

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

**श्री वी. दुर्गा राव, 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.298-299/Viz/2012
(निर्धारण वर्ष/Assessment Year:2007-08 and 2008-09)**

Satyanarayana & Others
Ravulapalem, East Godavari Dist

Vs. CIT, Rajahmundry

[PAN : ABJFS6323E]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**आयकर अपील सं./I.T.A.No.505-508/Viz/2016
(निर्धारण वर्ष/Assessment Year:2007-08 and 2008-09)**

Satyanarayana & Others
Ravulapalem, East Godavari Dist

Vs. The ITO, Ward-2
Amalapuram

[PAN : ABJFS6323E]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से / Respondent by


: Shri Deba Kumar Sonowal, DR

सुनवाई की तारीख / Date of Hearing

: 28.02.2018

घोषणा की तारीख/Date of Pronouncement

: 09.03.2018

ITA 298 & 299/Viz/2012 and ITA 505-508/Viz/2016
Satyanarayana & Ors,Ravulapalem, East Godavari Dist. 

आदेश / O R D E R

Per Bench :

1. The assessee filed the appeals with a delay of 74 days against the order passed under section 263. The appeals should have been filed before ITAT on or before 08.06.2012 against the date of filing the appeal on 21.08.2012. The assessee explained the reasons for the delay during the appeal hearing and filed the petition for condoning the delay. After hearing both the parties, the delay of 74 days is condoned and the appeals are admitted.

2. ITA Nos.298 &299/Viz/2012 are filed by the assessee against the orders of the Commissioner of Income Tax [CIT], Rajahmundry passed u/s 263 of I.T.Act vide F.No.H.Qrs.3/263/CIT/RJY/2010-11 and H.Qrs.4/263/CIT/RJY/2010-11 dated 20.03.2012. Since the facts are identical and the issue involved is common in both the appeals, they are clubbed, heard together and disposed of by this common order for the sake of convenience. The relevant facts are extracted from ITA No. 298/Viz/2012 for the A.Y.2007-08 as under:

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3. The assessee is engaged in the sand business for sand ramp at Ravulapalem Village, East Godavari Dist. (A.P.), being the successful bidders in the auction conducted by the State Government Department. In this case, survey u/s 133A was conducted on 29.08.2007 and during the course of survey certain loose sheets, daily sheets were found and a statement was recorded from the Managing Partner Sri Datla Satyanarayana Raju. The Assessing Officer (AO) has issued notice u/s 142(1) for not filing the return of income in response to which the assessee filed the return of income admitting total income of ₹ 5,48,450/-. The case was taken up for scrutiny. During the assessment proceedings, the assessee submitted that it has not maintained the books of accounts and only available material was daily sheets, loose slips regarding business transactions which were impounded at the time of survey. As per the working sheets, the total sales were computed by the AO at Rs.2,49,65,610/- for the assessment year 2007-08 and Rs.3,02,72,650/- for the assessment year 2008-09. Since the assessee was not maintaining the books of accounts, the AO completed the assessment estimating the income @15% on total sales at Rs.32,63,241/- for the assessment year 2007-08 and Rs.39,00,800/- for the assessment year 2008-09 after allowing the interest on capital and remuneration paid to the partner.

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4. Subsequently the Ld. CIT has called for the record and taken up the assessment orders framed u/s 143(3) for the assessment year 2007-08 and 2008-09 for revision u/s 263 and found that the orders passed by the AO were erroneous and prejudicial to the interest of the revenue since the AO has not considered the income and expenditure workings made on the basis of loose slips, daily sheets etc. found in the survey premises. As per the paper book filed by the assessee page No.28 was the income and expenditure details of Godavari Sand Ramp, Ravulapalem for the financial year 2006-07, the net profit worked out to Rs.38,77,491/-. Page No.28 stated to be statement of computation of income compiled by the Income Tax department as on the date of survey on the basis of evidence found during the survey. However, the said working was neither signed by the officer who compiled nor did bear the signature of the assessee. Similarly for the assessment year 2008-09 also, in page No.six, of the paper book the assessee has enclosed the income and expenditure details of Godavari Sand Ramp, Ravulapalem indicating the net profit of Rs.90,57,690/- and the said computation sheet was also not signed and without name. Page No.28 of paper book for the assessment year 2006-07, page no.6 of paper book for the assessment year 2008-09 and the daily

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sheets that were found at the time of survey were the source for initiation of revision proceedings u/s 263 of I.T. Act. According to the Ld.CIT, the department has computed the net profit on the basis of the evidences found during the survey proceedings considering the total income and expenditure, hence, the AO should have adopted the same income. Since there was no indication of payment salaries to the partners and interest on partnership capital, the AO should not have allowed the interest on capital and remuneration paid to the partners. Similarly, the Ld.CIT also observed that the assessee violated the provisions of TDS in respect of payments made for machine hire charges, therefore, the disallowance u/s 40(a)(ia) attracts and the AO did not consider this issue and failed to make the disallowance u/s 40(a)(ia) for non deduction of tax at source. Accordingly the Ld.CIT held that the assessments made u/s 143(3) dated 24.12.2009 for the assessment year 2007-08 and 2008-09 are erroneous and prejudicial to the interest of the revenue, hence set aside the orders with direction to redo the assessments as per the observations made and directions given in the order under section 263.

5. Aggrieved by the order of the CIT, the assessee is in appeal before us. During the appeal hearing, the Ld.AR argued that survey u/s 133A was

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conducted in the premises of the assessee on 29.08.2007. The assessee is engaged in the sand mining at Ravulapalem and not maintaining any books of accounts. The only available material with the assessee was daily sheets, vouchers and expenditure slips, charts etc. On the basis of daily sheets available at the time of survey, the revenue has determined the sales at Rs.2,49,65,610/- for the A.Y.2007-08 and Rs.3,02,72,650/- for the assessment year 2008-09. The daily sheets, slips etc. though indicate complete sales, it does not indicate the complete expenditure such as hire expenses, diesel expenses, selling, marketing, distribution expenses etc. Therefore argued that income and expenditure statement prepared by the department officials as on the date of survey was rough working but does not reflect the true and correct picture of income and expenditure. It was incomplete in respect of the expenses incurred for salaries, wages, interest, marketing expenditure etc. Therefore argued that the page No.28 of the paper book which shows the income and expenditure details for the assessment year 2007-08 and page No.6 of the paper book for the assessment year 2008-09 shows rough workings but not complete income and account expenditure, hence argued that the same cannot be taken cognizance of. This rough working was prepared by the revenue authorities without preparing the books of accounts,

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profit and loss account, balance sheet and the schedules for Depreciation etc., hence unreliable. The Ld. A.R further submitted that the revenue officials were not sure of it's correctness, hence did not sign the statement. Thus, argued that the AO has rightly completed the assessment by estimation of income. Once the books of accounts are rejected and the assessment is completed on estimation basis, no other addition required to be made as held by Hon'ble AP High Court in the case of Indwell Constructions Vs. CIT (1998) 232 ITR 776, hence argued that the order of the Ld. CIT passed u/s 263 is beyond the scope, erroneous which required to be quashed.

6. On the other hand, Ld. DR relied on the orders of the Ld.CIT.

7. We have heard both the parties and perused the material on record. In this case. Survey was conducted u/s 133A of I.T. Act in the business premises of the assessee and during the course of survey, the AO found that the assessee was not maintaining the books of accounts. The only material available with the assessee as on the date of survey was daily sheets of sales and loose slips and vouchers indicating certain expenses. On the basis of the material available, the revenue has worked out the income and expenditure

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account but it was neither signed by the assessee nor signed by the officer who prepared the statement. It was only a piece of paper containing certain information but cannot be said to be Profit and loss account. It was not supported by financial statements, hence cannot be taken in to cognizance as valid piece of evidence for computing the income. Prima facie, it appears that the AO has made a rough working of income and expenditure, however on careful verification of both the working sheets reveal that the complete expenditure was not taken into account by the A.O. While completing the assessment, the AO has estimated the income @15% of the total sales by rejecting the books of accounts, since the complete information was not available. The AO allowed the interest on capital and the remuneration paid to the partners from the estimated income. The Ld.CIT viewed that since no evidence was available at the time of survey for payment of remuneration and interest on capital in the loose slips the AO has committed an error in allowing interest and remuneration. As per the provisions of I.T. Act, the interest and remuneration is required to be allowed as evidenced by the partnership deed. Since the partnership deed filed in the paper book permits the payment of remuneration and interest, the AO has not committed any error in allowing the interest and remuneration paid to the partners from the estimated

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income. Hence the assessment made by the AO in estimation of income is neither erroneous nor prejudicial to the interest of the revenue giving scope for invoking the jurisdiction u/s 263. Similarly, in case, the assessment is completed u/s 143(3) by rejecting the books of accounts and estimating the income as held by Hon'ble Jurisdictional High Court in the case of Indwell Constructions Ltd. (supra), no other disallowance is required to be made. Therefore, the view of the Ld. CIT that the AO has not considered the disallowance u/s 40(a)(ia) is also a difference of opinion and does not give any possibility for invoking the jurisdiction u/s 263. Hence, we set aside the orders of the Ld.CIT passed u/s 263 and allow the appeals of the assessee.

ITA Nos. 506 & 508/Viz/2016

8. These appeals are filed against the orders passed u/s 143(3) r.w.s. 263 of I.T. Act for the assessment year 2007-08 and 2008-09. Since we have decided the appeal of the assessee and set aside the orders of the Ld. CIT passed u/s 263 of the Act, the appeals filed in respect of the orders passed u/s 143(3) r.w.s. 263 are infructuous, hence dismissed.

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9. In this case, the AO completed the assessment u/s 143(3) by an order dated 24.12.2009. The Ld. CIT has taken up the case for revision u/s 263 and set aside the orders passed u/s 143(3). The assessee filed appeals before CIT(A) and the assessee also filed appeal against the order u/s 263 before ITAT. The Hon'ble ITAT dismissed the appeals of the assessee against the orders u/s 263 for non prosecution. Hence, the Ld. CIT(A) dismissed the appeals holding that order u/s 263 has become final. Subsequently, the assessee filed miscellaneous applications before the Tribunal and the ITAT recalled the appeals filed against the order u/s 263. By this order we have set aside the orders of the Ld.CIT passed u/s 263 and allowed the appeals of the assessee. Hence, these appeals gets new life for fresh adjudication before the CIT(A). Hence, we remit the appeals back to the file of the Ld.CIT(A) with a direction to adjudicate the same on merits.

10. In the result, appeals of the assessee are partly allowed.

The above order was pronounced in the open court on 9th March, 2018.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

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विशाखापटणम /Visakhapatnam

दिनांक /Dated : 09.03.2018

L.Rama, SPS

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

1. अपीलार्थी / The Appellant- Satyanarayana & Others, Ravulapalem, East Godavari District.
2. प्रत्यर्थी / The Respondent- CIT, Rajahmundry
3. प्रत्यर्थी / The Respondent- The ITO, Ward-2, Amalapuram
4. The Pr. Commissioner of Income Tax, Guntur
5. The Commissioner of Income Tax(Appeals)-1, Guntur
6. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
7. गार्डफ़ाईल / Guard file

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Sr. Private Secretary
ITAT, VISAKHAPATNAM