

**आयकर अपीलिय 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.248/Vizag/2015  
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. R.R. Constructions,  
Vijayawada

(अपीलार्थी / Appellant)

DCIT, Circle-2(1),  
Vijayawada  
[PAN No.AADFR5608L]  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR  
प्रत्यार्थी की ओर से / Respondent by : Shri P.S. Murthy, DR  
सुनवाई की तारीख / Date of hearing : 20.02.2018  
घोषणा की तारीख / Date of Pronouncement : 28.02.2018

**आदेश / ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax {CIT}, Vijayawada dated 27.3.2015 for the assessment year 2010-11.

2. All the grounds of appeal are related revision u/s 263 of the Income Tax Act, 1961 (hereinafter called as 'the Act') by the CIT. In

this case, the assessee filed return of income admitting total income of ₹ 37,88,885/-. The A.O. has taken up the case for scrutiny and called for the relevant information and examined the books of accounts. Since the A.O. was not satisfied with the book results, invoked the provisions u/s 145(3) of the Act and completed the assessment estimating the income @ 8% on own contracts and 5% on sub contract works given to others and accordingly, completed the assessment u/s 143(3) of the Act by an order dated 27.3.2015 on total income of ₹ 40,09,400/-. The gross total income was worked out to ₹ 80,21,700/- and the A.O. has allowed the depreciation, remuneration and interest paid on capital and computed the total income at ₹ 40,09,400/-. Subsequently, the CIT has taken up the case for revision u/s 263 of the Act and issued the show cause notice with the following errors, which are stated to be prejudicial to the interest of the revenue.

*(i) The A.O. has estimated the income @ 5% on sub contracts given to others without collecting any material and the details and the relevant particulars.*

*(ii) The A.O. has completed the assessment estimating the income @ 8% on own contract without obtaining the relevant material indicating the basis for making estimation of income @ 8% on contract receipts.*

*(iii) The A.O. has allowed the depreciation of ₹ 28,23,214/- from the estimated income. The Ld. CIT(A) is of the view that the expenditure required to be allowed u/s 30 to 38 of the Act deemed to have been allowed and there no case for allowing depreciation separately from the estimated income.*

*(iv) The assessee had invested a sum of ₹ 42,39,000/- in the land. The total accumulated investment made in the land was ₹ 1,54,47,855/- and the A.O. has not called the relevant details and examined the sources/purposes, etc.*

*(v) The A.O. has not verified the unsecured loans and merely accepted the letters filed by the assessee without examining the identity, genuineness and creditworthiness of the creditors.*

The assessee filed reply to the show cause notice issued by the Ld. CIT. Not being satisfied with the reply of the assessee, the Ld. CIT held the assessment made u/s 143(3) of the Act dated 13.12.2012 is erroneous and prejudicial to the interest of the revenue, accordingly set aside the assessment order made by the A.O. and directed the A.O. to re-do the assessment as per the directions given in the revision order. Aggrieved by the order of the Ld. CIT, the assessee is in appeal before this Tribunal.

3. During the appeal hearing, the Ld. A.R. of the assessee argued that in this case, the assessment was completed u/s 143(3) of the Act after verification of all the details required for assessment and in the process the issues raised by the Ld. CIT were also considered by the A.O. The AR submitted that during the assessment proceedings the assessee has produced the books of accounts, vouchers and submitted the relevant information with regard to the expenditure debited to the P&L account, explained the investments made during the year and filed the confirmations letters in respect of loans and sundry creditors etc. and the AO has completed the assessment after verifying the entire information placed before him. The A.O. concluded that the true and correct profits cannot be arrived at from the books of accounts and accordingly rejected the books of accounts and computed the

assessment estimating the income @ 8% on own contracts and 5% on sub contracts. The Ld. A.R. further submitted that during the assessment proceedings, the assessee has submitted the relevant evidences in respect of the investments made during the year and unsecured loans accepted during the year, therefore, there is no case for revision u/s 263 of the Act. The Ld. CIT was of the view that the AO has not made the investigation to the level of his expectation hence taken up the case for revision which is not permitted in law. In the eyes of the Ld. CIT, the A.O. should have done more enquiries and obtained some more information before completing the assessment, which tantamount to inadequate enquiry, but not the lack of enquiry. The Ld. A.R. further submitted that inadequate enquiry is not a case for revision u/s 263 of the Act. The case of the assessee is that inadequate enquiry, hence, requested to quash the revision order passed u/s 263.

4. The Ld. D.R. supported the order of the Ld. CIT.

5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessment was completed u/s 143(3) of the Act on 31.12.2012. During the assessment proceedings, the A.O. has called for evidences in respect of expenses claimed by the assessee under various heads and verified the vouchers/bills and the same is evident from the

assessment order. Since the assessee has failed to substantiate the expenses with proper evidences, the A.O. invoked the provisions of section 145(3) of the Act and accordingly, completed the assessment by estimation of income. Once the assessment is completed by rejection of books of accounts on estimation basis, there is no merit in the argument of Ld. CIT that the A.O. has not conducted the proper enquiry. The A.O. resorts to estimation of income only as a last resort, when the assessee fails to furnish the complete information for completing the assessment. The estimation of income @ 8% on own contracts is supported by number of judgements including the decision of special bench in the case of Arihant Builders, Developers & Investors (P.) Ltd. v. Assistant Commissioner of Income-tax\*, Circle I(1), Indore, [2007] 106 ITD 10 (INDORE) and similarly the estimation of income @ 5% also appears to be reasonable and supported by the number of decisions. The A.O. has taken one of the possible view, hence, there is no case for making revision u/s 263 of the Act. Accordingly, the order of the Ld. CIT on the issue of estimation of income fails.

6. The next issue for taking the case for revision u/s 263 of the Act is the allowance of depreciation from the estimated income. The A.O. completed the assessment by estimating the income @ 8% on own contracts and 5% on sub contracts and from the resultant profit, the

A.O. has allowed the depreciation as allowable as per the Act. The Ld. CIT has taken up the case for revision u/s 263 of the Act, holding that once the income is estimated, the expenditure u/s 30 to 38 of the Act deemed to have been considered and thus, in the opinion of the Ld. CIT, no depreciation required to be allowed separately from the estimated income. However, depreciation allowance is statutory allowance, which required to be allowed even if the income is estimated. Hon'ble Jurisdictional High Court's judgement in the case of CIT vs Y. Ramachandra Reddy, [2014] 50 taxmann.com 129 (Andhra Pradesh) supports this view. Further, in the assessee's own case for the assessment year 2008-09, the ITAT Visakhapatnam in ITA No.447/Vizag/2013 dated 6.11.2015 held that depreciation is an allowable deduction even after estimation of net profit and gross profit. Hence, it is established that the A.O. has taken one of the possible views supported by the legal precedents. Hence, there is no case for revision u/s 263 of the Act.

7. The next issue for revision u/s 263 of the Act is investments made in land. The assessee had made investments of ₹ 42,39,000/- in the land and the accumulated investment was ₹ 1,54,47,855/-. During the assessment proceedings, it was submitted by the assessee that the sources of them have flown out of funds used from the OD Limit of ₹

100 lakhs held with the Corporation Bank and it was verified during the scrutiny assessment with necessary documents. Therefore, the issue with regard to the investments was verified by the assessing officer during the scrutiny assessment proceedings and after complete verification of the investments with relevant documents and the books of accounts the A.O. has accepted the investments made by the assessee. Once the A.O. has made complete enquiries, there is no case for revision u/s 263 of the Act.

8. The next issue for revision u/s 263 of the Act was unsecured loans. The assessee has stated before the CIT that the assessee had furnished the conformation from sundry debtors, sundry creditors, unsecured loans, etc., which was verified by the A.O. before completing the assessment. Once the assessee submits the confirmation letters, burden shifts to the revenue and burden of the assessee stands discharged and the Ld. CIT cannot hold that the A.O. has not made the enquiry. If the complete details were not obtained as expected by the Ld. CIT, at best it can be said that inadequate enquiry. Inadequate enquiry is not a case for revision u/s 263 of the Act. Only lack of enquiry is a case for revision u/s 263 of the Act. This view is supported by the decision of Hon'ble Supreme Court in the case of Malabar Industries Company Limited Vs. CIT 243 ITR 83 (SC) and the decision of

CIT Vs. Max India Limited 166 Taxman.com 188. Further, Hon'ble ITAT, Kolkata has examined this issue in Vinod Agarwal Vs. PCIT 80 Taxman.Com 171 and held that 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 the A.O. has conducted enquiry and he is satisfied with the reply given on the enquiries raised, the Principal CIT 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 or inadequate enquiry.

In the instant case, the A.O. with regard to the estimation of income and the depreciation has taken one of the possible views, in respect of the investments made, sundry creditors and unsecured loans, the A.O. collected the information after conducting the enquiries and completed the assessment. Therefore, there is no case for revision u/s 263 of the Act and the Ld. PCIT has not made out a case of not conducting the enquiry on any of the issues. The assessee's case is squarely covered by Hon'ble Supreme Court in the case of CIT Vs. Max India Limited 166 Taxman.com 188 and the Hon'ble Supreme Court in the case of CIT Gujarat II Vs. Quality Steel Supply Complex 395 ITR 1.

and CIT Vs. Y. Ramachandra Reddy 50 Taxmann.com 129 (AP). Hence, we are unable to sustain the order of the Ld. PCIT and do not find any reason to uphold the order. Accordingly, the order passed by the Ld. CIT u/s 263 of the Act is set aside and we allow the appeal of the assessee.

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

The above order was pronounced in the open court on 28<sup>th</sup> Feb'18.

Sd/-

(वी. दुर्गराव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.02.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.02.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – M/s. R.R. Constructions, D.No.27-11-24, Mary Street, Governorpet, Vijayawada
2. प्रत्यार्थी / The Respondent – The DCIT, Circle-2(1), Vijayawada
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM

Sl. No.	Description	Date	Initials
1.	Date of dictation by the Author	21.02.2018	Sr.PS
2.	Draft placed before the Dictating Member	22.02.2018	Sr.PS
3.	Draft placed before the Second Member		Sr. PS
4.	Draft approved by the Second Member		Sr. PS
5.	Date of approved order comes to the Sr. PS		Sr. PS
6.	Date of pronouncement of order		Sr. PS
7.	Date of file sent to the Bench Clerk		Sr. PS
8.	Date on which file goes to the Head Clerk		Hd. Clk
9.	Date of dispatch of order		Sr. PS