

**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 No. 593/VIZ/2018
(Asst. Year : 2009-10)**

The ACIT, Circle-1,
Kakinada.

vs.

Grandhi Narayana Rao,
Prop. : Sri Dhana Lakshmi
Oil & General Merchants,
D.No.27-9-14/1, Pulavarthy
Street, Kakinada.

(Appellant)

PAN No. ABQPG 1242 D
(Respondent)

**C.O.No. 19/VIZ/2019
(Arising out of ITA No. 593/VIZ/2018)
(Asst. Year : 2009-10)**

Grandhi Narayana Rao,
Prop. : Sri Dhana Lakshmi Oil
& General Merchants, D.No.
27-9-14/1, Pulavarthy Street,
Kakinada.

vs.

The ACIT, Circle-1,
Kakinada.

PAN No. ABQPG 1242 D
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 29/07/2019.
Date of pronouncement : 07/08/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue and the Cross Objection by the assessee are directed against the order of Commissioner of

Income Tax (Appeals)-3, Visakhapatnam, dated 29/06/2018 for the Assessment Year 2009-10.

2. When this appeal is taken up for hearing, Id. counsel for the assessee has submitted that the Department has to file two separate appeals against two separate assessment orders, but filed a single appeal, which is not maintainable.

3. We find that there is a delay of 16 days in filing the appeal. The Revenue has filed the condonation application for 11 days. This defect was brought to the notice of the Id.DR on 31/01/2019, who sought time to rectify the Form No.36. One more defect is noticed in this appeal is that the Assessing Officer has passed the order u/sec. 143(3) on 30/12/2010 and also passed order u/sec. 143(3) r.w.s. 147 on 18/06/2014, by which, the Revenue has preferred this appeal against both the orders. So far as order u/sec. 143(3) passed by the Assessing Officer is concerned, the Id.CIT(A) deleted the addition by observing that the approach of the Assessing Officer is not justified. So far as order u/sec.143(3) r.w.s. 147 is concerned, it is only mere change of opinion and by following the decision of the Hon'ble Apex Court in the case of *CIT Vs. Kelvinator India Ltd.* [(320 ITR 561 (SC))] has held that notice is invalid and the reassessment proceedings are void *ab initio*. These two separate assessment orders passed by the Assessing

Officer, though Id. CIT(A) has passed combined order dated 29/06/2018, the Department has to file two separate appeals before the Tribunal instead of that, one appeal has been filed. This was brought to the notice of the Id.DR on 31/01/2019 and subsequently on four occasions, Id.DR has submitted that the present appeal filed by the Department would be withdrawn with liberty to file two separate appeals, but neither withdrawn the appeal nor filed separate appeals, and even not filed proper condonation application. In view of the above, the appeal filed by the Department is dismissed in *limine*.

4. So far as Cross Objection is concerned, the assessee has raised a ground that the Revenue has to file two separate appeals against the two separate assessment orders. As we have decided this issue in Revenue's appeal, this cross objection filed by the assessee is partly allowed.

5. In the result, appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is partly allowed.

Order Pronounced in open Court on this 07th day of August, 2019.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 07th August, 2019.

vr/-

Copy to:

1. *The Assessee – Grandhi Narayana Rao, Prop. : Sri Dhana Lakshmi Oil & General Merchants, D.No.27-9-14/1, Pulavarthy Street, Kakinada.*
2. *The Revenue – The ACIT, Circle-1, Kakinada.*
3. *The Pr.CIT (Central), Visakhapatnam.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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