

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.33/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Nallamilli Satyanarayana Reddy
& Others
Turangi

[PAN No.AACFN4562G]

(अपीलार्थी / Appellant)

DCIT, Circle-1
Kakinada

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri G.V.N. Hari, AR

प्रत्यार्थी की ओर से / Respondent by

: Shri Deba Kumar Sonowal,
DR

सुनवाई की तारीख / Date of hearing

: 06.02.2018

घोषणा की तारीख / Date of Pronouncement

: 09.02.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee against order of the Principal Commissioner of Income Tax-2 (PCIT), Visakhapatnam vide F.No.Pr.CIT-2/VSP/263/10/2015-16 dated 1.1.2016 for the assessment year 2011-12.

2. All the grounds of appeal are related to the order passed by the Ld. Principal Commissioner of Income Tax-2, ('PCIT' in short) Visakhapatnam u/s 263 of the Income Tax Act, 1961 (hereinafter called as 'the Act'). In this case, the assessment order was completed u/s 143(3) of the Act by an order dated 31.12.2013 on total income of ₹ 13,30,125/- against the returned income of ₹ 9,23,003/-. Later on, the Ld. Principal Commissioner of Income Tax has taken up the case for revision and found that the order passed by the Assessing Officer (A.O.) was erroneous and prejudicial to the interest of the revenue due to following reasons:

(i) There were current liabilities to the extent of ₹ 6.06 crores and Reserves & Surplus of ₹ 4 38 lakhs which were not examined by the A.O.

(ii) The claim of the assessee of ₹ 1.01 crores interest was not examined by the A O.

(iii) There was no proof of examination of claims and liabilities and no cross verification was made by the A.O. with corresponding parties.

(iv) As per the audit report, the unsecured loans, vouchers for expenditure, etc. were subject to verification. An amount of ₹ 15.66 lakhs was shown in the balance sheet as unsecured loans and ₹ 5.6 crores of expenses were claimed in the P&L account under various heads leaving meager net profit of ₹ 4.74 lakhs.

(v)The A.O. has not verified the addition to fixed assets for which the assessee has claimed the depreciation.

(vi)There was a current asset in the name of T. Neelima and the A.O. has not obtained any information in respect of the above asset.

(vii) There was an introduction of capital in the capital accounts. The A.O. has not examined the source for increase in capital.

(viii) The A.O. has not verified the payments made in violation of section 40A(3) of the Act even though audit report was given with a remark of subject to verification.

(ix) The assessee had debited various expenses to the P&L account. The genuineness of the expenses was not verified by the A.O. and no evidence was placed on record.

3. Due to the above deficiencies, the Ld. Principal Commissioner of Income Tax was of the view that the order passed by the A.O. was erroneous and prejudicial to the interest of the revenue and accordingly set aside the assessment order directing the A.O. to redo the assessment after conducting enquiries and to take decision as per law.

4. Aggrieved by the order of the Ld. PCIT, the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. Counsel of the assessee argued that the Ld. Principal Commissioner of Income Tax has taken up the case for revision and set aside the assessment order for insufficiency of enquiry but not for lack of enquiry and argued that the Ld. PCIT is not permitted to invoke the jurisdiction under section 263 for inadequate enquiry. In the assessee's case, it is submitted by the Ld. A.R. that the A.O. has called for the books of accounts and the relevant information and verified all the issues raised by the Ld. Principal Commissioner of Income Tax in the show cause notice and the revision order. The A.O. after due verification of all the aspects passed the

assessment order. The A.R further submitted that with regard to the verification of expenses, low profit, additions to assets, violations u/s 40A(3), qualified remarks of audit report, increase in capital and the current assets and liabilities the A.O. has verified with the books of accounts and vouchers during the assessment proceedings. The same books of accounts were also produced before the Ld. Principal Commissioner of Income Tax at the time of revision proceedings and no defect was found by the revenue. With regard to the lorries, tanker and tractor, it was explained by the Ld. A.R. that the lorries, tanker and tractor were used by the assessee for it's business purpose, hence there were no receipts and the same was explained during the assessment proceedings. With regard to the additions to capital assets, the assessee has produced all the relevant vouchers at the time of assessment and supported by the entries in the books of accounts, which were duly verified by the A.O. In respect of Smt. Neelima, the debtor, which was appearing as an asset, the Ld. A.R. submitted that she is a partner in the firm and at the time of assessment, the assessee had produced the books of accounts, which was verified by the A.O. She has over drawn the amounts, hence it was shown as an asset and interest was also charged. With regard to the increase in capital account, there was introduction of capital in the case of one of the

partners Mr. T.Venkata Reddy, whose source was explained to the A.O. and also furnished the PAN Number of the partner and stated that Mr. T.Venkata Reddy was also assessed to tax. With regard to the remarks in the audit report in form No.3CD, the remarks made by the accountant were of routine nature and the same were verified from the books of accounts at the time of assessment. The Ld. A.R. referred our attention to page No.25 of the paper book, wherein the A.O. has issued the questionnaire on various issues including the details of current assets and provisions, details of reserves, details with regard to deposits exceeding ₹ 20,000/-, various expenses, copies of bank accounts, etc. and submitted that all the details as per the questionnaire were furnished to the A.O. during the course of assessment. The Ld. A.R. also invited our attention to page Nos.130 to 139 of the paper book referring various details filed by the assessee before the A.O. The Ld. A.R. further submitted that the A.O. has passed the consequential order u/s 143(3) r.w.s. 263 of the Act giving effect to the order of the Ld. Principal Commissioner of Income Tax u/s 263 of the Act, and the A.O. has not made any specific addition in respect of the issues raised by the Ld. PCIT, except estimated additions of ₹ 2,59,654/- for vehicle maintenance and ₹ 2,99,157/- for salaries on estimation basis. The Ld. A.R. argued that the Ld. PCIT has invoked the revision u/s 263 of the

Act on the surmises and conjectures, which is not sustainable in law. The Ld. Principal Commissioner of Income Tax has not brought on record any issue relating to the under assessment or suppression of income and it is not the case of the Ld. Principal Commissioner of Income Tax that the A.O. has not conducted the enquiries. It is a case of the Ld. Principal Commissioner of Income Tax that the A.O. has made inadequate enquiries and not placed the necessary copies of evidences furnished during the assessment. The Ld. A.R. further argued that the Ld. Principal Commissioner of Income Tax is not permitted to make revision u/s 263 of the Act unless the assessment made by the A.O. is found to be erroneous and prejudicial to the interest of the revenue. In this case, the Ld. Principal Commissioner of Income Tax has not made out any case of error, which is prejudicial to the interest of the revenue. Therefore, the Ld. A.R. of the assessee argued that the revision order made by the Ld. Principal Commissioner of Income Tax required to be quashed. Per contra the Ld. D.R. supported the order of the Ld. PCIT.

5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is engaged in the business of trading in paddy milling, purchase and sale of paddy rice and it's by products. The Ld. Principal Commissioner of Income Tax has taken up the case for revision u/s 263

of the Act for not conducting enquiries and investigations in respect of the expenses as per para 3.1 of the show cause notice with regard to rice cutting, salaries, bank interest, FCI cuttings, HPCL expenses, low profit, additions to assets, introduction of fresh capital, qualified remarks of the audit report, sales tax, current liabilities and current assets etc.. The Ld. PCIT also observed that the no evidence has been placed on record by the AO. The Ld A.R. submitted that the details called for by the AO were furnished at the time of assessment and the same were verified by the AO before completing the assessment.

On verification of the assessment order, it is observed that the assessee had produced the books of accounts, which was verified by the assessing officer. With regard to the net profit, the expenses incurred, addition to fixed assets and loans given to the partner, nature of current liabilities, reserves and surplus, all these issues and the remarks made by the accountant required to be verified from the books of accounts and there is no dispute that the assessee had produced the books of accounts, before the A.O. and verified the same. This fact is evidenced by the assessment order. Whether the A.O. has placed any evidences in the assessment record or not is discretion of the AO and is not the case for revision u/s 263 of the Act. With regard to the lorries, tanker and tractor, the assessee had explained that they were used in

the assessee's own business, hence, no receipts were admitted. The Ld. PCIT has not made out a case of suppression of the receipts or inflation of expenditure. With regard to the qualified audit report made by the accountant in the form 3CD, the books of accounts were examined by the AO no defect was found by the AO and the Ld. PCIT. With regard to the sales tax penalty, the same was disallowed by the A.O., hence no case for revision and no violation. The Ld. Principal Commissioner of Income Tax is empowered to take up the revision u/s 263 of the Act, if the A.O. has not made any enquiries but not for inadequate enquiries. Inadequate enquiry cannot be a reason for revision u/s 263 of the Act. In the instant case the Ld. PCIT is of the view that the AO has not conducted the enquiries as per his expectations. For revision of the assessment order, the assessment order passed by the A.O. should be erroneous and prejudicial to the interest of the revenue. Once the assessee furnishes the required information which is being verified by the A.O., there is no case for revision. Once A.O. has conducted enquiry and he is satisfied with the reply given on the queries raised, the Ld. Principal Commissioner of Income Tax cannot intervene through revision to come to a conclusion that assessment order passed by the A.O. was erroneous and prejudicial to the interest of the revenue for lack of or inadequate enquiry. This view is supported by the decision of ITAT,

Kolkata 'B' Bench in the case of Vinod Aggarwal Vs. Principal CIT (Central) Kolkata (2018) 80 Taxmann.com 171. For ready reference and clarity we extract the relevant parts of the Hon'ble ITAT's order supra which reads as under:

27. As pointed out by the Supreme Court in *Malabar Industrial Co.'s case (supra)*, the prerequisite to the exercise of jurisdiction by the Commissioner *suo motu* under it, is that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous but is not prejudicial to the interests of Revenue or if it is not erroneous but is prejudicial to the interests of Revenue-recourse cannot be had to section 263(1) of the Act. There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.

28. The Hon'ble Bombay High Court in the case of *Gabriel India Ltd. (supra)* has held that the power of *suo motu* revision under sub-s. (1) of s. 263 is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interest of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. An order cannot be termed as erroneous unless it is not in accordance with law. If an ITO acting in accordance with law makes certain assessment, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately. This section does not visualise a case of substitution of judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous.

32. Since the AO conducted enquiry the question is whether there can be no revision because the power u/s 263 can be invoked only in cases of lack of inquiry and not conducting inadequate inquiry. We are of the view that where an enquiry is conducted by the AO and he is satisfied with a reply given on a query raised, then the CIT cannot intervene through revision for coming to a conclusion that the assessment order passed by the AO was erroneous and prejudicial to the interests of the Revenue for lack of or inadequate enquiry.

In the instant case, the assessee has provided the entire information to A.O. at the time of assessment, which was being verified by the A.O. before completing assessment. This is evidenced by the questionnaire issued by the A.O. as well as the information furnished by the assessee at the time of assessment. Further, in the consequential order passed u/s 143(3) r.w.s 263 of the Act, the A.O. has not made any specific disallowance in respect of the issues raised by the Ld. Principal Commissioner of Income Tax u/s 263 of the Act except the estimated additions. The Ld. PCIT has not made out a case of not conducting the enquiry on any of the issues, hence, we are unable to sustain the order of the Ld. Principal Commissioner of Income Tax and we do not find any reason to hold the assessment order passed by the A.O. was erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of Ld. Principal Commissioner of Income Tax and allow the appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 9th Feb'18.

Sd/-
(वी. दुर्गराव)
(V. DURGA RAO)

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 09.02.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Nallamilli Satyanarayana Reddy & Others, Conts: Sri Venkata Padmavathi Raw & Boiled Rice Mill, Turangi.
2. प्रत्यार्थी / The Respondent – The DCIT, Circle 1, Kakinada.
3. आयकर आयुक्त / The PCIT-2, Visakhapatnam,
4. आयकर आयुक्त (अपील) / The CIT (A), Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM