

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.311/Viz/2017  
(निर्धारण वर्ष/Assessment Year:2012-13)

M/s Naveena Rice Industries  
R.S.No.59/2A  
Tarakaturu Village  
Krishna District

Vs. Pr.Commissioner of  
Income Tax  
Vijayawada

[PAN : AAJFN6020C]

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri D.L.Narasimha Rao, AR  
: Shri Deba Kumar Sonowal, DR

सुनवाई की तारीख / Date of Hearing

: 19.07.2018

घोषणा की तारीख/Date of Pronouncement

: 31.07.2018

**आदेश /ORDER**

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

This appeal is filed by the assessee against the order of the Pr.Commissioner of Income Tax [Pr.CIT], Vijayawada dated 30.03.2017 for the assessment year 2012-13.

2. All the grounds of appeal are against the order passed by the Pr.CIT u/s 263 of Income Tax Act, 1961 (hereinafter called as 'Act').

3. In this case, the assessee is carrying on business in purchase and sale of paddy and its bye-products, filed its return of income admitting loss of Rs.1,98,157/- for the assessment year 2012-13. In this case, a survey u/s 133A was conducted on 19.03.2014 and during the course of survey some discrepancies were noticed by the Assessing Officer (AO) relating to sundry creditors, cost of construction etc. and reopened the assessment by issue of notice u/s 148 and taken up the case for assessment. After verifying the books of accounts, material impounded during the course of survey, completed the assessment on total income of Rs.1,20,41,627/- by order dated 30.03.2015. Subsequently, the Pr.CIT has taken up the case for revision u/s 263 of the Act and found that the AO has not examined certain issues properly, hence, the assessment order passed by the AO is considered to be erroneous and prejudicial to the interest of the revenue within the scope of section 263 of the Act and accordingly issued show cause notice calling for objections from the assessee. The Ld.Pr.CIT observed that during the course of survey conducted u/s 133A certain

books of accounts were impounded in the business premises of the assessee firm and marked as Annexure NRI 1 to NRI-40. From the books of accounts some entries for the financial years 2011-12, 2012-13 and 2013-14 were made which reflects the cash credits in the name of 'Pedababugaru', NN Rao and some debits which shows the expenditure incurred towards kirayi, kata, coolie, hamalies, advance for vehicles etc. The total of cash credits for the financial year 2011-12 worked out to Rs.1,41,48,064/-. The Ld.Pr.CIT further observed that the AO has neither called for the details, documents, books of accounts nor made any enquiries to examine the source of cash credits as per the impounded material. Hence, the Ld.Pr.CIT issued the notice u/s 263 calling for the explanation of the assessee as to why the assessment should not be revised u/s 263 of the Act. In response to the above, the assessee filed its explanation as below :

*i. At the outset it is humbly submitted, that the assessee commenced business activity from January 2012 and thus it happened to be the first year of activity. It may kindly be therefore noticed that there may not be any possibility of holding any 'Unaccounted. Money in the first year of activity as per the well established Judicial Rulings existed on this issue.*

*ii. The information as contained in the impounded material cited supra was already available with the AO while completing the impugned asst. proceedings of the Act u/s. 143(3). dt.30-03-2015 and no addition was formulated by him on this count going by the fact that the assessee produced books of accounts, bank statements and other relevant material and evidence before him and only after thorough verification of the same he did not choose to make the impugned addition incorporated in the show cause notice issued u/s.263 of the Act, It could be deemed that in view of the*

*production of relevant documentary evidence that the AO convinced himself with the nature of the credits recorded in the above show cause notice and in such a factual and legal background of the case it may not be justifiable to substitute views of the principal Commissioner of Income Tax as he well established Rulings existed on this issue, As explained by working partner Sri K.Narasimha Rao (Peda Babu all the transactions noted in the above note books are nothing but preliminary / petty cash books before entering the transaction in regular books of accounts. All the transactions entered in these books are within the ambit of regular books of account. He produced the regular books of accounts for the verification of the same during the course of assessment proceedings. He has also mentioned the transactions recorded in these note books are repeated in nature also. The said partner explained the practical difficulties, common practice followed by the rice mill in his sworn statement. Since all the transactions are related to the payments for purchase of paddy/paddy creditors and no part of receipts/credits in the note books were generated outside the regular books of accounts i.e rice sales etc there was no source for the assessee firm to bring cash outside the regular books are within the ambit of the purchases/payments recorded in the main set of books of accounts. The assessee has no other sources of income to introduce fresh capital to do any other business. No part of the amount was identified as invested in any asset / immovable properties. But for making notings in the rough note books there is no additional investment passed through rough note books.*

*iii. In this line of trading activity, it is very common that each paddy producer may not bring the stock to the mill premises on his own but for samples and paddy supplied by them thru intermediaries, co producers. The paddy after pooling up will be transported by means of tractors, lorries, bullock carts etc. to The intermediaries usually bring samples pertaining to the farmers to the mill premises and after verification of the quality of paddy element of drriage and after fixation of the price, those intermediaries collect the paddy from the ryots of different villages and bring the same to mill premises and subject availability of the liquid funds the assessee used to make the payments to the ryots directly since the bargain was settled.*

*iv. The usual procedure adopted by the assessee in order to meet the demands for payments of different points of time to ryots and also to meet related overheads, funds are drawn from books of accounts by means of petty cash and those are reflected in the note books referred to above to analyze the funds withdrawn from the banks.*

*v. All the sales of rice were effected to FCI only and bran to De-Oiled Bran Companies and the sale proceeds are received by the assessee routing*

*then bank only. Thus the sales are authenticated by the documentary evidence viz bank account only. It is therefore clear that there may not be any scope for unaccounted sale proceeds as those are routed thru banking channel only. The Assessing Officer did not dispute the overheads claimed by the assessee as those are mostly covered by regular bills and vouchers etc. In such a well established factual background it may not be reasonable to hold the view that the assessee was holding unaccounted for money outside the books of accounts as recorded in the above show cause notice.*

*vi. To reiterate the Managing partner Sri K. Rovindra used to withdraw funds from the banks on day to day basis and handed over the funds to other working partner N.Narasimha Rao who is his father-in-law of the Managing Partner and (who is popularly known as Pedababu) who ensures making payments towards purchase of paddy and other over heads thru accountant who used to record those financial transactions in the rough note books referred to above 'Pedababu alias N Narasimha Rao. Sri N Narasimha Rao is known as Peda Babu in those areas. In order to hold substantial control over the movement of funds and in order to avoid embezzlement the entries are made not only in the regular books of account but also in rough note books maintained by the accountant under the control and directions of Pedababu (N. Narasimha Rao) Whenever the cash was drawn from the bank account and given to the accountant for disbursement the accountant noted such a receipts as given by Pedababu.*

*vii. In order to establish the aforesaid practice of recording transactions in both the regular books of accounts as well as rough note books, Annexure A is submitted herewith which contains the date-wise financial transactions such as withdrawals and the annexure A would stands by itself to testify that financial transactions were reflected in the both the books. To illustrate there was withdrawal made by the assessee firm from the SBI CA Account to tune of Rs. 40 Lakhs on 06-02-2012, ant/this financial transaction was duly effected in the rough note books and also in the regular cash book on the same date. Thus the quantum of transactions viz, amount date of withdrawal from the bank are identical, i.e., one and the sane in both the regular books and also the rough note books. "Such withdrawal from the bank which were reflected in both the books viz., regular books and also note books could be found on many occasions as established by Annexure A. On some dates a part of the funds withdrawn from the bank were reflected in the note book while the full amount of withdrawal was reflected in regular cash books depending upon the requirements. To illustrate there was cash withdrawal from the bank SBI CA Account on 8<sup>th</sup> February 2012 viz Rs.8,60,000 and this amount was recorded in the regular cash book to the entire extent. Depending upon the requirements i.e. to meet financial commitments, envisaged above, an amount of Rs. 5,00,000 was taken out from the regular cash book on the*

*same day i.e./8<sup>th</sup> February 2012 and the same was recorded in ' Rough Note Book". An amount of Rs. 1,95,000 was taken from the regular cash book and reflected on 10<sup>th</sup> February 2012 out of the above withdrawal of Rs. 8,60,000.*

*viii. It is manifest from the Annexure A the withdrawals which were reflected in both the books i.e. regular books as well as rough note books amounted in aggregate to Rs.1,35.47,600/-. The breakup of this figure of Rs.1,35,47,600/- was duly incorporated in Annexure A with reference to the each transaction which took place on day to day basis vide column 6 thereof under caption "the amounts noted in rough note books being bank withdrawals.*

*ix. It is therefore emphasized that out of the total credits of Rs. 1,41,48,064 recorded in the aforesaid show cause notice credits to the total extent of Rs 1,35,47,600 REPRESENTED BANK WITHDRAWALS which were reflected twice, viz., both the regular cash book and rough note for the reasons elaborately discussing in the above paras.*

*x. In view of the above the left over credits would work out Rs.6,00,464 only and those represented sundry receipts as explained item wise in Annexure A.*

*In the aforesaid factual background it may kindly be noticed that the impugned credits of Rs.1,41,48,064/- as appearing in the rough note books were not generated in any form outside the books of accounts and those formed part of the regular books of accounts and taking this aspect into consideration and also giving due weight to the fact that this was first year of activity covering only three months and also giving weight that all sale proceeds were authenticated and evidenced by bank accounts, it is humbly requested that the proceedings contemplated under 263 of the Act may kindly be dropped, in the interest of equity and justice and also to be in conformity with provisions of law."*

4. The Ld.Pr.CIT considered the explanation offered by the assessee and did not accept the contention of the assessee that the AO had examined all the issues and formulated an opinion that no addition required to be made on the said issues while completing the assessment. The Ld.Pr.CIT

observed that the AO did not call for any details, material and examined the issues and there was no mention in the entire record about the examination of cash credits as available in the impounded material NRI-1 to NRI-40. Hence, the Pr.CIT was of the view that neither the AO obtained the relevant documents, particulars about the cash credits nor the assessee has furnished source of cash credits. The assessee furnished the detailed analysis of the sums noted in the note book in Annexure-A before the Pr.CIT and the same was scrutinized by the Pr.CIT during the course of revision proceedings and observed the discrepancies with regard to some entries of credits such as the amount withdrawn on 19.01.2012 for a sum of Rs.50,000/- was not found in the rough cash books but recorded a sum of Rs.20,000/- in seized material on 20.01.2012. An amount of Rs.1,30,000/- was withdrawn from the bank on 27.1.2012, whereas in the seized material an amount of Rs.30,000/- and Rs.30,000/- was recorded on 27.01.2012. Similarly, an amount of Rs.1,25,000/- was drawn from the bank on 1.2.2012, in the seized material noting was made for Rs.47,000/-, Rs.3,000/- on 01.02.2012 and Rs.10,000/- on 3.2.2012. In the similar manner, most of the entries were not tallied with the amounts withdrawn and the cash credit entries made in the seized material. The amounts

claimed to have withdrawn from the banks on respective dates were not tallied with the amounts shown in the rough cash books of seized material. According to the Ld.Pr.CIT the contention of the assessee that the amounts were withdrawn from the main cash book is contradicting from facts narrated above. The Ld.Pr.CIT found that the AO has completed the assessment without examining the impounded material and without making necessary enquiries with regard to the cash credits noted in the impounded material. Hence the assessment order passed u/s 143(3) r.w.s. 148 on 30.03.2015 was held to be erroneous and prejudicial to the interest of revenue. Accordingly the Ld.Pr.CIT set aside the assessment made u/s 143(3) r.w.s. 148 and directed the AO to redo the assessment after examining the above issues as per law.

5. Aggrieved by the order of the Ld.Pr.CIT, the assessee filed appeal before us. During the appeal hearing, the Ld.AR submitted that in this case there was a survey conducted u/s 133A of the Act on 19.03.2014. Consequent to the survey conducted by the AO, the AO found some discrepancies and the assessment was reopened by issue of notice u/s 148 to verify the discrepancies found during the survey and completed the

assessment after examining the entire material found at the time of survey. The material marked as NRI-1 to NRI-40 impounded u/s 131 of the Act and the sworn depositions were obtained by the AO and the statements were recorded during the course of survey on the issues covering the survey material. Hence, the entire material of cash credits, sources of cash credits was made available before the AO at the time of reassessment. During the reassessment proceedings u/s 147, the AO called for the details and the books of accounts which were produced and verified with seized material available to the AO and the explanations were offered by the assessee with regard to all the items and then completed the assessment. Since the seized material is available with the AO, which was impounded and kept under his control and the assessee has produced the books of accounts, it is construed that the entire material available with the AO has been verified and satisfied by the AO and formed an opinion that no addition is required to be made on account of the entries made in the rough cash book. The entries made in the rough cash book represent nothing but the business transactions which was paid to N.Narasimha Rao who is also called as Pedababugaru are nothing but entries made in petty cash book. All the transactions are entered in these books are within the ambit of regular

books of accounts and also submitted that in this line of trading activity it is very common that in order to meet the demands at different points of time to ryots and also to meet related overheads, the funds are drawn from books of accounts by means of petty cash and those are reflected in the books referred above to analyze the funds withdrawn from the banks. The Ld.AR further argued that the entire sales of rice were effected to FCI and bran to De Oiled Bran Companies and authenticated by the documentary evidence i.e. through bank account only. Therefore, the entire sale transactions are routed through the banking channels and there is no scope for unaccounted sale proceeds as those are routed through banking channel only. The AO has completed the assessment, examined the books of accounts and accepted the overheads and there is no dispute. Therefore, since there is no scope for generation of unaccounted money outside the books of accounts Mr. K.Ravindra, Managing Partner used to withdraw funds from the banks on day to day basis and handed over some funds to other working partner, Mr.N.Narasimha Rao who is father-in-law of the Managing Partner also known as 'Pedababugaru' who ensures making payments towards purchase of paddy and other overheads through accountant who used to record those financial transaction in the rough

note books referred to above as 'Pedababugaru' alias N.Narasimha Rao. The Ld.AR furnished Annexure A which is placed before the Ld.Pr.CIT in page No. 78 to 80 explaining the amounts noted in the rough note book, date wise along with cash balance as per the cash book, the regular books of accounts and submitted that at no point of time, the cash book shows the negative cash balance or shortage of cash as per the regular cash books of accounts. The AO after verifying the entries made in the rough note books with regard to the deposits and withdrawals completed the assessment. Therefore, argued that the AO at the time of assessment has considered the explanation made by the assessee and verified the entries in the rough note books and the books of accounts and found that there is no requirement to make the addition on account of the entries in the cash book. Therefore, the action of the Ld.Pr.CIT in directing the AO to redo the assessment is nothing but a change of opinion. The Ld.AR further argued that as per the order of the Ld.Pr.CIT, the revision was taken up for issues which were not properly examined clearly shows that the purpose of taking up the case for revision is for inadequate enquiry but not for lack of enquiry, therefore argued that the order of the Ld.Pr.CIT is unsustainable and requested to quash the order passed u/s 263 of the Act.

6. On the other hand, the Ld.DR argued that the Ld.Pr.CIT though mentioned that the AO has not examined the issue properly, it does not indicate the inadequate enquiry, it is the lack of enquiry by the AO. Though the seized material was impounded and the books of accounts produced at the time of assessment, there was no finding given by the AO either in the assessment order or in the assessment record to indicate that the AO has examined the issues. No details were called for by the AO as observed by the Ld.Pr.CIT in the revision order u/s 263. Further, the Ld.Pr.CIT observed that the assessee has withdrawn cash of Rs.50,000/- on 19.01.2012, but there was no entry made on 19.01.2012 in the seized material and there was a credit of Rs.20,000/- on 20.01.2012 in the rough note book. An amount of Rs.1,30,000/- was withdrawn from the bank account on 27.01.2012, whereas the amount of Rs.30,000/- & Rs.30,000/- was recorded in the seized material on 27.01.2012. Similarly, expenditure as pointed out by the Ld.Pr.CIT in the order u/s 263 were not recorded in the note book. The Ld.Pr.CIT also observed from the order of the AO that certain cash receipts outside the books of accounts were not explained by the assessee. All the above issues clearly establish that the AO has not

examined the issues, hence the Ld.Pr.CIT has rightly invoked the provisions u/s 263, thus argued that the order u/s 263 required to be upheld.

7. We have heard both the parties and perused the material placed on record. The Pr.CIT has taken up the case for revision u/s 263 for not properly examining the issues in the seized material marked as NRI-1 to NRI-40 for the assessment year 2012-13. Such cash credits and expenditure was worked out to Rs.1,41,48,064/-. All the cash credits stated to have been recorded by the assessee from explained sources relating to the business transactions. The assessee explained that the Managing Partner withdraws the money from the banks on day to day basis and hands over some funds to Mr.N.Narasimha Rao who is also called as 'Pedababugaru' who ensures making the payment towards purchase of paddy and other overheads through accountant who used to write those financial transactions in a rough note book referred to above in the name Pedababugaru alias Mr.M.Narasimha Rao in order to hold substantial control over the movement of funds and to avoid embezzlement. The entries are made not only in the regular books of accounts, but also in rough note books maintained by the accountant under the control and

directions of Pedababugaru, The assessee further submitted that in this line of trading activity, it is very common to make the payments at different points of time to ryots and also to meet related overheads. The funds are drawn from the books of accounts by means of petty cash and recorded in the rough books referred above. The entries made in the rough books are nothing but the duplication of the entries in the regular books of accounts, no separate cash was introduced. The assessee also furnished Annexure A explaining the amounts withdrawn from the bank account, the cash available as per the books of accounts, the amounts noted in the rough note books and with the remarks, before the Ld.Pr.CIT in the paper book at page No. 78 to 80 during the revision u/s 263.. On going through the Annexure A, there was sufficient cash balances available as per the regular books of accounts and there was no negative cash balance. It is a fact that the AO has conducted the survey u/s 133A and recorded the statements during the course of survey and found the discrepancies at the time of survey. All the above discrepancies were found by the AO at the time of survey and because of the discrepancies found during the course of survey, the assessment was reopened u/s 147 to examine the material available at the time of survey. Accordingly, the AO has taken up the case for assessment,

called for the books of accounts, examined the books of accounts and completed the assessment. In this case, the entire material was available to the AO and the books of accounts were also made available to the AO. The assessee contended that the entries made in the rough cash book are nothing but the duplication of entries in the regular books of account and no separate cash was introduced. Therefore, once the AO examined the books of accounts, there is no basis for holding that the AO has not examined the issue merely because the AO has not recorded his finding with regard to issues in the rough note book in the assessment order or has not placed the relevant details in the assessment records. The Pr.CIT cannot conclude that the AO has not examined the issue when the material is very much available with the AO. In these facts and circumstances, it is for the revenue to establish that the AO has not examined the issue in the reassessment, which the revenue has failed to do so. The Pr.CIT cannot consider the entries made in the rough cash book only with the withdrawals made from the bank. It has to be considered with regular cash book and withdrawals made from the bank account together. If the same is considered, there was no negative balance and the source of the entries made in the rough note book stands explained. The Pr.CIT heavily placed

reliance on findings of the AO for the A.Y.2014-15 and the same are irrelevant in the year under consideration. The observations of the Ld.Pr.CIT as best can be called as inadequate enquiry but not the lack of enquiry. The Ld.Pr.CIT also stated in the order that the AO has not examined certain issues properly. Though lack of enquiry is a reason for taking up the case for revision, inadequate enquiry cannot be held to be erroneous and prejudicial to the interest of the revenue. Therefore, we hold that the assessment order passed by the AO was not erroneous and the revenue could not support its contention that the AO has not enquired into the issues available in the impounded material. Therefore, the order passed by the CIT u/s 263 is unsustainable and accordingly cancelled.

8. In the result, appeal of the assessee is allowed.

The above order was pronounced in the open court on 31st July, 2018.

Sd/- (वी.दुर्गा राव) <b>(V. DURGA RAO)</b>	Sd/- (डि.एस. सुन्दर सिंह) <b>(D.S. SUNDER SINGH)</b>
<b>न्यायिक सदस्य/JUDICIAL MEMBER</b> लेखा सदस्य/ <b>ACCOUNTANT MEMBER</b>	
विशाखापटणम /Visakhapatnam	
दिनांक /Dated : 31.07.2018	
L.Rama, SPS	

**ITA No.311/Viz/2017**  
**M/s Naveena Rice Industries, Krishna Dist.**

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

1. निर्धारिती/ The Assessee- M/s Naveena Rice Industries, R.S.No.59/2A  
Tarakaturu Village, Krishna District
2. राजस्व/ The Revenue – Pr.Commissioner of Income Tax, Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 5.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, VISAKHAPATNAM