

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

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.297/Viz/2014
(निर्धारण वर्ष/Assessment Year:2009-10)

Vizag Company's Steel
C/o K.S.S.Sarma, C.A.
#12-05-25A, New Colony
Anakapalle - 531001

Vs. CIT-1
Visakhapatnam

[PAN :AAGFV6746E]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri K.S.S.Sharma, AR
: Shri Deba Kumar Sonowal, DR

सुनवाई की तारीख / Date of Hearing

: 19.07.2018

घोषणा की तारीख/Date of Pronouncement

: 25.07.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (CIT)-1, Visakhapatnam passed u/s 263 of Income Tax Act, 1961 (hereinafter called as 'Act') vide F.No.CIT-1/VSP/263/28/2013-14 dated 27.03.2014 for the assessment year 2009-10.

2. All the grounds of appeal are related to the order passed by the CIT u/s 263 of the Act. In this case, the assessee filed the return of income on 25.09.2009 declaring total income of Rs.3,30,050/-. The assessment was completed u/s 143(3) by an order dated 30.12.2011 on total income of Rs.5,65,820/-. The CIT has taken up the case for revision u/s 263 and found that the assessee has taken the loans from the bank and diverted the loan funds for purchase of lands and claimed the entire interest of Rs.1,20,47,196/- as business expenses. The Ld.CIT is of the view that, since the lands purchased are not used for its business, the interest attributable to the purchase of assets should be disallowed and the same should be capitalized. The Ld.CIT further, noticed that the capital account of one of the partner Shri M.Yaswanth was showing the negative balance of Rs.13,34,516/- and the interest there on should have been disallowed by the AO. The Ld.CIT issued show cause notice proposing to revise the assessment on the above lines and the assessee has furnished the reply stating that the property at Gobburu land was purchased during the year under consideration and the other assets mentioned in the notice were purchased in the earlier years which are existing in the earlier balance sheet for the financial year 2007-08 also. Hence argued that they are not

the new assets and in the case of the Gobburu land it was stated to be purchased out of profits of previous years and also capital infused by the partners, therefore, there is no case for disallowance of proportionate interest relatable to acquiring of the assets.

With regard to the disallowance of interest on partners capital account, the assessee has expressed no objection as per para No.12 of the Ld.CIT order. The CIT, after considering the submissions made by the assessee found that the order passed by the AO u/s 143(3) dated 31.12.2011 was erroneous and prejudicial to the interest of the revenue, therefore, set aside the order of the AO with a direction to the AO to examine the issues and reframe the assessment order after giving reasonable opportunity to the assessee.

3. Aggrieved by the order of the Ld.CIT, the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR of the assessee while reiterating the submissions made before the Ld.CIT submitted that the assets were purchased in the earlier years and the new asset of Gobburu land was purchased in the year under consideration with the interest free funds of the assessee. The Ld.AR submitted that the issue of purchase of assets and the sources were examined by the AO at the time of scrutiny

assessment. Therefore, there is no case for revision u/s 263, accordingly requested to cancel the order passed u/s 263 of the act.

4. On the other hand, the Ld.DR strongly supported the order of the CIT.

5. We have heard both the parties and perused the material placed on record. With regard to disallowance of interest on partners' capital account, the assessee has not furnished any explanation before the Ld.CIT and the Ld.CIT presumed that the assessee has no objection for the revision and the same is evident from the para No.12 of the CIT's order. On perusal of the balance sheet filed by the assessee in the paper book, it is evident that the partners are having debit balances and there are no interest free funds available to the assessee for diversion funds for non business purposes. From the balance sheet of the assessee except profit and loss account, balance of Rs.3,30,049/-, there was no other interest free fund available to the assessee. Though Assessee's AR argued that the AO has examined the issue at time of assessment, there was no indication having verified the transaction by the AO in the assessment order. The assessee has produced the questionnaire issued by the AO and there was no

evidence having furnished the details before the AO. We have carefully gone through the questionnaire in Col.No.13, wherein the AO has asked the sources for acquisition of lands, but the assessee has not furnished any evidence having furnished the details before the AO. The assessee neither established that the AO has verified the issue during the assessment nor having furnished the details before the AO with regard to diversion funds and the claim of interest. In the case of interest on debit balance of the partner's capital the assessee did not make any objection before the CIT. Therefore, we hold that there is no error in the order of the Ld.CIT and the order passed by the AO was erroneous and prejudicial to the interest of the revenue. Accordingly, we uphold the order of the Ld.CIT u/s 263 and dismiss the appeal of the assessee.

6. In the result, appeal of the assessee is dismissed.

The above order was pronounced in the open court on 25th July, 2018.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

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

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 25.07.2018

L.Rama, SPS

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. निर्धारिती/ The Assessee- Vizag Company's Steel, C/o K.S.S.Sarma, C.A.
#12-05-25A, New Colony, Anakapalle – 531001
2. राजस्व/ The Revenue –CIT-1, Visakhapatnam
3. The Commissioner of Income Tax-1, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM