

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.No.173/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2014-15)**

M/s Daspalla Investments Pvt.Ltd.,
D.No.28-02-48, Hotel Daspalla
Suryabagh
Visakhapatnam

Vs. Income Tax Officer
Ward-3(1)
Visakhapatnam

[PAN :AAECD8330K]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri I Kama Sastry, AR
: Shri D.K.Sonowal, CIT DR

सुनवाई की तारीख / Date of Hearing

: 18.07.2019

घोषणा की तारीख/Date of Pronouncement

: 21.08.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Pr.Commissioner of Income Tax [Pr.CIT], Visakhapatnam vide F.No.Pr.CIT-1/VSP/263/03/2018-19 dated 31.03.2019 for the Assessment Year (A.Y.)2014-15.

2. All the grounds of appeal are related to the order passed by the Ld.Pr.CIT u/s 263 of the Income Tax Act, 1961 (in short 'Act'). In this case, the assessment was completed u/s 143(3) on total income of Rs.2,10,237/-. Subsequently, the Pr.CIT noticed that the assessee has made the investments of Rs.2,02,50,000/- in equity shares of M/s Jubilee Hill Resorts Ltd., during the Financial Year 2013-14 relevant to the A.Y.2014-15 . Since the income that would accrue from the investments is exempt u/s 10(34) of the Act, the Ld.Pr.CIT viewed that disallowance required to be made u/s 14A of the Act relating to the expenditure incurred by the assessee pertaining to the investments made in Jubilee Hill Resorts Ltd. Since the AO has failed to disallow the expenditure relatable to the earning of exempt income, the Ld.Pr.CIT has taken up the case for revision u/s 263 and held that the assessment made u/s 143(3) was erroneous and prejudicial to the interest of the revenue and accordingly set aside the order of the AO and directed the AO to disallow the expenditure relatable to the earning the dividend income as per Rule 8D of I.T.Rules. Hence, the assessee filed appeal before us.

3. During the appeal hearing the Ld.A.R. submitted that during the assessment proceedings, the assessee has furnished the balance sheet, profit and loss account and the relevant details before the AO at the time of scrutiny assessment and the AO had completed the assessment after duly verifying the details. Thus the Ld.AR contended that the assessment was completed u/s 143(3) in this case, after verifying the details filed by the assessee and there is no other income earned by the assessee relating to earning of the dividend income as per the Profit & Loss account. Since the AO has completed the assessment after examining the Profit & Loss account and the relevant details, the Ld.AR argued that there is no error in the order of the AO, hence, the Ld.Pr.CIT erred in taking action u/s 263. The Ld.AR further argued that in the instant case, the assessee did not earn any dividend or exempt income, thus, there is no case for making the disallowance u/s 14A of the Act. The Ld.AR further submitted that the coordinate bench of this Tribunal in number of decisions on identical facts has taken similar view. The Ld.AR relied on the decision of this Tribunal in the case of D.Veerabhadra Reddy (HUF) Vs. Deputy Commissioner of Income Tax vide I.T.A. No.263/Viz/2014 dated 23.06.2017 and submitted that on identical facts this Tribunal held that there is no case for

disallowance of expenditure u/s 14A in the absence of dividend income.

The Ld.AR also relied on the following decisions :

- (i) The Income Tax Appellate Tribunal, Visakhapatnam Bench Order Dt. 30.04.2019 between Asst. Commissioner of Income Tax Vs. M/s.G M P Infrastructure Private Limited.
- (ii) Principal Commissioner of Income Tax Vs. IL & FS Energy Development Company Ltd.(2017) 99 CCH DEL HC (2017) 297 CTR 0452 (DEL): (2017) 399 ITR 0483 (DELHI (2017) 250 Taxman 0174 (DELHI)
- (iii) High Court of Punjab & Haryana Judgement Dt. 28.08.2018 between Principal Commissioner of Income Tax vs Vardhman Chemtech Private Limited
- (iv) Cheminvest Limited vs Commissioner of Income Tax (2015) 94 CCH 0002 DEL HC (2015) 281 CTR 0447 (DEL) (2015) 126 DTR (DEL) (2015) 378 ITR 0033 (DELHI) :(2015) 234 TAXMAN 0761 (DELHI)
- (v) The Income Tax Appellate Tribunal, Delhi 'F' Bench Between M/s Parsvnath Developers Limited Vs The Deputy Commissioner Of Income Tax Dt.22.04.2019

4. We have heard both the parties and perused the material placed on record. In the instant case, the assessment was completed u/s 143(3). As per the Profit & Loss account placed in page No.2 of the paper book the assessee has received the revenue from operations for which the details were given in Annexure No.13 and the same was interest earned and there is no other income. From the break-up of the income account it is found that only income received by the assessee was interest receipt which was offered to tax. Therefore, it is evident from the Profit & Loss account that

the assessee has not earned any dividend income from the investments made by the assessee during the impugned assessment year which is exempt. The Ld.AR argued that the AO had examined the issue hence, there is no error in the order passed by the AO and accordingly argued that the Ld.Pr.CIT erred in invoking the jurisdiction. The Ld.A.R further submitted that the coordinate bench of this Tribunal on identical facts held that in the absence of dividend income, there is no case for disallowance of expenditure u/s 14A of the Act. In the instant case, there is no dispute that there is no exempt income earned by the assessee, hence there is no case for disallowance of expenditure relating to earning the dividend income. Therefore, we are of the view that there is no error in the order passed by the AO for taking up the case for revision u/s 263 of the Act. Two conditions required to be satisfied for invoking the jurisdiction u/s 263 i.e. order passed should be erroneous and prejudicial to the interest of the revenue. In the instant case, the assessee did not earn the exempt income and furnished the completed details before the AO. Therefore, we are of the view that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of revenue, hence the same is unsustainable. Therefore, we set aside the order of the Ld.Pr.CIT

passed u/s 263 and restore the assessment order. Accordingly, appeal of the assessee is allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21st August, 2019.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO)</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH)</p>
<p>न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>लेखा सदस्य/ACCOUNTANT MEMBER</p>
<p>विशाखापटणम /Visakhapatnam</p>	
<p>दिनांक /Dated : 21.08.2019</p>	
<p>L.Rama, SPS</p>	

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

1. निर्धारिती/ The Assessee- M/s Daspalla Investments Pvt.Ltd., D.No.28-02-48, Hotel Daspalla, Suryabagh, Visakhapatnam
2. राजस्व/The Revenue - Income Tax Officer, Ward-3(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 5.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam