

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.165/Vizag/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

The KCP Ltd.,
Chennai
[PAN No.AAACT8046J]
(अपीलार्थी / Appellant)

DCIT, Circle-1,
Vijayawada
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri C. Subrahmanyam, AR
प्रत्यार्थी की ओर से / Respondent by : Shri Deba Kumar Sonowal,
DR
सुनवाई की तारीख / Date of hearing : 05.03.2018
घोषणा की तारीख / Date of Pronouncement : 09.03.2018

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 passed u/s 263 vide order dated 26.3.2015 for the assessment year 2010-11.

2. This appeal against order passed u/s 263 of the Income Tax Act, 1961 (hereinafter called as 'the Act') by the Commissioner of Income Tax (CIT). The assessee has raised number of grounds descriptive and argumentative and all the grounds of appeal are related to the order of the Ld. CIT passed u/s 263 of the Act. In this case, the assessment was completed u/s 143(3) of the Act by an order dated 29.3.2013 and determined the total income at ₹ 88,18,99,940/-. The said order was taken up by the CIT for revision u/s 263 of the Act and observed that the following issues were not examined by the Assessing officer(A.O).:

- i. The assessee had admitted the rental receipts of ₹ 12,28,020/- against the receipts as per TDS certificates amounting to ₹ 25,71,820/- on which the TDS deducted was at ₹ 3,39,268/-.
- ii. The assessee had claimed the depreciation on motor cars @ 50% against the allowable depreciation of 15%.
- iii. The assessee had admitted capital loss of ₹ 1,28,65,575/- and claimed the indexed cost of acquisition of shares at ₹ 2,48,65,574/-.

3. Before the LdCIT the Ld. A.R. submitted that though the TDS certificate shows ₹ 25,71,820/- towards the rental receipts, a sum of ₹ 13,31,800/- was admitted as a rental income towards land in the profit

& loss account, hence there was no difference in the rental income admitted by the assessee. The Ld. A.R. clarified that the entire receipts of ₹ 25,71,820/- were admitted as rental income under house property for ₹ 12,28,020/- and business income of ₹ 13,31,800/-, hence, there is no under assessment which is prejudicial to the interest of the revenue, hence requested to drop the proceedings u/s 263 of the Act on this issue.

4. With regard to the second issue of depreciation, the Ld. A.R. submitted before the CIT that the assessee had claimed the depreciation @ 50% on commercial vehicles which were put to use for business purpose. The assessee has included the assets in the block and once the assets are included in the Block of assets there is no scope for removing them from the block of assets. Since the assessee has taken the commercial vehicles and put to use for business purpose, the Ld. A.R. argued that the same are eligible for depreciation @ 50%. The Ld. A.R. also submitted that the assessee was claiming depreciation @ 50% on the same assets right from 2007-08 onwards and the same was allowed by the AO. Therefore, there is no change of facts in the year under consideration. Further, the Ld. A.R. submitted that once the asset is included in the block of assets, the same cannot be deleted from the

block of assets, hence, there is no case for taking up the case for revision u/s 263 of the Act which caused financial injury to the revenue.

5. With regard to the third issue, the assessee had submitted that the assessee had purchased 1,20,000 shares of M/s. Sudalagunta Sugars Limited during the financial year 2009-10 for a consideration of ₹ 1,20,00,000/- by an agreement dated 10.6.2004. The said shares were sold for same consideration, which resulted in indexed cost of acquisition of ₹ 2,48,65,274/- and capital loss of Rs.1,28,65,274/- The Ld. A.R. argued that the shares were purchased as per the agreement and sold as per the agreement for the same consideration, which resulted in capital gain loss.

The Ld. Commissioner not being convinced with the arguments of the Ld. A.R., Passed the order u/s 263 and directed the A.O. to disallow the capital indexation loss claimed by the assessee and with regard to the other issues the Ld. CIT set aside the order of the A.O. u/s 263 of the Act.

6. Aggrieved by the order of the Ld. CIT, the assessee is in appeal before us. During the appeal hearing, the Ld. A.R. reiterated the submissions made before the Ld. CIT and argued that there is no error which caused prejudice to the interest of the revenue, hence, there is no case for revision u/s 263 of the Act. Ld. A.R. relied on the decision of

Hon'ble Delhi High Court in the case of CIT Vs. Oswal Agro Mills Ltd. 197 Taxman 0025 (2011) and the decision of ITAT Hyderabad 'A' Bench in the case of DCIT Vs. Coromandal Bio Tech Industries (I) Ltd. (2012) 31 CCH 0142.

7. On the other hand, the Ld. D.R. relied on the orders of the Ld. CIT.

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The Ld. A.R. reiterated the submissions made before the Ld. CIT as discussed above. The Ld. A.R. relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Oswal Agro Mills Ltd. (supra). The limited issue for adjudication in this case is whether the A.O. has erred in framing the assessment, which is prejudicial to the interest of the revenue or not. In this case, the CIT taken up the revision of the assessment u/s 263 of the Act for not examining the rental receipts understated by the assessee compared to the TDS receipts as per Form No.26AS and the excess depreciation claimed by the assessee in respect of motor cars and long term capital gain loss claimed by the assessee. Though the Ld. A.R. submitted during the course of hearing that the assessee had admitted the rental receipts under two heads i.e. house property income and the land. The same was not examined by the A.O. The A.O. did not call for

the details and the assessee also failed to furnish the details before the A.O. There was no whisper with regard to the difference of rents admitted by the assessee in the return of income compared to form No.26AS. During the assessment proceedings, no such details were called for by the A.O. nor the assessee did supply the details. Similarly, with respect to the depreciation, the assessee had claimed the depreciation @ 50%, whereas as per the rules, depreciation is allowable on motor cars was only @ 15%. There was no hire income admitted by the assessee in the return of income. Similarly, neither the A.O. called for the details nor the assessee had furnished the details. The assessee required to demonstrate that the assessee has used the vehicles in the business of hiring. Merely registering the vehicles for commercial purpose does not make entitle the assessee for higher rate of depreciation. In respect of indexed capital gain loss, the assessee had purchased the shares at ₹ 10/- per share and sold the shares at the same rate of ₹ 10/-. The assessee has claimed the indexed cost of acquisition at ₹ 2,48,65,574/-. The Ld. A.R. submitted during the course of hearing that the A.O. neither called for the details nor the details were furnished before the A.O. The only argument of the Ld. A.R. was that since the books of accounts were produced, it is deemed that the A.O. has considered all the issues, hence, there is no error in the

assessment order. Ld. A.R.'s submission is that the mere production of books of accounts ensures the complete verification of all the issues. There is no dispute with regard to the fact that the A.O. has not verified the rental receipts' depreciation and the sale of shares during the assessment proceedings. Mere production of books of accounts cannot be construed that the AO had verified the complete information. It is obligation on the part of the assessee to demonstrate that the AO had in fact considered and decided the issues raised by the CIT in the assessment. Though the assessee has purchased the shares at ₹ 10/- and sold at ₹ 10/-, there is a method of valuation of the unlisted company's shares to determine the market value and it is required to be certified by the qualified accountant. In this case, the Ld. A.R. submitted that no report of the accountant is available with him with regard to the valuation of shares as on the date of sale or as on the date of purchase of shares to determine the cost of acquisition or to determine the market value to compute the capital gains. The Ld. A.R. relied on the case law of Hon'ble Delhi High Court in the case of CIT Vs. Oswal Agro Mills Ltd. (supra), which is related to the allowability of depreciation in case of business comes to stand still but not the issue with regard to the order passed u/s 263 of the Act. Hon'ble Delhi High Court held that passive use of the asset is also recognised as usage for

the purpose of depreciation. The case law relied upon by the Ld. A.R. is distinguishable on facts with that of the assessee's case. Similarly, in the case of DCIT Vs. Coromandal Bio Tech Industries (I) Ltd., the issue is with regard to the allowability of depreciation on block of assets but not with regard to the issue of order passed u/s 263 of the Act. As discussed earlier, in the present case, the issue is limited whether the CIT has rightly invoked the provisions u/s 263 of the Act or not. The assessee has received the rents as per Form No.26AS a sum of ₹ 25 lakhs, whereas the assessee had admitted a sum of ₹ 12,28,020/- in the return of income and the A.O. has not examined the issue with regard to the remaining amount of ₹ 13,31,800/- which should have been brought to tax by the A.O., similarly, the assessee had claimed the depreciation @ 50%. The A.O. has neither called for the details nor the assessee had demonstrated that the motor cars were used for the purpose of running them on hire. With regard to the capital gains, the assessee had purchased shares at ₹ 10/- per share and sold the same at ₹ 10/- per share and claimed the long term capital loss of ₹ 1,28,65,574/- with indexed cost of acquisition at ₹ 2,48,65,574/-. But there was no valuation report submitted by the assessee to arrive at the market value as required by the Income tax rules. Therefore, the A.O. clearly committed an error which is prejudicial to the interest of the

revenue and the Ld.CIT has rightly taken up the case for revision u/s 263. However, the CIT(A) while remitting the matter back to the file of the A.O., had directed the A.O. to disallow the capital loss based on cost of inflation index and remitted the remaining two issues for re-adjudication. However, we are of the considered opinion that all the three issues required to be remitted back to the file of the A.O. to re-do the assessment afresh on merits. Accordingly, while upholding the order of the CIT passed u/s 263 of the Act, we remit the matter back to the file of the A.O. all the three issues with a direction to re-do the same afresh on merits.

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

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

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 09.03.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER 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 – The KCP Ltd., Ramakrishna Buildings, No.2, P.V. Cherian Crescent, Egmore, Chennai.
2. प्रत्यार्थी / The Respondent – The DCIT, Circle-1(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

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM