

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.248/VIZ/2014  
(निर्धारण वर्ष/ Assessment Year: 2009-2010)

Chaluvadi Anjaneyulu (HUF)  
Prop.: Sree Seetharamanjaneya  
Rice Traders, 6-156, Fort Road  
Machilipatnam

Vs. Commissioner of  
Income Tax  
Vijayawada

**[PAN : AAAHC6340R]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

आयकर अपील सं./I.T.A.No. 270/Viz/2015  
(निर्धारण वर्ष/ Assessment Year: 2009-2010)

Chaluvadi Anjaneyulu (HUF)  
Prop.: Sree Seetharamanjaneya  
Rice Traders, 6-156, Fort Road  
Machilipatnam

Income Tax Officer  
Ward-1  
Machilipatnam

**[PAN : AAAHC6340R]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri Siva Ram Kumar, AR  
: Shri Ch Sanjeev, DR

सुनवाई की तारीख / Date of Hearing

: 08.01.2019

घोषणा की तारीख/Date of Pronouncement

: 11.01.2019

## **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 (CIT), Vijayawada dated 28.03.2014 and Commissioner of Income Tax (Appeals)[CIT(A)], Vijayawada vide Appeal No.374/CIT(A)/VJA/2014-15 dated 15.04.2015 for the Assessment Year (A.Y.) 2009-10. Since the issue involved 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. No.248/Viz/2014**

2. In this case, the assessee filed the return of income admitting total income of Rs.3,93,980/- besides agricultural income of Rs.91,175/-. The AO completed the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'Act') on total income of Rs.7,91,770/-. Subsequently, the Ld.CIT has taken up the case for revision u/s 263, since the assessment passed by the AO was erroneous and prejudicial to the interest of the revenue, and observed the following errors which are prejudicial to the interest of the revenue.

(i) The auditor who conducted the audit u/s 44AB of the Act has

specified in the Audit certificate dated 20.09.2009 that the closing stock and the cash balance as they stood on 31.03.2009 could not be verified since the appointment for audit came subsequent to that date. The Ld.CIT observed that examination of particulars furnished by the assessee with reference to paddy purchase, month wise purchase and sales showing valuation of closing stock as on 31.03.2009 indicated that the AO has not examined this aspect and its consequential effects.

ii) The assessee has paid interest of Rs.50,680 to Smt. Ch.Parvathi and Rs.51,288/- to Shri Ch.Dileep. No TDS was deducted and the same has to be brought to tax u/s 40(a)(ia).

iii) The assessee has claimed chit loss as revenue expenditure which required to be disallowed.

2.1 The Ld.CIT issued show cause notice to the assessee calling for the explanation as to why the assessment should not be revised and the assessee filed the explanation objecting for revision and submitted before the Ld.CIT that there is no error in the assessment which caused prejudice to the department. Not being satisfied with the explanation of the assessee, the Ld.CIT held that the assessment passed u/s 143(3) as erroneous and

prejudicial to the interest of the revenue and accordingly set aside the assessment order and directed the AO to redo the assessment denovo in accordance with the law and established procedure.

3. Aggrieved by the order of the CIT, the assessee filed appeal before us. During the appeal hearing, the Ld.AR submitted that the auditor who has audited the books of accounts has passed a routine remark with regard to physical verification of closing stock and the cash balance as on that day stating that it was not physically verified by him as he could not make physical verification of stock and the cash because he was appointed subsequently. However the partner of the firm made the physical verification of the stock and the cash as on 31.03.2009 and there was no understatement of physical stock and there was no difference in the cash balance as on 31.03.2009. The Ld.AR further submitted that the assessee has furnished quantitative particulars of stock as part of the audit report. The tax audit report was also filed during the course of assessment proceedings and also the valuation of closing stock. Monthly purchase and sales statement, the relevant bills were produced before the AO at the time of original assessment proceedings. From the observation of the Ld.CIT except non verification of physical stock and the cash as on 31.03.2009, no

other defect was pointed out which leads to under assessment of income and hence, argued that the assessment was neither erroneous nor prejudicial to the interest of the revenue and the order of the Ld.CIT required to be set aside.

4. The next issue is non deduction of TDS on interest payment of Rs.50,680/- and Rs.51,288/- made to Smt. Ch.Parvathi and Shri Ch.Dileep Kumar respectively and consequent disallowance of expenditure u/s 40(a)(ia) . In this regard, the assessee submitted that the TDS was made in the case of Smt.Ch.Parvathi on 06.062009 and filed e-TDS returns. Since the payment was made before filing the specified date u/s 139(1), there is no case for invoking the provisions u/s 40(a)(ia) of the Act.

In the case of Shri Ch.Dileep Kumar, the assessee submitted that the interest payment was only Rs.12,000/- and the balance amount represents the salary and bonus and the provisions of TDS has no application since there is no liability as the aggregate amount does not exceed the maximum amount chargeable to tax for an individual.

5. With regard to 3<sup>rd</sup> issue of chit loss, the Ld.AR submitted that the assessee is following the method of offering the chit dividend as income and chit loss as expenditure. This view is supported by the Hon'ble High

Court of Andhra Pradesh in the case of CIT Vs. Kovur Textiles & Co (136 ITR 61). The assessee submitted that these details were submitted before the AO during the assessment proceedings and are accounted in the regular books of accounts. The Ld.AR further submitted that the entire bid amount was credited in the assessee's business account, therefore, submitted that the chit loss is a business expenditure and the chit dividend is income, hence, there is no under assessment, accordingly argued that there is no case of error which causes prejudice in the assessment order.

6. On the other hand, the Ld.DR supported the orders of the CIT and argued that the chit loss is non allowable loss and the AO has not examined the issue.

7. We have heard both the parties and perused the material placed on record. In this case, the case is taken up for revision for non-verification of closing stock and cash balance as on 31.03.2009 physically, by the auditor who has conducted the audit u/s 44AB of the Act. Except the observation of the CIT, there was no other defect found by the CIT causing loss to the revenue or leading to understatement of income. In the submissions made by the assessee it is observed that all the relevant details were furnished before the AO during the course of original assessment, thus, argued that

there is no error in the order passed by the AO and the AO has duly verified the quantitative details of monthly purchase and sales with relevant bills during the original assessment. The assessee also maintained the regular cash book and no defect was found by the Ld.CIT. In this case the assessment was completed u/s 143(3) after verification of the books of accounts and the relevant evidences. No material placed before us by the revenue to controvert the submissions made by the Ld.AR. Thus, it is established the issue has been examined by the AO at the time of assessment and we do not find any understatement of income or loss of revenue. Hence, there is no error in the assessment order.

7.1. With regard to non-deduction of tax at source in the case of Smt.Ch.Parvathi, the assessee has submitted that he has deducted the TDS before filing the IT return and also filed e-TDS return. In the case of Shri Ch.Dileep Kumar, the payment of interest was stated to be only Rs.12,000/- and the remaining payment represented the salary and bonus, hence, the provisions of TDS were not applicable, since the income in the case of Shri Dileep does not exceed the taxable limit. The assessee also placed copy of challan having remitted the TDS amount and the details of payments covered u/s 40A(2)(b) in respect of salary and the interest paid to Shri Ch.Dileep to establish the TDS deduction and non attraction of TDS

in the case of Shri Ch.Dileep. All the above material was placed before the AO and the department did not controvert the same. Since, the TDS was deducted in the case of Smt.Ch.Parvathi there is no case for invoking provisions u/s 40(a)(ia). Similarly, in the case of Shri Ch.Dileep Kumar, there is no case for deduction of tax and consequent disallowance u/s 40(a)(ia) of the act. Hence there is no under assessment which is causing prejudice to the revenue.

7.2. In respect of the third issue of chit loss, the assessee submitted that the chit bid amount was utilized for the purpose of business and credited to the business account. It partakes the character of interest on borrowed capital and hence the chit loss is business expenditure and chit dividend is income. The assessee has been following the same method of accounting and relied on the jurisdictional High Court judgement in the case of Kovur Textiles & Co.(supra). The assessee has produced the books of accounts in the original assessment proceedings and the AO has completed the assessment after verifying the books of accounts. During the appeal the assessee furnished the copies of chit accounts and the income and expenditure account in the paper book. All these evidences were placed before the AO at the time of assessment and the department did not controvert the same. We are of the considered opinion that as per the

jurisdictional Hon'ble High court decision the chit loss is business expenditure and the chit dividend is business income and the assessee has followed the judgement of jurisdictional High Court and accordingly accounted the income and expenditure / loss related to the chit. We do not find any error in the assessment order which was prejudicial to the interest of revenue.. Accordingly, we hold that the assessment passed by the AO is neither erroneous nor prejudicial to the interest of the revenue, hence, we quash the order of the CIT passed under section 263 and allow the appeal of the assessee.

### **I.T.A. 270/Viz/2015**

8. In this case, the AO has passed consequential order giving effect to the order passed by the CIT u/s 263 for the A.Y. 2009-10 making various additions as observed by the Ld.CIT for the A.Y. 2009-10 vide order U/s 143(3) r.w.s 263 dated 28.03.2014 and assessed the total income at Rs.9,92,783/-.

9. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee stating that the AO has completed the assessment as per the directions of the

Ld.CIT u/s 263 and CIT(A) being the parallel authority, has no jurisdiction to decide the consequential order passed by the AO.

10. Against the order of the Ld.CIT(A), the assessee is in appeal before us.

11. We have heard both the parties and perused the material placed on record. In our order in I.T.A. No.248/Viz/2014 the order passed by the CIT u/s 263 is quashed, hence, the order passed by the AO u/s 143(3) r.w.s. 263 became infructuous and does not exist. Accordingly, the appeal of the assessee is allowed.

12. In the result appeals of the assessee are allowed.

Order pronounced in the open court on 11<sup>th</sup> January 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 11.01.2019

L.Rama, SPS

(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 – Chaluvadi Anjaneyulu (HUF), Prop.: Sree Seetharamanjaneya, Rice Traders, 6-156, Fort Road, Machilipatnam
2. राजस्व / The Revenue– (i) Commissioner of Income Tax, Vijayawada (ii) Income Tax Officer, Ward-1, Machilipatnam
3. The Pr.Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income Tax-(Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, VISAKHAPATNAM