an appeal before Punjab & Haryana High Court. The pending application is also disposed of.

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

FEBRUARY 04, 2025

‘gsr’