

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 604 & 605/VIZ/2018
(Asst. Year : 2010-11 & to 2011-12)**

ITO, Ward-1(1),
Vijayawada.

vs.

Ghantasala Venkata Krishna,
Prop. M/s. Ghantasala
Manikyala Rao Cards,
D.No. 11-25-167, Main Road,
One Town, Vijayawada.

(Appellant)

PAN No. ACPPG 1246 F
(Respondent)

**C.O.Nos. 35 & 36/VIZ/2019
(Arising out of ITA Nos. 604 & 605/VIZ/2018)
(Asst. Year : 2010-11 & to 2011-12)**

Ghantasala Venkata Krishna,
Prop. M/s. Ghantasala
Manikyala Rao Cards,
D.No. 11-25-167, Main Road,
One Town, Vijayawada.

vs.

ITO, Ward-1(1),
Vijayawada.

PAN No. ACPPG 1246 F
(Appellant)

(Respondent)

Assessee by : Shri C. Subrahmanyam, FCA.

Department By : Smt. Suman Malik, Sr.DR

Date of hearing : 21/03/2019.

Date of pronouncement : 27/03/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

These appeals by the Revenue and the Cross Objections by
the assessee are directed against the separate orders of

Commissioner of Income Tax (Appeals), Vijayawada, all dated 06/09/2013 for the Assessment Years 2010-11 & 2011-12. Since, facts are identical and issues are common, they are clubbed, heard together and disposed of by way of this common order for the sake of convenience.

2. Facts of the case, in brief, are that the assessee is an individual, running retail wedding cards business in the name and style of M/s. Sri Ghantasala Manikyala Rao Cards, filed his return of income by admitting total income of Rs. 3,50,950/-. Subsequently, assessee's case was reopened by issuing notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as "Act") and assessment was completed under section 143(3) r.w.s. 147 of the Act by determining total income at Rs.4,50,950/- dated 18/03/2014. Subsequently, the order passed by the Assessing Officer under section 143(3) r.w.s. 147 is subjected to review under section 263 by the Pr.CIT. The Pr.CIT set aside the order passed by the Assessing Officer and directed to redo the assessment in *denovo* in accordance with law. Accordingly, Assessing Officer passed assessment order under section 143(3) r.w.s. 263 of the Act by determining total income at Rs.81,83,060/- dated 30/12/2016.

3. Subsequently, the order passed by the Pr.CIT under section 263 has been challenged before the ITAT. The ITAT in ITA Nos.31 & 33/VIZ/2017 for the Assessment Years 2010-11 & 2011-12 by order dated 10/08/2018 quashed the order passed by the Pr.CIT. The assessee carried the matter in appeal before the Id. CIT(A) against the order passed by the Assessing Officer under section 143(3) r.w.s. 263 dated 30/12/2016 and submitted that on the very basis for the assessment year, which is challenged before the ITAT, the ITAT quashed the order passed under section 263 by the Pr.CIT and submitted that assessment order cannot survive. The Id. CIT(A) after considering the explanation of the assessee has held that the order passed by the Assessing Officer under section 143(3) r.w.s. 263 dated 30/12/2016 does not exist and appeal filed by the assessee is allowed. For the sake of convenience, the relevant portion of the order of the Id.CIT (A) is extracted as under:-

"5 I have perused the assessment order, submissions of appellant and decision of TAT order, in appellant's own case.

5.1. The Hon'ble ITAT, Visakhapatnam Bench vide order in ITA No.31IViz/2017 Assessment Year 2010-11 dated 10.08.2018 held in appellant's own case which is reproduced as under:

*".....
.....
The Ld. Pr. CIT observed that the printouts of accounts for*

the calendar years 2008, 2009 and 2010 were taken from the laptop and it was observed from the said extracts, that the accounts relating to M/s. Sri Vaya Lakshmi Stationery and Fancy Mart pertaining to the assessee were also included. The Ld. Pr. CIT found that the Assessing Officer has neither reconciled the accounts nor examined same with reference to the books of account for the purpose of assessment while completing the assessment. The assessee denied ownership of the extracts taken from the laptop stating that the laptop does not belong to their firm. At the time of survey itself, the assessee has denied the contents of the extracts. The laptop was neither seized, no statement was recorded from the part time accountant. Having denied the contents of the extracts of the laptop belonging to the assessee, it is for the revenue to establish that the contents do belonged to the assessee. The fact that the laptop does not belong to the assessee was not disputed by the Assessing Officer. The contention of the assessee that the part time accountant maintained the books of accounts of many, other customers was also not disputed. During the assessment proceedings, the assessee stated that the assessee has not maintained books of accounts and admitted the income as per Sec. 44AF of the Act. The Assessing Officer has not brought on record any material to establish that the turnover recorded in the computer extract belonged to the assessee by comparing the contents of the printouts of the assessee with the entries in the books of accounts or with the information found during the course of survey. The entire survey material was available with the Assessing Officer at the time of assessment and the case was reopened for verification of the material found during the course of survey, and the Assessing Officer has completed the assessment after examining the entire details available with the Assessing Officer. While finalizing the assessment, the Assessing Officer reconciled with the VAT returns, purchase bills and physical stock considering each and every aspect and completed the assessment. On identical facts in the group cases in respect of print outs extracted from the laptop and the stock found during the survey, we have decided the issue in favour of the assessee and set aside the order of the Ld.Pr.CIT and allowed the appeal of the assessee. Following the rule of consistency, we hold that the order passed by the Assessing Officer is neither

erroneous and nor prejudicial to the interest of revenue and accordingly we set aside the order passed u/s.263 and restore the assessment order. The appeal of the assessee on this ground is allowed.

6. As the order passed u/s.263 by Pr. Commissioner of Income Tax, Vijayawada is set aside and restore the original assessment order, accordingly allowed the appeal of the assessee by the Hon'ble ITAT, Visakhapatnam Bench cited (supra), the consequential order passed by Assessing Officer u/s.143(3) r.w.s.263 of the Act dated 30.12.20 16 does not exist."

4. On being aggrieved, Revenue carried the matter in appeal before this Tribunal.

5. When this appeal is taken up for hearing, Id. Authorised Representative for the assessee has submitted that Pr.CIT directed the Assessing Officer to redo the assessment by exercising the power under section 263, which has been quashed by the ITAT in ITA Nos.31 & 33/VIZ/2017 for the Assessment Years 2010-11 & 2011-12 by order dated 10/08/2018. Therefore, Id. CIT(A) by following the same has held that the order passed by the Assessing Officer under section 143(3) r.w.s. 263 of the Act dated 30/12/2016 does not exist. Ld. Departmental Representative has not raised any objection.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below.

7. We find that the order passed by the Id. Pr.CIT under section 263 dated 16/03/2016 has been set aside by the ITAT in ITA Nos.31 & 33/VIZ/2017 for the Assessment Years 2010-11 & 2011-12 by order dated 10/08/2018. Thus, we find that the Id.CIT(A) has rightly held that the order passed by the Assessing Officer under section 143(3) r.w.s. 263 dated 30/12/2016 cannot exist. We find no infirmity in the order passed by the Id. CIT(A). Thus, these appeals filed by the revenue are dismissed.

8. So far as cross objections filed by the assessee are concerned, these are only supportive to the orders of the Id.CIT(A). In view of our decision above, the Cross Objections filed by the assessee are mere academic, no adjudication is required, therefore same are dismissed.

9. In the result, appeals filed by the Revenue and the cross objections filed by the assessee are dismissed.

Order Pronounced in open Court on this 27th day of March, 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 27th March, 2019.

vr/-

Copy to:

1. *The Assessee- Ghantasala Venkata Krishna, Prop. M/s. Ghantasala Manikyala Rao Cards, D.No. 11-25-167, Main Road, One Town, Vijayawada.*
2. *The Revenue – ITO, Ward-1(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.