

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.Nos.40 & 41/Viz/2018  
(निर्धारण वर्ष/ Assessment Year: 2012-2013 and 2013-14)

Bhawarlal Jain  
S/o Sri Javanmal  
D.No.5-9-6/37, Main Road  
Narsapur  
West Godavari

ITO, Ward-1, Palakol

[PAN : AHSPJ6893M]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR  
प्रत्यर्थी की ओर से/ Respondent by : Smt. Suman Malik, CIT DR

सुनवाई की तारीख / Date of Hearing : 20.12.2018  
घोषणा की तारीख/Date of Pronouncement : 03 .01.2019

**आदेश /ORDER**

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

These appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-12, Hyderabad vide Appeal Nos.10319/2017-18 and 10318/2017-18 dated 22.12.2017 for the Assessment Years(A.Y.)2012-13 and 2013-14 respectively. Since the issues

involved in the appeals is common, the appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under.

2. For the **A.Y.2012-13** the assessee raised additional ground challenging the validity of assessment made u/s 147 r.w.s 143(3). In the petition for admission of additional ground the assessee submitted that the Assessing Officer (AO) had issued the notice u/s 148 of the Income Tax Act, 1961 (hereinafter called as 'Act') on 16.06.2014 and in response to the said notice, the assessee had filed a letter dated 24.06.2014 requesting the AO to treat the return already filed on 28.07.2012 as a return in response to the notice u/s 148. It was further stated that the assessee has also requested for reasons for reopening the assessment. The Ld.AR submitted that though the assessee filed a letter requesting for reasons to reopen the assessment, the AO did not furnish the reasons and completed the assessment without communicating the reasons to the assessee. Further, the assessee stated that he did not raise this ground before the Ld.CIT(A) and only challenged the validity of reopening of assessment on the adequacy reasons for invoking the jurisdiction u/s 147 of the Act. Since the ground is a legal ground, the assessee has requested to admit the additional ground vide

petition dated 22.11.2018. During the appeal hearing, the Ld.AR argued that the additional ground raised by the assessee is purely legal ground which does not require any enquiry or verification, therefore, requested to admit the additional ground.

3. On the other hand, the Ld.DR vehemently opposed the admission of additional ground.

4. We have heard both the parties and perused the material placed on record. The assessee raised additional ground stating that the reasons recorded for issue of notice u/s 148 was not communicated by the AO. This issue was neither raised before the Ld.CIT(A) nor agitated before the AO during the assessment proceedings. No evidence was placed before us to establish that the reasons were not communicated to the assessee. Before the Ld.CIT(A), the assessee challenged the validity of assessment on the ground that the reasons for reopening were inadequate for invoking the jurisdiction u/s 147 of the Act which indicates that the assessee was made aware of the reasons recorded for reopening the assessment. Since the assessee did not agitate the issue regarding reopening of assessment before the CIT(A) and no evidence was placed on record to show that the reasons were not communicated to the assessee in spite of making the request, we

are unable to entertain the additional ground raised by the assessee which involves the verification of fact regarding non-communication of reasons at the level of AO. Accordingly, the additional ground raised by the assessee is dismissed in limine.

5. In the grounds of appeal filed along with the return of income for the **A.Y.2012-13** the assessee challenged the validity of invoking the provisions u/s 147 of the Act stating that the reasons for reopening the assessment were not adequate. No arguments were advanced by the Ld.AR during the appeal hearing. Therefore, ground No.1 (a,b, and c) with regard to validity of assessment are dismissed as not pressed.

6. Ground No.2 is related to the disallowance of interest amounting to Rs.13,61,164/- for the A.Y.2012-13 and Rs.2,52,507/- for the A.Y. 2013-14. During the assessment proceedings, the AO found that the assessee is maintaining books of accounts on cash basis in respect of interest receipts. and in respect of interest payments, the assessee is following mercantile system of accounting i.e. interest is claimed as expenditure on accrual basis without actual payment. Therefore, the AO disallowed the difference of interest which remained unpaid amounting to Rs.13,61,164/- for the A.Y. 2012-13 and Rs.2,52,507/- for the A.Y. 2013-14.

7. On appeal before the CIT(A), the Ld.CIT(A) confirmed the addition and dismissed the appeal of the assessee.

8. We have heard both the parties and perused the material placed on record. As per section 145 of the act the assessee is bound to follow cash system of accounting or mercantile system of accounting for each source of income. For ready reference we reproduce hereunder relevant provisions of IT act section 145(1) which reads as under:

*145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly<sup>2</sup> employed by the assessee.*

Cash system of accounting is accounting the income and expenditure on cash basis(actual receipt/payment basis). The mercantile system of accounting is both income and expenditure required to be accounted on accrual basis irrespective of the fact whether the said income is received or the expenditure is actually paid. In this case, the assessee is following cash system of accounting for interest receipts and mercantile system of accounting for interest payment which is not permitted by the law. The assessee's only source of income is interest income through money lending and the assessee has to follow the cash system or the mercantile system for

interest receipts as well as for interest payments. The hybrid system of accounting is not permitted. If the assessee follows the cash system for receipts and mercantile system for payments, it would distort the income and there is a possibility of under stating the income or over stating the expenditure and the AO cannot deduce true and correct income. Therefore, we hold that the AO rightly has disallowed the interest payment which was not actually paid by the assessee during the previous year relevant to the assessment year and we do not see any infirmity in the order of the Ld.CIT(A) and the same is upheld. The appeals of the assessee are dismissed.

9. In the result, the appeals of the assessee are dismissed.

Order pronounced in the open court on 3<sup>rd</sup> January, 2019.

Sd/-

(वी.दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated :03.01.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

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

1. निर्धारिती / The Assessee – Bhawarlal Jain, S/o Sri Javanmal, D.No.5-9-6/37, Main Road, Narsapur, West Godavari
2. राजस्व / The Revenue– ITO, Ward-1, Palakol
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax-(Appeals)-12,Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, VISAKHAPATNAM