

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.260/Vizag/2013

(निर्धारण वर्ष / Assessment Year: 2007-08)

The Aryapuram Co-
operative Urban Bank Ltd.
Rajahmundry
(PAN No.AAATT8099C)

(अपीलार्थी / Appellant)

CIT,
Rajahmundry

(प्रत्यार्थी / Respondent)

आयकर अपील सं./I.T.A.No.172/Vizag/2015

(निर्धारण वर्ष / Assessment Year: 2007-08)

The Aryapuram
Co-operative Urban Bank Ltd.
Rajahmundry

(अपीलार्थी / Appellant)

ACIT, Circle-1,
Rajahmundry

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri G.V.N. Hari, AR

प्रत्यार्थी की ओर से / Respondent by

: Shri Deba Kumar Sonowal,
DR

सुनवाई की तारीख / Date of hearing

: 02.05.2018

घोषणा की तारीख / Date of Pronouncement

: 18.05.2018

आदेश / ORDER

PER V. DURGA RAO, Judicial Member:

These appeals filed by the assessee is directed against order of the Commissioner of Income Tax, Rajahmundry vide F.No.Hqrs/45/263/CIT/RJY/2012-13 dated 22.3.2013 and against order of the Commissioner of Income Tax (Appeals), Rajahmundry vide ITA No.23/14-15/266/AC,C-1, RJY/2014-15 dated 27.2.2015 for the assessment year 2007-08.

2. Facts are in brief that the assessee is a Co-Operative bank engaged in the business of banking, filed a return of income for the assessment year 2007-08 admitting total income at ₹ Nil on 29.10.2007. The return filed by the assessee was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). Subsequently, the case was selected for scrutiny and assessment was completed u/s 143(3) of the Act on 31.12.2009 determining taxable income at ₹1,67,11,890/-. Subsequently, a notice u/s 148 of the Act was issued on the assessee and in response to the notice, assessee filed return of income admitting gratuity amount paid of ₹ 7,50,000/-. The same is accepted and assessment is completed u/s 143(3) r.w.s. 148 of the Act on 31.12.2010 on total income at ₹ 1,74,61,890/-.

3. Subsequently, the Commissioner of Income Tax has issued a show cause notice dated 4.3.2013 by exercising power conferred on him u/s 263 of the Act and called the explanation from the assessee as to why the order passed by the A.O. cannot be revised on the ground that the A.O. while passing the order u/s 143(3) r.w.s. 147 of the Act has not considered (i) Bonus/Exgratia of ₹ 15,35,863/- (ii) interest on share capital of ₹ 72,73,357/- (iii) leave encashment fund ₹ 25,23,857/- and after considering the explanation given by the assessee, the Commissioner of Income Tax has passed an order directing the A.O. to redo the assessment by an order dated 22.3.2013.

4. On being aggrieved, the assessee carried matter in appeal before the Tribunal. The Ld. Counsel for the assessee has submitted that the assessment was reopened on the ground that the gratuity contribution was not offered for taxation. The assessee offered his income for taxation subsequent to the notice u/s 148 of the Act. The A.O. accepted the return filed by the assessee and assessment is completed. Therefore, Ld. Counsel for the assessee argued that there is no error in the order passed by the A.O. and notice issued by the CIT u/s 263 of the Act dated 14.3.2013 is illegal and without jurisdiction. The Ld. Counsel for the assessee further submitted that the notice issued by the Commissioner in respect of bonus, interest on share capital, leave

encashment as pointed out by the Ld. Commissioner relates to assessment u/s 143(3) of the Act by order dated 31.12.2009, which cannot be raised as per sub clause (2) of section 263 of the Act and submitted that the order passed by the Ld. Commissioner has to be quashed. He also relied on the judgement of the Hon'ble Supreme Court in the case of CIT Vs. Alagendran Finance Ltd. (2007) 75 CCH 0720 ISCC.

5. On the other hand, the Ld. D.R. relied on the order passed by the Ld. Commissioner of Income Tax.

6. 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 A.O. has completed the assessment u/s 143(3) of the Act on 31.12.2009 by determining total taxable income at ₹ 1,67,11,890/-. Subsequently, a notice u/s 147 of the Act was issued on the ground that the contribution towards the gratuity is escaped from the assessment. In response to the notice issued by the A.O., the assessee offered an amount of ₹ 7,50,000/- towards the contribution to the gratuity and the A.O. has accepted the same and assessment is completed on 31.12.2010 on total income of ₹ 1,74,61,890/-.

7. Subsequently, the Ld. Commissioner has issued a show cause notice on 14.3.2013 on the ground that the A.O. while passing the order u/s 143(3) of the Act has committed certain commissions and omissions and the order is erroneous, therefore, it has to be revised u/s 263 of the Act. We find that the A.O. has issued a show cause notice u/s 148 of the Act on the ground that there is an escapement of an amount of ₹ 7,50,000/- towards the gratuity payment and for that assessment is reopened, the assessee has offered the same amount for taxation and accordingly assessment is completed. Therefore, order passed by the A.O. u/s 143(3) r.w.s. 147 of the Act dated 31.12.2010 cannot be said to be erroneous and prejudicial to the interest of the revenue.

8. From page No.2 of the order passed by the Ld. Commissioner, the Commissioner wanted to revise the order passed by the A.O. u/s 143(3) r.w.s. 147 of the Act on the ground that there are certain omissions and commissions in the order passed u/s 143(3) of the Act. We find that when there are certain omissions and commissions which appear to the Ld. Commissioner are erroneous and prejudicial to the interest of the revenue, he has power u/s 263 of the Act to revise the order. In this case, the A.O. has reopened the assessment for the escapement of income and the same is offered for taxation and assessment is completed. We find that the order passed by the A.O. u/s 143(3) r.w.s.

147 of the Act dated 31.12.2010 is neither erroneous nor prejudicial to the interest of the revenue. Therefore, on this count, the order passed by the Ld. Commissioner u/s 263 of the Act dated 22.3.2013 is quashed.

9. So far as the second argument of the Ld. Counsel for the assessee is concerned, we find that if the order passed by the A.O. is erroneous and prejudicial to the interest of the revenue, the Ld. Commissioner u/s 263 of the Act has power to review the order subject to sub section (2) of section 263 of the Act. In this case, the assessing officer passed an order u/s 143(3) of the Act on 31.12.2009. If at all, the Ld. Commissioner wanted to exercise power u/s 263 of the Act, he has to issue a notice on or before 31.12.2011. In this case, he has issued notice on 04.03.2013 and the order was passed on 22.3.2013, which is time barred. Therefore, on this count, the order passed by the Ld. Commissioner cannot survive. In this context, the Hon'ble Supreme Court in the case of CIT Vs. Alagendran Finance Ltd. (supra) held that **"In respect of an issue it was not subject matter of reassessment, limitation u/s 263(2) of the Act would run from the date of original assessment and revisional proceedings initiated in respect of such issue beyond the period of two years from the date of original assessment were barred by limitation"**. Keeping in view of the facts and circumstances of the case

and respectfully following the judgment of the Hon'ble Supreme Court in the above case, we hold that the order passed by the Ld. Commissioner dated 22.3.2013 is time barred, and has to be quashed, accordingly, the same is quashed. Thus, this appeal filed by the assessee is allowed.

10. In so far as appeal No.172/Vizag/2015 arising out of section 143(3) r.w.s. 263 of the Act dated 27.3.2014, the very same order passed u/s 263 of the Act which is the basis for the assessment order has already been quashed in the above appeal. Therefore, this appeal cannot survive and the same is dismissed.

11. In the result, appeals filed by the assessee in ITA No.260/Vizag/2013 is allowed; and in ITA No. 172/Vizag/2015 is dismissed.

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

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

Sd/-
(वी. दुर्गराव)
(V. DURGA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 18.05.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – The Aryapuram Co-operative Urban Bank Ltd., Opp. Gokavaram Bus Stand, Rajahmundry, E.G. dist.
2. प्रत्यार्थी / The Respondent – The CIT, Rajahmundry
4. आयकर आयुक्त (अपील) / The CIT (A), Rajahmundry
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

