

**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.273/Vizag/2017**  
(निर्धारण वर्ष / Assessment Year: 2007-08)

Sri Mahesh Anumalisetty  
Visakhapatnam  
[PAN No.ADJPA3853B]  
(अपीलार्थी / Appellant)

DCIT Central Circle-2  
Visakhapatnam  
(प्रत्यार्थी / Respondent)

**आयकर अपील सं./I.T.A.No.274/Vizag/2017**  
(निर्धारण वर्ष / Assessment Year: 2007-08)

Sri Nagesh Anumalisetty  
Visakhapatnam  
[PAN No.ACFPA3146A]  
(अपीलार्थी / Appellant)

DCIT Central Circle-2  
Visakhapatnam  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by  
प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR  
: Shri Deba Kumar Sonowal,  
DR

सुनवाई की तारीख / Date of hearing

: 06.03.2018

घोषणा की तारीख / Date of Pronouncement

: 09.03.2018

## आदेश / O R D E R

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

These appeals filed by different assesseees are directed against the order of the Principal CIT(Central), Visakhapatnam vide order No.Pr.CIT(C)/VSP/263/CC-2/VSP/2016-17 dated 8.3.2017 for the assessment year 2007-08 on identical facts. Since, the facts are identical and issues are common, they are clubbed, heard together and disposed-off by way of this common order for the sake of convenience.

2. The grounds of appeal in both the appeals are related to the orders of revision u/s 263 of the Income Tax Act, 1961 (hereinafter called as 'the Act'). In this case, the facts are taken from ITA No.273/Vizag/2017 in the case of A. Mahesh. The assessee filed return of income declaring total income of ₹ 49,64,520/- for the assessment year 2007-08 on 16.5.2008. The assessee is Director in A.S. Steel Traders and deriving salary income, house property, business income, capital gains and other sources. A search u/s 132 of the Act was carried out in the assessee's case on 11.12.2012 in A.S. Steel Group. Consequently, the assessment u/s 143(3) r.w.s. 153A of the Act was completed by the DCIT Central Circle-2, Visakhapatnam on 31.3.2015 accepting the income returned. On verification of the assessment records, the Principal Commissioner of Income Tax (Central),

Visakhapatnam noticed that the assessee is 66% shareholder in A.S. Steel Traders Pvt. Ltd. and during the previous year relevant to the assessment year 2007-08, the company has advanced amounts of ₹ 5,31,700/- and the accumulated profits of the company was ₹ 2,94,081/- as on 31.3.2006. The Principal Commissioner of Income Tax was of the view that the advance received by the assessee company comes under the purview of deemed dividend as defined u/s 2(22)(e) of the Act as the assessee is holding more than 10% of voting power. It was also observed by the Principal Commissioner of Income Tax that the Director Mr. A. Nagesh holds 34% of shares and had received advance of ₹ 1,76,344/-, which also comes within the purview of deemed dividend u/s 2(22)(e) of the Act. Both the Directors have not shown the advances received from the company as a deemed dividend in the return of income. Hence, the Principal Commissioner of Income Tax has taken up the case for revision and held that the assessment order passed by the A.O. is erroneous in as much as not examining the issue with regard to the deemed dividend and prejudicial to the interest of the revenue, since the deemed dividend was not brought to tax. Therefore, the Ld. Principal Commissioner of Income Tax set aside the order passed by the A.O. with a direction to re-do the assessment afresh after examining the issue.

3. Aggrieved by the order of the Principal Commissioner of Income Tax, the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. A.R. argued that in this case the assessment were completed u/s 143(3) r.w.s. 153A of the Act on the issues on which the incriminating material was found during the course of search. The issue raised by the Principal Commissioner of Income Tax with regard to the deemed dividend is duly accounted in the books of accounts and the same cannot be the material for revision u/s 263 of the Act in respect of the search assessments. The issue with regard to the deemed dividend if at all required to be examined, the same should be examined in the regular assessment but not in the search assessments. The Ld. A.R. relied on the decision of A. Swarna Lakshmi Vs. DCIT (Central), Vijayawada in ITA No.207/Vizag/2011 dated 9.8.2017 of this Tribunal.

4. On the other hand, the Ld. D.R. relied on the orders of the Principal Commissioner of Income Tax.

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 search assessments were completed u/s 143(3) r.w.s. 153A of the Act by an order dated 31.3.2005 accepting the income returned. The Commissioner of Income Tax has taken up the case for revision u/s 263 of the Act with regard to the advances given by the company to the

Directors who are holding substantial share in the companies. The company was having sufficient resources and the issue has to be considered as deemed dividend u/s 2 (22)(e) of the Act. However, as per the decided case laws, the entries made in the regular books of accounts should not be considered in search assessments unless the assessment is incomplete. On the similar facts and circumstances, this Tribunal in the case of A. Swarna Lakshmi relied upon by the Ld. A.R. allowed the appeal of the assessee. For ready reference, we extract relevant para of this Tribunal order which reads as under:

*11. We have heard the rival submissions and perused the material placed on record. Prima facie, the expenditure was accounted in the regular books of accounts and the assessments for the assessment years 2006-07 and 2007-08 are unabated and completed. The completed assessments cannot be inferred with the regular books of accounts while making the assessments u/s 153A. Reassessment u/s 153A is possible in unabated assessments only with the incriminating material found during the course of search. If no new material is unearthed during the course of search revision u/s 263 is not permissible in the case of completed assessments on the basis of entries made in the regular books of accounts. For any omission or commission resulting under assessment should be considered in regular assessments but not in search assessments. This view is supported by the decision of Hon'ble ITAT, Delhi Tribunal in Mahesh Kumar Gupta Vs. Commissioner of Income Tax, reported in 47 CCH 0190. The coordinate bench in the decision cited supra in connection with the taxability of deemed dividend held as under:*

*"the Clause (iv) above, the Hon Z/e High Court held that "obviously an assessment has to be made under this Section only on the basis of seized material". In clause (v), the same is reiterated by ho/ding "In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made In clause (vii), it is stated "Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the bask of some incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be reiterated and the abated assessment or reassessment can be made" In clause (vii), it is stated "Completed assessments can be Interfered with by the AO while making the assessment under Section 153A only on the basis of some*

*incriminating material unearthed during the course of search”.*

*Thus, in present case the issue of deemed dividend does not arise from the provisions of Section 153A of the Act and there is no seized material unearthed at the relevant time. Thus it is beyond Assessing Officer's power to address the said issue in proceedings initiated under Section 143(3) read with Section 153A of the Act. The CIT was wrong in directing the examination of taxability of deemed dividend under Section 2(22)(e) of the Act, in the proceedings u/s 153A of the Act while passing order under Section 263 of the Act when the proceedings under Section 153A itself has not unearthed the said issue. Thus, the CIT do not have power under Section 263 of the Act to give its own opinion when there is no new material unearthed. The issue taken up by the CIT was not within the purview of the Assessing Officer at the inception of assessment proceedings.”*

11.1 Therefore we hold that it is not permissible to revise the assessment order in the case of search assessments without referring to the incriminating material in the case of completed assessments. In the instant case the assessments were unabated and there is no incriminating material. Hence we set aside the orders of the Ld. CIT and allow the appeal of the assessee for the A.Y.2006-07 and 2007-08.

6. Since the facts are identical, respectfully following the view taken by this Tribunal, we hold that it is not permissible to revise the assessment order in the case of search assessments without referring to incriminating material in the case of completed assessments. Accordingly, we set aside the order of the Ld. Principal Commissioner of Income Tax and allow the appeals of the assessee.

7. In the result, the appeals filed by the assessee are allowed.

The above order was pronounced in the open court on 9<sup>th</sup> Mar'18.

Sd/-

(वी. दुर्गराव)

**(V. DURGA RAO)**

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डि.एस. सुन्दर सिंह)

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

लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 09.03.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – Sri Anumalisetty Mahesh, D.No.7-5-104/9, Sri Lakshmi Nivas, Maitri Nagar, Visakhapatnam
2. 1. अपीलार्थी / The Appellant – Sri Anumalisetty Nagesh, Plot No.201, Sector-IV, MVP Colony, Visakhapatnam
3. प्रत्यार्थी / The Respondent – The DCIT, Central Circle-2, Visakhapatnam
3. आयकर आयुक्त / The The Principal CIT (Central), 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