

**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.Nos.361,362 & 364/Viz/2017  
(निर्धारण वर्ष/ Assessment Years: 2011-2012 to 2013-14)**

Income Tax Officer  
Ward-2  
Bhimavaram

**(अपीलार्थी/ Appellant)**

Vs. M/s MHM Fish Packers  
D.No.14-2/4, Main Road  
Akividu, West Godavari Dist.  
[PAN : AAPFM6477L]  
**(प्रत्यर्थी/ Respondent)**

**आयकर अपील सं./I.T.A.Nos.363/Viz/2017  
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

Income Tax Officer  
Ward-2  
Bhimavaram

**(अपीलार्थी/ Appellant)**

Vs. M/s MHM Fish Trading  
Company  
D.No.14-2/4, Main Road  
Akividu, West Godavari Dist.  
[PAN : AAUFM3198F]  
**(प्रत्यर्थी/ Respondent)**

**आयकर अपील सं./I.T.A.Nos.336-338/Viz/2017  
(निर्धारण वर्ष/ Assessment Year: 2011-12 to 2013-14)**

M/s MHM Fish Packers  
D.No.14-2/4, Main Road  
Akividu  
West Godavari Dist.

[PAN : AAPFM6477L]

**(अपीलार्थी/ Appellant)**

Vs. Income Tax Officer  
Ward-2  
Bhimavaram

**(प्रत्यर्थी/ Respondent)**

**आयकर अपील सं./I.T.A.No.339/Viz/2017  
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

M/s MHM Fish Trading Company  
D.No.14-2/4, Main Road  
Akividu  
West Godavari Dist.

[PAN : AAUFM3198F]

**(अपीलार्थी/ Appellant)**

Vs. Income Tax Officer  
Ward-2  
Bhimavaram

**(प्रत्यर्थी/ Respondent)**

*I.T.A. Nos.361, 362 & 364/Viz/2017. 363/Viz/2017, 336-338/Viz/2017, 339/Viz/2017*

*Sri Sesha Sai Township P.Ltd., Vijayawada* 

**Cross Objection Nos. 93,94 & 96/Viz/2018**  
**(Arising out of I.T.A. Nos.361,362 & 364/Viz/2017)**  
**(निर्धारण वर्ष/ Assessment Year: 2011-12-2013-14)**

M/s MHM Fish Packers  
D.No.14-2/4, Main Road  
Akividu  
West Godavari Dist.  
**[PAN : AAPFM6477L]**

Vs. Income Tax Officer  
Ward-2  
Bhimavaram

**Cross Objection No. 95/Viz/2018**  
**(Arising out of I.T.A. Nos.363/Viz/2017)**  
**(निर्धारणवर्ष/ Assessment Year: 2013-14)**

M/s MHM Fish Trading Company  
D.No.14-2/4, Main Road  
Akividu  
West Godavari Dist.  
**[PAN : AAUFM3198F]**  
**(अपीलार्थी/ Appellant)**

Vs. Income Tax Officer  
Ward-2  
Bhimavaram

**(प्रत्यर्थी/ Respondent)**

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

: Shri C.Subrahmanyam, AR  
: Shri V.Appala Raju, DR

सुनवाई की तारीख / Date of Hearing

: 03.01.2019

घोषणा की तारीख/Date of Pronouncement

: 18.01.2019

**आदेश /ORDER**

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

These appeals are filed by the revenue and the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)]-2, Guntur dated

24.03.2017 and 14.03.2017 for the Assessment Years (A.Y.)2011-12 to 2013-14. Cross Objections are filed by the assessee in support of the order of the Ld.CIT(A)-2, Guntur for the A.Y. 2011-12 to 2013-14. Since the issues and the grounds raised in these appeals are common, the appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under.

**I.T.A Nos. 361, 362 and 363/Viz/2017 – Revenue’s Appeals**

2. The revenue has raised as many as five common grounds in all the appeals which reads as under :

(a) The order of the CIT(A) is not acceptable on the facts of the case and the order is liable to be vitiated.

(b) The CIT(A) erred in reducing the rate of percentage of profit in the assessee’s case, ignoring that the principles of resjudicata are not applicable to the income tax proceedings.

(c) The CIT(A) is not justified in making a general observation that the same assessing officer has estimated the profit margin at 0.4% of the turnover, to hold that the estimation in this case is at a higher margin.

(d) The CIT(A) is not correct in adjudicating an issue not before him in the grounds of appeal, thereby directing the AO to allow depreciation on crates.

(e) Any other ground that may be urged at the time of appeal hearing.

3. Ground No. (a) and (e) are general in nature which does not require specific adjudication.

4. Ground No. (b) and (c) are related to the estimation of income. The assessee is engaged in the fish trading and packing. A survey u/s 133A was conducted in the assessee's case on 20.11.2012. During the course of survey as well as post survey enquiries, the assessee submitted that the firm is carrying on commission business in purchase and sale of fish. The Assessing Officer (AO) observed from the return of income that it never claimed expenditure like freight expenses, purchase of packing material, ice and labour expenses in its P&L a/c and observed the existence of sundry creditors and sundry debtors as at the end of the year. The AO also found that the assessee firm was supplying fish to parties located at various places such as Orissa, West Bengal etc. and receiving orders from the trader at per kilogram rate. In turn the purchasers of fish from the assessee (purchaser in short) has to make the payment to the assessee as agreed including the incidental charges like packing charges and freight etc.. Hence, the AO viewed that the assessee firm purchases fish from the local farmers and undertakes packing activity by purchasing ice besides engaging the labour for the purpose and dispatch the fish and also makes the payments to lorry drivers as advances to meet the incidental expenditure. After receiving the material, the purchaser makes the balance payment of freight to the lorry drivers and makes the payment to the assessee firm through RTGS

including the advances paid by the assessee. In a nut shell, the assessee undertakes the entire activity of fish from the farmers and sells it to the purchaser. Thus, incurs all the incidental expenses and makes necessary arrangement for packing and exporting the fish. The purchaser does not know who is the real owner of the fish. Therefore, held that the assessee is not a commission agent and in fact it is engaged in the fish trading activity. The assessee objected for treating it as engaged in fish trading activity, but the AO rejected the said contention and accordingly held that the assessee is fish trader. The AO further observed from the material gathered during the course of survey that the assessee did not maintain regular books of accounts and suppressed the sales and offered meager amount of net profit @0.10% on gross receipts. Since the assessee failed to produce the books of accounts, the AO rejected the books of accounts and estimated the income @ 1% on gross sales and accordingly completed the assessment estimating the total income as under :

(a) MHM Fish Packers

A.Y.	Amount (Rs.)	Turnover Rs.
2011-12	52,97,957/-	52,97,95,792/-
2012-13	52,20,913/-	52,20,91,378/-
2013-14	26,33,237/-	26,33,23,685/-

(b) MHM Fish Trading Company

A.Y.	Amount (Rs.)	Turnover Rs.
2013-14	1,20,70,349	1,20,70,34,965/-

5. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that most of the assesseees in Andhra Pradesh engaged in this type of business activity and centered in Godavari and Krishna districts. Fish trading is an unorganized activity and the proper books of accounts are not maintained by the traders and farmers. Perusal of various assessment records completed under scrutiny shows that in most of the cases, where the turnover ranges between 10 crores to 100 crores, the incomes have been estimated by the AOs at 0.25% to 0.4% depending on the facts of each case. The Ld.Pr.CIT further observed that the same AO who made the assessment in the case of the assessee had assessed in comparable cases estimating the net profit @0.4% in the case of Mr.Abdul Kalam Ajad. Therefore, the Ld.CIT(A) viewed that in the assessee's case also estimation of income at 0.4% is reasonable and directed the AO to make the estimation of income @0.40% for the impugned assessment years and accordingly allowed the appeal of the assessee partly.

6. Aggrieved by the order of the Ld.CIT(A), the revenue filed appeals challenging the reduction rate of estimation of income from 1% to 0.4% and the assessee filed cross appeals and also filed cross objections supporting the order of the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. The fish trading is a highly unorganized activity and it is perishable goods require lot of process for storing, processing and despatch. Even if it is stored in ice it cannot be stored for a longer period and decomposes within a short period of time. It is an undisputed fact that the assessee acts as a middle man and facilitates the purchase and sale of the fish from the fish growers to the end consumers(purchasers) and extend all the facilities such as packing, transportation, collecting the dues from the purchasers and repayment of collections to the farmers and receives the commission or the margin over and above the purchase price agreed to be paid to the farmers. Thus from the margin received by the assessee, it incurs the entire expenditure of processing, storing such as packing, icing, transporting and collection of dues from the purchasers etc.. and the balance is it's profit. The Ld.CIT(A) has observed the comparable cases and given a finding that the net profit in this line of trade in and around the coastal districts of Andhra Pradesh is ranging from 0.25% to 0.4% in respect of the assesses

*I.T.A. Nos.361, 362 & 364/Viz/2017. 363/Viz/2017, 336-338/Viz/2017, 339/Viz/2017*

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with the turnover ranging from 10 crore and above. In the assessee's case, there is no dispute that the turnover exceeds 10 crore. Though the department has made survey u/s 133A no evidence was brought on record to establish that the net profit is more than 0.4% or the assessee's case is different from other cases and deriving more income than the other comparable cases. The department also did not find any concealed assets in assessee's case. The AO did not give the basis for estimation of income at 1% of the gross turnover. The AO also did not make any exercise to work out the net profit with the sale price and relevant expenses. The orders were passed by the ITO, Ward-2 Bhimavaram in the assessee' case as well as other cases relied upon by the Ld.CIT(A). For the A.Y. 2013-14 in the case of Mr.Abdul Kalam Azad, the AO estimated the income at 0.4% after rejecting the books of accounts. Similarly in the case of Adabala Narsimha, the same AO estimated the income @0.4% clear of expenses. During the appeal hearing the department could not place any evidence before us to controvert the finding given by the Ld.CIT(A) or to substantiate the contention of the department that income estimated by the Ld.CIT(A) is less and assessee gets more income than the comparable cases decided by the AO. Therefore, we do not find any reason to interfere with the order of the

Ld.CIT(A) and the same is upheld. The appeals of the revenue on these grounds are dismissed.

8. Ground No.(d) is related to the depreciation on crates. The AO has computed the rental income of the assessee received from crates separately apart from the estimation of income from fish trading. ***This issue is involved in the case of MHM Fish Packers for the A.Ys 2011-12, 2012-13 and 2013-14.*** However, the AO did not allow any expenditure attributable to earning of income from the fish crates. The assessee went on appeal before the CIT(A) and the Ld.CIT(A) directed the AO to allow depreciation on fish crates.

9. Against the order of the Ld.CIT(A), the department is in appeal agitating the allowance of depreciation and also raised the ground that the Ld.CIT(A) is incorrect in adjudicating the issue (depreciation) which was not before him. The assessee also filed cross appeal in revised ground No.9 requesting for interest on bank loans for purchase of crates.

10. During the appeal hearing, the Ld.DR conceded that the assessee has raised the issue before the Ld.CIT(A) requesting for allowing the expenditure relating to earning of income on the crates in ground No.10 which was reproduced in the appellate order. The Ld.DR supported the

order of the Ld.AO and argued that no separate deduction required to be allowed in the case of crates since the expenditure was taken care in estimation of income.

11. On the other hand, the Ld.AR argued that the AO has erred in raising the ground that the issue was not agitated before the CIT(A) and invited our attention to ground No.10 of the Grounds of Appeal filed before the CIT(A), wherein, the assessee has raised the ground for allowing the expenditure relating to earning of income from crates.

12. We have gone through the appeal order of First Appellate Authority and grounds of appeal raised by the assessee before the CIT(A). In ground No.10 of the grounds of appeal before the Ld.CIT(A) in MHM Fish Packers, the assessee challenged the addition made by the AO for assessment of income separately on the fish crates without allowing the expenses relatable to earning the income on fish crates. The depreciation is an expenditure which required to be allowed while computing the income. Therefore, contention of the revenue that the Ld.CIT(A) has allowed the depreciation on crates without being agitated before him is incorrect. Therefore we dismiss the revenues appeal in ground No.(d) with regard to depreciation.

13. The AO has estimated the income from the fish trading separately and the income from fish crates separately. The Ld.AR argued before us that once the income from fish trading and the fish crates are assessed separately, it is incumbent upon the AO to allow the expenditure relating earning of income on fish crates. The Ld.AR further submitted that though the Ld.DR argued that the estimation of income on fish trading inter alia takes care of the depreciation on crates, the AO has not given any such finding as to how it would take care of the expenses of income relating to crates. The Ld.AR argued that since the income of crates is assessed separately, he requested to allow the interest on bank loan for acquiring the fish crates apart from the depreciation.

14. We have heard both the parties and perused the material placed on record. The AO has assessed the income from fish trading separately and taxed the entire income received from the fish crates separately. The AO did not allow the expenditure attributable to earning of income from fish crates. The income has to be computed in accordance with the provisions of income tax after allowing the deductions or the expenditure attributable to the earning of the income. Though the Ld.DR argued that no separate expenditure required to be allowed for fish crates the Ld.DR did not place

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any valid argument with relevant documentation before us to support his argument. Further the AO in the assessment order did not specify the reasons for not allowing the expenditure. Hence we are unable to accept the contention of the revenue that no other expenditure required to allowed for income from fish crates. In this case, though the AO has taxed the entire receipt from fish crates as income and did not allow the expenditure relatable to earning of income. The Ld.AR submitted before us that the assessee would be satisfied if the interest expenditure is also allowed. We are of the considered opinion that the depreciation on crates and the interest attributable to acquiring the fish crates required to be allowed in the interest of justice. Accordingly we uphold the order of the Ld.CIT(A) with regard to the allowance of depreciation on fish crates and remit the issue of interest on crates back to the file of the AO with a direction to verify the issue with regard to the borrowed capital for acquiring the crates and allow the interest relatable to acquiring fish crates also. The AO should give an opportunity to the assessee before completing the assessment. Accordingly appeal of the revenue on this ground is dismissed and the cross appeal of the assessee on this issue is allowed.

**I.T.A. No.336-338/Viz/2017 and 339/Viz/2017 - Assessee's Cross Appeals**

*I.T.A. Nos.361, 362 & 364/Viz/2017. 363/Viz/2017, 336-338/Viz/2017, 339/Viz/2017*

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15. The assessee raised various grounds in the cross appeals, but did not press any other ground except the depreciation and the interest on crates. Therefore, all other grounds raised by the assessee in their cross appeals are dismissed as not pressed.

**CO Nos.93-95/Viz/2018 – Assessee’s Cross Objections**

16. The assessee filed cross objections supporting the order of the Ld.CIT(A) estimating the income @0.4% and allowing the depreciation on crates. Since the revenue’s appeals are dismissed, the cross objections have become infructuous, thus dismissed.

**I.T.A. No.364/Viz/2017 – Revenue Appeal**

17. When this appeal is taken up for hearing, the Ld. Counsel for the assessee has submitted that the tax effect involved in these appeals is below Rs.20 lakhs. As per the latest circular No. 03/2018, dated 11.07.2018 of CBDT being retrospective in nature, which is in supersession of its Circular No. 21/2015 dated 10.12.2015, in relation to filing of appeals before the Income Tax Appellate Tribunal, the appeal filed by the revenue is not maintainable. The Ld. D.R. has not raised any objection. In view of the above, the appeal filed by the revenue is not maintainable. Hence, the same is dismissed.

***I.T.A. Nos.361, 362 & 364/Viz/2017. 363/Viz/2017, 336-338/Viz/2017, 339/Viz/2017***

***Sri Sesha Sai Township P.Ltd., Vijayawada*** 

*I.T.A. Nos.361, 362 & 364/Viz/2017. 363/Viz/2017, 336-338/Viz/2017, 339/Viz/2017*

*Sri Sesha Sai Township P.Ltd., Vijayawada* 

**CO No.96/Viz/2018**

18. The assessee filed cross objection supporting the order of the Ld.CIT(A) estimating the income @0.4% and allowing depreciation on crates in appeal No.364/Viz/2017. Since the appeal is not maintainable and dismissed, the cross objection filed by the assessee is dismissed as infructuous.

19. In the result In the result appeals of the revenue in I.T.A.Nos.361, 362, 364/Viz/2017 and 363/Viz/2017 are dismissed, cross appeals of the assessee in I.T.A Nos.336-339/Viz/2017 are partly allowed and cross objections of the assessee in CO Nos.93-96/Viz/2018 are dismissed as infructuous.

Order pronounced in the open court on 18<sup>th</sup> January 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)  
(V. DURGA RAO)

(डि.एस. सुन्दर सिंह)  
(D.S. SUNDER SINGH)

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

विशाखापटणम /Visakhapatnam

दिनांक /Dated :18.01.2019

L.Rama, SPS

*I.T.A. Nos.361, 362 & 364/Viz/2017. 363/Viz/2017, 336-338/Viz/2017, 339/Viz/2017*

*Sri Sesha Sai Township P.Ltd., Vijayawada* 

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

1. निर्धारिती / The Assessee – (i) M/s MHM Fish Packers (ii) M/s MHM Fish Trading Company, D.No.14-2/4, Main Road, Akividu, West Godavari Dist.
2. राजस्व / The Revenue–Income Tax Officer, Ward-2, Bhimavaram
3. The Pr.Commissioner of Income Tax, Rajahmundry
4. The Commissioner of Income Tax-(Appeals)-2, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT,Visakhapatnam
6. गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, VISAKHAPATNAM