

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA Nos.2849 & 3251/Chny/2019
निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Anish Kumar Wife Trust,
160, Linghi Chetty Street,
Mannadi, Chennai-600 001.

v. The Income Tax Officer,
Non-Corporate Ward-11(1),
Chennai.

[PAN: AAATA 6596 R]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos.3247 & 3248/Chny/2019
निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Archana Male Child Trust,
160, Linghi Chetty Street,
Mannadi, Chennai-600 001

v. The Income Tax Officer,
Non-Corporate Ward-11(1),
Chennai.

[PAN: AAATA 6600 N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos.3249 & 3250/Chny/2019
निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Archana Female Child Trust,
160, Linghi Chetty Street,
Mannadi, Chennai-600 001.

v. The Income Tax Officer,
Non-Corporate Ward-11(1),
Chennai.

[PAN: AAATA 6601 P]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos.3252 & 3253/Chny/2019

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Anish Kumar Female Child Trust, v. The Income Tax Officer,
160, Linghi Chetty Street, Non-Corporate Ward-11(1),
Mannadi, Chennai-600 001. Chennai.

[PAN: AAATA 0989 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos.3254 & 3255/Chny/2019

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Anish Kumar Education Trust, v. The Income Tax Officer,
160, Linghi Chetty Street, Non-Corporate Ward-11(1),
Mannadi, Chennai-600 001. Chennai.

[PAN: AAATA 6595 N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos.3256 & 3257/Chny/2019

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Anish Kumar Male Child Trust, v. The Income Tax Officer,
160, Linghi Chetty Street, Non-Corporate Ward-11(1),
Mannadi, Chennai-600 001. Chennai.

[PAN: AAATA 6597 Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

ITA Nos.3258 & 3259/Chny/2019

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Anish Kumar Marriage Trust, v. The Income Tax Officer,
160, Linghi Chetty Street, Non-Corporate Ward-11(1),
Mannadi, Chennai-600 001. Chennai.

[PAN: AAATA 0990 R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri J. Prabhakar, FCA
प्रत्यर्थी की ओर से/Respondent by : Shri G. Chandrababu, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 16.02.2021
घोषणा की तारीख/Date of Pronouncement : 10.03.2021

आदेश /O R D E R

PER BENCH:

These appeals by the assesseees are arising out of the orders of the Commissioner of Income Tax (Appeals)-13, Chennai in ITA No. 131/19-20/AY 2013-14/CIT(A)13, order dated 26.09.2019, ITA 134/19-20,AY 2014-15/CIT(A)13 order dt. 26.09.2019, ITA No.92/19-20 AY 2013-14/CIT(A)13 order dated 20.09.2019, ITA No.100/19-20, AY 2014-15/CIT(A) 13 order dt. 23.09.2019, ITA No.95/19-20, AY 2013-14/ CIT(A) 13 dt. 19.09.2019, ITA No.96/19-20, AY 2014-15/CIT(A) 13 dt. 23.09.2019, ITA No.93/19-20, AY 2013-14/ CIT(A) 13 dt. 23.09.2019, ITA No.97/19-20, AY 2014-15/CIT(A) 13 dt. 23.09.2019, ITA No.94/19-20, AY 2013-14/ CIT(A) 13 dt. 23.09.2019, ITA No.99/19-20, AY 2014-15/CIT(A) 13 dt. 23.09.2019, ITA No.94/19-20, AY 2013-14/ CIT(A) 13 dt. 23.09.2019, ITA No.98/19-20, AY 2014-15/CIT(A) 13 dt. 23.09.2019, ITA No.132/19-20, AY 2013-14/ CIT(A) 13 dt.

26.09.2019 and ITA No.133/19-20, AY 2014-15/CIT(A) 13 dt. 26.09.2019. Before the CIT(A), the orders under challenge was passed by the ITO, Non-Corporate Ward 11(1), Chennai, rejecting objections to re-opening u/s.147 r.w.s. 148 of the Income Tax Act, 1961 (hereinafter 'the Act') vide his orders in F.No.AAATA6596R/2019-20 dated 09.08.2019, F.No. AAATA6600N/2019-20 dt. 01.07.2019, F.No.AAATA6601N/ 2019-20 dt. 01.07.2019, F.No.AAATA0989J/ 2019-20 dt. 01.07.2019, F.No.AAATA6595N/ 2019-20 dt. 01.07.2019, F.No.AAATA6597Q/2019-20 dt. 01.07.2019 and F.No.AAATA0990R/ 2019-20 dt. 09.08.2019.

2. The only common issue in these appeals of assesseees is against the orders of CIT(A) in upholding that the appeals filed by the assesseees are non-maintainable u/s.246A of the Act. For this, assesseees have raised 9 identical grounds in all the appeals. For the sake of brevity, we are reproducing grounds raised in ITA No.2849/Chny/2019 for AY 2013-14 and deal with the issue in this appeal. This decision will apply in all the appeals.

The relevant grounds raised are as under:-

1. The Learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal filed as not maintainable under section 246A of the Act.
2. The Learned Commissioner of Income Tax (Appeals) is not justified in alleging that the “speaking order” passed pursuant to reopening of assessment is not an order under section 147 appealable under section 246A (1) of the Act.
3. The Learned Commissioner of Income Tax (Appeals) erred in holding that the appellant has no locus standi to question the reopened proceedings under section 147 in a pre-assessment notice alleging that it determines neither the Income nor demand therefor.
4. The Learned Commissioner of Income Tax (Appeals) is not justified in rejecting the claim on maintainability of appeal filed which questions the jurisdiction of the Assessing Officer to mulct the assessee with a liability under the omnibus character of “denying his liability” to be assessed under the Act.
5. The Learned Commissioner of Income Tax (Appeals) has no jurisdiction to direct the Assessing Officer to incorporate the operative part of the “speaking order” in the regular assessment being framed later pursuant to reopened proceedings.
6. The Learned Commissioner of Income Tax (Appeals) has no basis to assume or direct an assessment to be framed pursuant to reopened proceedings when rescue provisions against such order is available under section 152 (2) of the Act.
7. The appellant seeks the indulgence of the Hon’ble ITAT to file additional \ supplemental grounds of appeal to bring forth the legal aspects on record for fit and proper adjudication.
8. In any event the order of the Commissioner of Income Tax (Appeals) is illegal, arbitrary and made without due regard to the facts and circumstances of the appellant’s case and the law applicable thereto.
9. For these grounds and for such other grounds that may be adduced at the time of hearing, is prayed that the order of the Commissioner of Income Tax (Appeals) be cancelled and the reopened proceedings be quashed.

ITA No.2849/Chny/2019 for AY 2013-14:

3. Brief facts are that the assessee is a private beneficiary trust. The assessee filed its return of income for the relevant assessment year 2013-14 on 19.03.2013. The return of income was processed by the Income-Tax Department u/s.143(1) of the Act and accepted levying taxes at maximum marginal rate u/s.164(2) of the Act. The assessee preferred appeal before CIT(A) against the processing of return u/s.143(1) of the Act and stated that assessment ought to have been made u/s.161(1) of the Act. The CIT(A) has not accepted the claim of the assessee and dismissed the appeal of the assessee. The assessee preferred appeal before ITAT. The ITAT, in ITA No.2185/Mds/ 2016, vide order dated 27.12.2016 quashed the assessment by holding that the challenge to status and levy of tax at maximum marginal rate does not come within the purview of *prima facie* adjustment u/s.143(1) of the Act and therefore the processing done by AO u/s.143(1) of the Act was quashed. The Tribunal observed in para No.5 as under:-

5. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly filed their returns of income electronically and the same

were processed under Section 143(1) of the Act. The question arises for consideration is when the Assessing Officer processed the returns under Section 143(1) of the Act, whether he can change the status of the assessee and levy tax at maximum marginal rate? We have carefully gone through the provisions of Section 143(1) of the Act. Section 143(1) of the Act enables the Assessing Officer to make prima facie adjustment on the basis of the material available on record. Changing of status is something outside the purview of the prima facie adjustment under Section 143(1) of the Act. Therefore, this Tribunal is of the considered opinion that changing of status of the assessee cannot be made while processing return under Section 143(1) of the Act. Therefore, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the same are set aside. However, it is made clear that it is open to the Assessing Officer to take up the matter for scrutiny as provided under the provisions of the Income-tax Act

3.1. Subsequently, ITO, Non-Corporate Ward-11(1) issued notice u/s.148 of the Act dated 28.03.2019, for the reason that there was uncertainty in the assessee trust about vesting of income in the hands of the beneficiary, which in itself are uncertain, according to AO. The assessee vide letter dated 12.04.2019, requested for supply of reasons recorded for reopening of assessment u/s.147 r.w.s. 148 of the Act. The AO vide letter dated 25.04.2019, in F.No.AAATA6596R/2019-20 supplied reasons for reopening assessment and the relevant reasons reads as under:-

“The return of income filed electronically for the Asst. Year 2014-15 was processed u/s 143(1) of the income Tax Act, 1961 while processing, tax was levied u/s 164(1) of the Act at maximum marginal rate. The CIT(Appeals) upheld the order.

The Hon'ble ITAT held that the changing of status of the assessee cannot be made while processing return u/s 143(1) of the Act and set aside the orders of the lower authorities.

Placing reliance on the judgement of Apex Court in CWT Vs. Trustees of H.E.H Nizam's family (Remainder Wealth) Trust (108 ITR 555), the Revenue had the option to assess the beneficial interest either in the hands of the trustee in a representative capacity or assessee directly in the hands of the beneficiary. In both the cases, what was taxed was the interest of the beneficiary for the trust properties and not the corpus of the trust properties and therefore, it was held that there is uncertainty in the trust and vesting of income in the hands of the future beneficiaries. Hence, the shares of allocation are to be treated as indefinite and uncertain and therefore the income of the Trusts is liable for taxation at maximum marginal rate u/s 164(1) of the Act.”

The assessee vide letter dated 09.05.2019, objected to reasons for reopening of assessment for the impugned assessment year. The AO considered these reasons and rejected the objections vide order in F.No.AAATA6596R/2019-20 dated 09.08.2019. The AO after rejection of objections raised for reopening of assessment, requested the assessee to appear in the re-assessment proceedings initiated for assessment years 2013-14 & 2014-15.

4. Aggrieved against rejection of reasons, assessee preferred appeal before CIT(A). The CIT(A) dismissed the appeal of the assessee by holding that the appeal filed by the assessee against the communication of rejection of objections is not maintainable because re-assessment proceedings is to be framed u/s.147 r.w.s. 143(3) of the Act. The CIT(A) elaborately discussed from para No.6 to 10, as under:-

6. To call the aforesaid letter of the AO to the appellant / AR as an order u/s 147 to be appealed against as declared by the appellant in Form No. 35 in the strict sense as per the IT Act would be a misnomer and is only a communication / correspondence by the AO to the appellant rejecting his objections raised to such reopening of the assessment as stated earlier and has been used in a manner of ordinary usage in the usual English parlance and is meant as an 'order' which speaks for itself the reasons providing therein a live link to the formation of the belief that income had escaped assessment which Section 147, authorises and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that the said income has escaped assessment and further that the formation such belief of the AO being a condition precedent for assuming jurisdiction which precisely the AO has done by issue of notice u/s 148 and further rejecting the objections raised by the appellant thereto, in keeping with the ratio of the judgement of GKN Driveshafts 259 ITR 19 (SC) which clearly enjoins upon the AO to dispose of the same by passing a speaking order before proceeding with the assessment and therefore it cannot be the case of the appellant / AR that the AO has reopened the impugned case without complying with the provisions of Section 147 of the Income Tax Act

7. The appellant in the instant impugned case has declared in the appeal Form No.35 that the order appealed is against Sec. 147 which is clearly not factually true / borne out by the facts, since there is admittedly no order passed u/s 147 in the first place in this case and therefore appealing against such “order” is legally untenable and invalid to begin with.

8. Now, Sec. 147 under the heading “income escaping assessment” states that:

“if the AO has reason to believe that any income chargeable to tax has escaped assessment for any AY he may subject to the provisions of Sec 148 to 153 assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section or recompute the loss or depreciation allowance or any other allowance, as the case may be, for the AY concerned

8.1. From a cursory reading of Section 147 as above, it clearly implies that what is stressed therein is the assessment / reassessment of escaped Income which the AR himself has not disputed to have not taken place till date in the instant impugned case by way of a proper assessment order assessing / reassessing escaped income chargeable to tax which is best illustrated by the inescapable fact that the rows vide 6a & 6b relating to ‘assessed income’ and ‘total additions to income’ has been left blank by the appellant itself in the Memo of Appeal in Form No. 35.. Further the so called ‘order’ dated 01.07.2019 by the AO is in fact rejection of the AR’s objection to the reopening u/s 147 is further clearly evident from the subject and reference captioned therein and reproduced as under:

“Subject : Reopened assessment u/s 147 of the Income Tax Act, 1961 — Your Own - Asst. Years 2013-14 and 2014-15 - Objections to reopening u/s 147 - Speaking order – Regarding

Reference : (i) Notice u/s 148 of the IT Act, 1961 dated 28.03.2019 (ii) Your submissions dated 09.05.2019.”

8.2 From a perusal of the said order it is clear that the AO has only assumed jurisdiction to reopen proceeding as is again clearly evident from the AO's averments therein as extracted in the foregoing discussion.

8.3. As can be seen from the aforesaid extracts the AO, vide the above 'order' construed and argued as an order u/s 147 by the AR has not assessed or reassessed any escaped income or recomputed the loss or the depreciation or any other allowance and therefore the said speaking order as termed by the AR and appealed against is clearly not an order passed in terms of Sec 147 till date and therefore is not caught within the mischief thereof and as such, it is opined that the AR has acted hastily and jumped the gun, as it were, prematurely filing appeal against the said 'order u/s 147' as declared in Form no. 35 without waiting for the actual order u/s 147 r.w.s. 143/144 as the case may be, which is still not barred by limitation of time. Therefore the AO's speaking order rejecting the AR's objection is only a pre-assessment/ reassessment stage of proceedings, as of now and by no rationale or logic in itself be called an order u/s 147, which the appellant has, it is considered, to have erroneously and prematurely appealed against.

9. During the course of the appellate proceeding the AR has filed a note relating to what has been termed as his deniability of liability to be assessed / reassessed and its appealability, the contents of which are reproduced hereunder:

“1. The appeal against an order of the type rendered by the Assessing Officer is maintainable under sub clause (a) of Clause (1) of Sec 246A of the Act (relevant portion only) which reads as under:

“any assessee or deductor aggrieved by

- a. an order against the assessee where the assessee denies his liability to be assessed under this Act....”

2. This section is in existence since time immemorial under the un-amended provisions of Sec. 246 wherein a right is given to an assessee to question an order which is detrimental to his Interest such that his liability to be assessed under the provisions of the Act is questionable.

3. The amended provisions of Sec. 246A also carries the wordings of the old Section 246, lock stock and barrel, with the only difference being that under the new amendment all appeals will lie before the CIT (Appeals) only and not the Deputy Commissioner(Appeals) as it then stood.

4. The crucial phrases are “denies his liability to be assessed” and “under this Act ‘ In this part no particular section or provision of the Act has been mentioned. Under the latter part of the section an order of assessment under sub-sec (3) of Sec. 143 or under Sec.144 is appealable. Similarly, the various other clauses of Sec. 246 specifically refer to the particular section, orders passed whereunder were appealable. In this setting, the use of the phrase “under this Act” should not mean under any individual section or provision of this Act.

5. In the case of *Sushi 1 Kumar v. Commissioner of Income-tax* [1980] 12 ITR 708, a full bench of the Allahabad High court held that the term “assessed” occurring in this phrase also needs to be properly construed.

6. Ever since the decision of the Privy Council in *CIT v. Khemchand Ramdas* [1938] 6 ITR 414 (PC), it is settled that the word “assessment “as used in the I.T. Act is used as meaning sometimes the computation of income, sometimes determination of the amount of tax payable, and sometimes the whole procedure laid down in the Act for imposing liability upon the taxpayer. [*Abraham (C.A.) v. ITO* [1961] 41 ITR 425 (SC), *Kalawati Devi Harlalka v. CIT* [1967] 66 ITR 680 (SC) and *S. Sankappa v. ITO* [1968] 68 ITR 760 (SC)].

7. When an assessee claims that he is not liable to be proceeded against under Section 35, sub-section (1) which,

paraphrasing it in the language of S.Sankappa's case [1968] 68 ITR 760 (SC), means that he is not liable to be assessed by a proceeding for rectification under Sec. 35, sub-section (1), he is not 'denying his liability to be assessed under this Act'. His objection then is only against a proceeding for assessment under a particular provision of the Act. He does not say: 'I am not liable to be assessed at all under any provision of the Act which is what is connoted by the expression denies his liability to be assessed under this Act - these were the words used by the Gujarat High Court in Mandal Ginning and Pressing Co. Ltd. v. CIT [1973] 90 ITR 332 (Guj).

8. It went further to add "that denial of liability to be assessed may be in respect of the whole income or any part of the income. It may be based on any ground, whether of fact or of law, and it may be total denial of liability or denial of liability under particular circumstances.

9. In this connection kind reference is invited to the circular of the CBDT when the jurisdiction of the first appellate authority was sought to be defined and explained vide Circular no 269 dated 29/04/1980 reported in [1980] 126 ITR (st) 24; therein in response to no 5 the Central Board clarified that in view of the non-obstante clause in sub-section 2, any order which does not fall within the ambit of that sub-section, may still be subject matter of appeal under the omnibus provision "an order against the assessee denies his liability" under clause 1 of the main section.

10. In fact the Circular goes further to state that a pre-assessment order is also appealable under Section 246.

11. Thus the pre-assessment order in the guise of "an interlocutory order" or a "rejection order" by whatever name called is appealable under Section 246 A of the Act.

12. The Circular of the CBDT being binding on any Income Tax authority under the Act, it is incumbent upon the

C.I.T.(A) to admit the appeal filed under the omnibus clause in Section 1 and pass orders on the merits of the appeal.”

9.1 However the arguments and the case laws cited / discussed aforesaid are clearly distinguishable from the facts / bone of contention in this case in so far as the issue, is not as to whether the order of the type rendered u/s 246A(1)(a) is appealable but as to whether when an order u/s 147 has still not been passed or even time barred in the first place, whether the AR can prematurely appeal against such “speaking order” made under Sec. 147, (as termed by him and expressly declared in Form No 35) which as already pointed out is nothing more than a communication rejecting the AR’s objection to such reopening implying in no uncertain terms that the AR has construed the communication of rejection of his objections and reassessment order u/s 147 to be passed in the instant case interchangeably which is clearly an erroneous understanding of Sec. 147 in the context of the impugned case. The contention of the AR that a pre—assessment order is also appealable under Sec. 246 is hardly even relevant in the instant case since as seen from Form No. 35 the appeal is made against order u/s 147 and not against any pre-assessment order as the AR characterizes it and therefore the authorities he has placed reliance on in the foregoing para does not come to his aid here.

10. After having carefully gone through the undisputed / uncontroverted facts marshalled and presented by the AO/AR as also the relevant case laws as reflected, essentially in the excerpts from the relevant respective submissions but on a relative and comparative consideration of the same, I am however persuaded by the more substantive and meritorious reasoning adduced by the AO on the issue at hand. Further, in view of the foregoing discussion, the assessee’s appeal filed against Sec. 147 as per the AR is held to be not maintainable at the present stage of the proceedings in the impugned case and being clearly premature, is dismissed.

10.1 It is however mentioned in passing, that the AO would be well advised to incorporate atleast the operational parts of the aforesaid

‘speaking order’ rejecting the AR’s objections to the reopening in the interests of and while passing a timely well reasoned and logically sound order u/s 147.

5. Before us, the Id.counsel for the assessee Shri J. Prabakar, FCA, first of all argued that CIT(A) has erred while holding that the impugned order of the AO i.e., the speaking order is not order passed u/s.147 of the Act and that an appeal against such order is legally untenable in the given facts and circumstances of the case. He made first argument and stated that the phrases “an order against the assessee where he denies his liability to be assessed under the Act” is ingrained u/s.246A of the Act itself to make any order of the AO attempting to impose a liability to assessment or tax appealable one. He particularly referred to the term ‘assessment’ which cannot either of the following situations:-

- (i) a computation of income declared by the assessee
- (ii) determination of taxes payable by the assessee
- (iii) the whole procedure under the Act for imposing liability on the tax payer.

Then he goes on to explain the term denial of liability to be assessed in respect of (i) whole or any part of the income (ii)

it may be with reference to rate of taxes applicable i.e., slab rate or maximum marginal rate (iii) it may be based on any ground, whether on facts or in law. (iv) it may be total denial of liability (v) it may be total denial of liability under particular circumstances.

6. The Id.counsel for the assessee further relied on the CBDT Circular issued vide its Circular No.269 dated 29.04.1980, as reported in [1980] 126 ITR (ST) 24 at page 27. He referred to question No.5 and answer of the same, which reads as under:-

“The use of the non-obstante clause – not withstanding anything contained in sub-section (1) – in sub section (2) of section 246 would show that the appealable orders which would fall within the jurisdiction of the CIT(Appeals) have been excluded for that purpose from sub-section (1) thereof. If any order is not appealable within the provisions of sub-section (2) it would still remain appealable under sub-section (1) with the result that appeals against such pre-assessment orders would lie to the AAC”.

According to Id.counsel, the use of the non-obstante clause in the provisions of section 246 of the Act, ie., not withstanding anything contained in sub-section (1), in sub-section (2) of section 246 of the Act would show that the appealable orders

have been excluded for the purpose of sub-section-1, but in sub-section (2), it is clearly mentioned that it would still remain appealable under sub-section-1 with the result that appeals against such pre-assessment orders would lie to be Appellate Assistant Commissioner. The Id.counsel for the assessee also relied on the recent decision of Hon'ble Supreme court in the case of Genpact India Private Limited v. DCIT, [2019] 419 ITR 440 (SC). He particularly referred to page 458 of the journal. In view of the above, Id.counsel stated that apart from the decision of Hon'ble Apex Court, even CBDT had admitted this position that in term of provisions of section 246(2) of the Act, still the pre-assessment orders remains appealable under sub section (1) of section 246 of the Act. In term of these, he stated that CIT(A) has erred in not entertaining the appeal of assessee as not-maintainable.

7. On the other hand, the Id.senior Departmental Representative heavily relied on the order of CIT(A). He stated that disposal of objection i.e., objections regarding reasons recorded for re-opening is not order, which can be appealed against u/s.246A of the Act. He stated that there is

no provision in the amended section 246A of the Act, which provides appeal for or against the communication of rejection of objections u/s.147 of the Act, particularly, when reassessment is not framed. Only appeal lies against the reassessment framed u/s.147 r.w.s. 143(3) of the Act. In term of the above, he supported order of CIT(A) and stated that the CIT(A) has rightly held the appeal of the assessee to be not-maintainable at the present state.

8. We have heard rival contentions and gone through the facts and circumstances of the case. The above facts are very clear. Admitted facts are that under challenge rejection of objections raised against reasons recorded for re-opening of the ITO, Non-Corporate Ward 11(1) dated 09.08.2019, whereby the ITO has rejected objections raised against reasons recorded for re-opening of assessment. According to CIT(A), this is not appealable order or appeal is not maintainable against this communication of rejection of assessee's objections against reasons recorded u/s.147 of the Act. Now, we have to advert to the provisions of section 246A of the Act and the same reads as under:-

246A. (1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(aa) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab) an order of assessment or reassessment under section 115WG;

(b) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of Dispute Resolution Panel *or an order referred to in sub-section (12) of section 144BA* or section 150;

(ba) an order of assessment or reassessment under section 153A except an order passed in pursuance of directions of the Dispute Resolution Panel *or an order referred to in sub-section (12) of section 144BA*;

(bb) an order of assessment or reassessment under sub-section (3) of section 92CD

(c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections [*except an order referred to in sub-section (12) of section 144BA*];

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

- (e) an order made under sub-section (2) or sub-section (3) of section 170;
- (f) an order made under section 171;
- (g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;
- (ha) an order made under section 201;
- (hb) an order made under sub-section (6A) of section 206C;
- (i) an order made under section 237;
- (j) an order imposing a penalty under—
- (A) section 221; or
- (B) section 271, section 271A, section 271AAA, section 271AAB, section 271F, section 271FB, section 272AA or section 272BB;
- (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;
- (ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;
- (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;
- (l) an order imposing a penalty under sub-section (2) of section 158BFA;
- (m) an order imposing a penalty under section 271B or section 271BB;
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E;

(o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Explanation.—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 shall be deemed to have been filed under this section.

(1B) Every appeal filed by an assessee in default against an order under sub-section (6A) of section 206C on or after the 1st day of April, 2007 but before the 1st day of June, 2007 shall be deemed to have been filed under this section.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

Explanation.—For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.

9. We noted that the above provisions of section 246A of the Act, was inserted by the Finance No.2 Act, 1998 w.e.f. 01.10.1998. The first legal argument made by Id.counsel for the assessee is that whether an appeal lies under erstwhile section 246 of the Act, in respect of pre-assessment orders as noted by the CBDT vide its Circular No.269 (*supra*). We noted that the Id.counsel for the assessee has heavily relied on the erstwhile section 246 of the Act and Circular issued therein i.e., dated 24.09.1980, No 269 *supra*. We noted that the provision has been amended and a new section 246A of the Act, has been inserted w.e.f. 01.10.1998.

10. Thus, it could be seen from the title heading of Section 246A of the Act that it provides for appealable orders before learned CIT(A) and as could be seen above that there are no clauses/sub-section within Section 246A of the Act which provides that an appeal can be filed by assessee against interlocutory order passed by the AO while disposing off

objections filed by assessee against reopening of the concluded assessment u/s 147 of the Act. It is also not the case of the assessee that it is denying its liability to be assessed under the Act rather the assessee has voluntarily filed its return of income and offered its status to chargeability to tax as a 'trust' and has paid taxes at the rates applicable for 'individual'. In this bunch of fourteen appeals, wherever the liability to deposit tax was there keeping in view income offered to tax and rates as applicable to individual. The assessee had voluntarily come forward and deposited self assessment tax before filing its return of income with Revenue.

11. The recent decision of Hon'ble Supreme Court in the case of Genpact India Private Limited (cited supra) which is heavily relied upon by assessee is distinguishable as firstly, in the case of Genpact (supra) the tax-payer denied its liability to be assessed under the provisions of Section 115QA of the Act and secondly in that case, the order passed by the AO was the final assessment order u/s 143(3) of the Act, wherein, inter-alia, one of the additions as was made by AO was under

Section 115QA of the Act. Thus in the case of Genpact India (supra), the order passed by AO was not an interlocutory order which was subject matter of challenge in the case of Genpact (supra). The Hon'ble Supreme Court in the case of M/s. Genpact India Pvt. Ltd., *supra* has held in para Nos.12, 13 & 14 as under:-

12. Section 115QA of the Act stipulates that in case of buy back of shares referred to in the provisions of said Section, the company shall be liable to pay additional income tax at the rate of 20% on the distributed income. Any determination in that behalf, be it regarding quantification of the liability or the question whether such company is liable or not would be matters coming within the ambit of the first postulate referred to hereinabove. Similar is the situation with respect to provisions of Section 246A(1)(a) where again out of certain situations contemplated, one of them is "an order against the assessee, where the assessee denies his liability to be assessed under this Act". The computation and extent of liability is determined under the provisions of Section 115QA of the Act. Such determination under the Act would squarely get covered under said expression. There is no reason why the scope of the such expression be restricted and confined to issues arising out of or touching upon assessment proceedings either under Section 143 or Section 144 of the Act.

13. If the submission of the appellant is accepted and the concerned expression as stated hereinabove in Section 246(1)(a) or in Section 246A(1)(a) is to be considered as relatable to the liability of an assessee to be assessed under Section 143(3) as contended, there would be no appellate remedy in case of any determination under Section 115QA. The

issues may arise not just confined to the question whether the company is liable at all but may also relate to other facets including the extent of liability and also with regard to computation. If the submission is accepted, every time the dispute will be required to be taken up in proceedings such as a petition under Article 226 of the Constitution, which normally would not be entertained in case of any disputed questions of fact or concerning factual aspects of the matter. The assessee may thus, not only lose a remedy of having the matter considered on factual facets of the matter but would also stand deprived of regular channels of challenges available to it under the hierarchy of fora available under the Act.

14. We, therefore, reject the submissions advanced by the appellant and hold that an appeal would be maintainable against the determination of liability under Section 115QA of the Act.

12. What is presently under challenge before us was an interlocutory order passed by the AO disposing off objection to reopening of the concluded assessment u/s 147 of the Act against which appeal filed by assessee before learned CIT(A) stood dismissed on account of non maintainability keeping in view scope of Section 246A of the Act.

13. In the present case before us, the assessee has admitted that it is liable to be assessed under provisions of the Act by filing its return of income with Revenue and paying self

assessment tax on the rates applicable to individual. Secondly the order passed by AO was not the final assessment order but merely an interlocutory order disposing off objections filed by assessee against reopening of the concluded assessment u/s 147 of the Act and no amount of tax is determined to be payable by the said interlocutory order towards tax and no final reassessment order u/s 147 of the Act was passed by the AO. Merely because objections raised by the assessee to reopening of the concluded assessment u/s 147 of the Act were disposed off by the AO does not mean that the assessee will be finally fastened with additions to income in its hand on merits. The assessee will always have an opportunity to appear before the AO during reassessment proceedings and raise objections on merits of the issue before any prejudice is caused to the assessee by way of adverse reassessment order to be passed u/s 147 read with Section 143(3) of the Act. There is every possibility that the AO may drop reassessment proceedings on the merits of the issue albeit the reopening was upheld by the AO on legal grounds. In any case, even if the reopening is upheld on legal ground by the AO and additions are also sustained on merits, then also the assessee

will not be remedy less as the assessee will always be having remedy available to it by way of filing an appeal with learned CIT(A) u/s 246A of the Act against an reassessment order passed by the AO u/s 147 read with Section 143(3) of the Act. The assessee could challenge the legal ground i.e., re-opening of assessment as well as the issues on merits before CIT(A) after the assessment or re-assessment order is passed u/s.147 r.w.s. 143(3) of the Act. The assessee is entitled to file appeal on both the count i.e., on the jurisdictional issue as well as on merits.

14. So far as interlocutory order as was passed by the AO in the instant case, the assessee, if so advised, also had the remedy of filing writ petition under Article 226 with Hon'ble High Court, but in our considered view, no appeal is maintainable with learned CIT(A) u/s 246A of the Act or any other provisions of the Act, against interlocutory order passed by AO disposing off of objections raised by assessee against reopening of the concluded assessment u/s 147 of the Act. The right to file an appeal with learned CIT(A) is a statutory

right which emanates from the provisions of the Act and it could not be shown to us by the assessee that there existed any provision in the Act which enables it to file an appeal with learned CIT(A) against aforesaid interlocutory order. More so, the appellant is not remedy less as it will have any opportunity to file an appeal with learned CIT(A) u/s 246A of the Act in case reassessment proceedings culminates into an adverse order u/s 147 read with Section 143(3) of the Act.

15. If the plea of the assessee is accepted that such an interlocutory order is amenable to appeal before learned CIT(A) without having any specific provision in the Act allowing filing such an appeal before learned CIT(A), it will open floodgates of litigation before appellate authorities as even notices, summons etc. issued by the authorities will find their place by way of litigation before the authorities despite having no provision in the statute granting right to appeal to litigant and in our considered view this could never be intention of legislation and the plea's of the assessee lacks merit and deserves to be repelled. Thus, these fourteen

appeals filed by respective assessee's lacks merit and are dismissed.

16. In the result, the appeals of the assesseees are dismissed.

Order pronounced in the court on 10th March, 2021 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 10th March, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT