

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.207/VIZ/2018
(निर्धारण वर्ष/ Assessment Year:2010-11)

Asst. Commissioner of Income-tax
Circle-1(1)
Rajahmundry

Vs. Sri K.S.V.Raja
D.No.6-12-18, Main Road
Narsapur
West Godavari Dist.
[PAN : AKUPK9237H]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

Cross Objection No.43/Viz/2018
(Arising out of I.T.A 207/Viz/2018)
(निर्धारण वर्ष/ Assessment Year:2010-11)

Sri K.S.V.Raja
D.No.6-12-18, Main Road
Narsapur
West Godavari Dist.
[PAN : AKUPK9237H]

Asst. Commissioner of
Income-tax
Circle-1(1)
Rajahmundry

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से / Revenue by
निर्धारिती की ओर से / Assessee by

: Smt Suman Malik, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 27.03.2019

घोषणा की तारीख/Date of Pronouncement

: 03.04.2019

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

Delay : The appeal filed by the revenue is time barred by 31 days and the cross objection filed by the assessee is time barred by 9 days. The revenue filed condonation petition requesting to condone the delay due to the circumstances beyond the control of the Assessing Officer. After hearing both the parties the delay is condoned.

2. In this case, tax effect is below Rs.20 lakhs and the revenue has raised the ground stating that the case is covered under exceptional category under clause-8(C) of CBDT Circular No.21/2015 for preferring appeal i.e. Revenue Audit Objection which was accepted by the Department. During the appeal hearing, the Ld.DR did not produce the gist of revenue audit objection inspite of giving repeated opportunities. It is also observed in this case that appeal was filed originally on 16.05.2018 against the order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act. However, the Department has filed order of Commissioner of Income Tax (Appeals) [CIT(A)]-12, Hyderabad vide Appeal No.10366/2017-18 dated 10.01.2018 relating to the Assessment order passed u/s 143(3) dated

19.03.2013 which is incorrect order. The grounds of appeal filed along with appeal memo were also related to the order passed u/s 143(3). Subsequently, this Bench has asked the Ld.DR to rectify the mistake and to file the correct orders relating to the appeal of lower authorities. The Department has filed revised Form No.36 on 21.12.2018 mentioning the appeal in respect of order u/s 143(3) but not filed impugned assessment order along with the revised Form No.36. The appeal is defective since the impugned assessment order was not filed. On 19.03.2019, when the case came up for hearing, the Ld.DR asked for some more time and the appeal was fixed for hearing on 27.03.2019. On 27.03.2019 also the defect was not rectified. From the perusal of the appeal papers filed, tax effect in this case is less than Rs.20 lakhs, since, the addition made u/s 143(3) r.w.s. 147 was only Rs.5,00,860/-. Though the grounds of appeal raised on various issues are related to the estimation of income, no such assessment order was placed before us. In spite of giving several opportunities, the revenue failed to rectify the defects and the appeal is defective and the tax effect in this case is less than Rs.20 lakhs. It is painful to put on record that in spite of reminding the revenue to rectify the mistake from 05.12.2018 onwards and posting the case for four times the revenue did not make any effort to

rectify the mistakes. Since the appeal is defective and the department did not rectify the defect after giving opportunity also, we dismiss the appeal filed by the revenue in limine.

3. In the result, appeal of the revenue is dismissed in limine and the cross objections filed by the assessee have become infructuous and dismissed.

Order pronounced in the open court on 3rd April, 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 03.04.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. राजस्व/ The Revenue – Asst.Commissioner of Income Tax, Circle-1(1)
Rajahmundry
2. निर्धारिती/ The Assessee- Sri K.S.V.Raja, D.No.6-12-18, Main Road, Narsapur
West Godavari Dist.
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.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam