

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 21/VIZ/2016  
(Asst. Year : 2009-10)**

M. Rama Rao,  
D.No. 1-460, Sriramnagar,  
Yanam.

vs. ITO, Ward-3,  
Kakinada.

PAN No. AACHM 8536 M  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Shri Sesa Srinivas – Sr.DR

Date of hearing : 07/02/2018.  
Date of pronouncement : 21/02/2018.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Guntur, dated 29/10/2015 for the Assessment Year 2009-10.

**2.** Facts of the case, in brief, are that assessee is a wholesale dealer in coconut business and operates Scorpio vehicle on hire basis and takes excavators etc. on lease and work for his clients. The assessee has filed his return of income by declaring total income of Rs. 4,48,816/- and claimed a refund of Rs. 55,926/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as "Act") and accordingly case was selected for scrutiny. After due

process, assessment is completed under section 143(3) of the Act. During the course of assessment proceedings, the Assessing Officer has observed that the assessee has declared income under the head 'house property'. The assessee stated to have received rent of Rs. 3,30,000/- for 7 months during the previous year. On being asked, assessee submitted before the Assessing Officer that as per the oral agreement with his son Sri M.V.V. Satyanarayana, he leased out his house property on 01/07/2007 to 30/06/2009 at a monthly rent of Rs. 55,000/- and in turn, his son leased it out to M/s. Atlas Marine at a monthly rent of Rs. 1,10,000/-. It is further submitted that M/s. Atlas Marine, terminated the lease agreement from 30/09/2008 onwards and thus, his son was in receipt of rent at Rs. 1,10,000/- p.m. for only 6 months during the previous year and accordingly the assessee was also in receipt of rent only for 6 months @ Rs. 55,000/- p.m. The assessee has submitted before the Assessing Officer that he was in receipt of rent of Rs.3,30,000/- only. The Assessing Officer by considering section 23 of the Act observed that the assessee is required to admit the sum, for which the property might reasonably be expected to let from year to year. As has been admitted by assessee himself, the property fetched Rs. 1,10,000/- p.m., which the assessee's son received. Therefore, the assessee ought to have admitted the rent from the property @ 1,10,000/- p.m. Accordingly, the

Assessing Officer has computed for the entire previous year, taking the monthly rent at Rs. 1,10,000/-.

**3.** On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

**4.** Before us, Id. counsel for the assessee has submitted that in the case of assessee's son Sri M.V.V. Satyanarayana, the Id.CIT(A) directed the Assessing Officer to tax on the income from house property leased out for the period of 6 months. There is no justification for the Assessing Officer to tax the assessee for 12 months on the very same property. It is further submitted that issue may be remitted back to the Assessing Officer for fresh consideration.

**5.** On the other hand, Id. Departmental Representative strongly supported the orders of the Assessing Officer as well as Id. CIT(A).

**6.** We have heard both the parties, perused the material available on record and orders of the authorities below.

**7.** The assessee leased out the property to his son Sri M.V.V. Satyanarayana for Rs. 55,000/- p.m. In turn, Sri M.V.V. Satyanarayana, sub-leased the same to M/s.Atlas Marine at a monthly rent of Rs. 1,10,000/-. The case of the assessee is that lease agreement between his son and M/s. Atlas Marine is cancelled, hence, he only received rent for 6 months from his son. However, the Assessing Officer has not agreed with the

explanation given by the assessee and calculated rental income what is received by his son at Rs. 1,10,000/- for a period of 12 months. The Id. CIT(A) confirmed the same. We find that the very same Id. CIT(A) in the case of assessee's son in Appeal No. 171/11-12, dated 31/05/2016, has directed the Assessing Officer to consider the rental income for a period of for six months only. Under these facts and circumstances of the case, we are of the opinion that in the light of the order passed by the Id. CIT(A) in assessee's son's case, it needs, the issue has to be re-adjudicated by the Assessing Officer. In view of the above, we set aside the order passed by the Id. CIT(A) and direct the Assessing Officer to adjudicate the entire issue afresh in *denovo* in accordance with law. Thus, this appeal filed by the assessee is allowed for statistical purpose.

**8.** In the result, appeal filed by the assessee is allowed for statistical purpose.

Order Pronounced in open Court on this 21<sup>st</sup> day of Feb., 2018.

Sd/-  
**(D.S. SUNDER SINGH)**  
Accountant Member

sd/-  
**(V. DURGA RAO)**  
Judicial Member

**Dated : 21<sup>st</sup> February, 2018.**

**vr/-**

*Copy to:*

1. *The Assessee - M. Rama Rao, D.No. 1-460, Sriramnagar, Yanam.*
2. *The Revenue - ITO, Ward-3, Kakinada.*
3. *The Pr.CIT-2, Visakhapatnam.*
4. *The CIT(A)-2, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.

