

**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. 215/VIZ/2018  
(Asst. Year : 2013-14)**

Smt. Gudimetla Saroja,  
D.No. 4-37, Mallipudi Street,  
Main Road, Penumantra  
Mandal, W.G. District.

vs. ITO, Ward-1,  
Tanuku.

PAN No. AIAPG 5391 G  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Shri D.V. Subba Rao– Sr.DR

Date of hearing : 08/08/2019.  
Date of pronouncement : 23/08/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax, Rajahmundry, dated 28/03/2018 for the Assessment Year 2013-14.

**2.** Facts of the case, in brief, are that assessee is an individual engaged in construction works and fish trading business, filed her return of income declaring total income of Rs. 12,10,010/-. Subsequently, case was selected for scrutiny under CASS and assessment was completed u/sec. 143(3) on 29/02/2016 by

assessing total income at Rs. 18,13,100/-. Subsequently, Pr.CIT by exercising the powers conferred on him u/sec. 263, called the income-tax returns and examined the same and noticed the following aspects:-

*"(i) The assessee has filed a combined P&L account in respect of fish business, contracts and interest & remuneration from the firm M/s. Abhiruchi Foods. On segregation of the income and expenditure relating to fish business only, it is found that the assessee has incurred a huge loss of Rs. 51.84 Lakhs, which is highly unlikely in the line of business and the major expenditure incurred by the assessee in this business were not examined by the AO.*

*(ii) As per the P&L Account, an amount of Rs. 24.17 Lakhs was shown towards interest paid to banks and the entire amount was claimed against remuneration and interest received from the firm M/s. Abhiruchi Foods of Rs. 31.62 lakhs. The details regarding whether all the interest bearing funds drawn from the bank were invested in the firm so as to claim the same against the remuneration & interest received from the firm should have been called for and verified. But, the AO has overlooked this aspect.*

*(iii) The assessee received a share income of Rs. 8,36,457/- which was claimed as exempt U/s. 10 of the I.T. Act, 1961. Therefore, the interest and expenditure related to the earning of the exempted share income should have been computed and disallowed U/s. 14A of the I.T. Act, 1961. But the AO has totally lost sight of the same.*

*(iv) The assessee claimed to have taken a loan of Rs. 2.45 Crores from the firm M/s. Abhiruchi Foods whereas the balance sheet of the firm M/s. Abhiruchi Foods shows only an advance of Rs. 1.45 Crores. This huge difference of Rs. 1 Crore was not questioned by the AO during the assessment proceedings.*

*(v) Substantial portion of assets shown in the balance sheet represents personal assets whereas the capital available was only Rs. 53 lakhs. This aspect also ought to have been examined by the AO."*

Accordingly, the Pr.CIT issued a show-cause notice to the assessee as to why order passed u/sec. 143(3), dated 29/02/2016

should not be revised. In reply, the assessee has filed the following written submissions before the Pr.CIT:-

(a) *Your goodselves have stated that I claimed a huge loss of 51.84 crores in Fish business. It is respectfully submitted that your observation is not correct. I enclose herewith a business wise P&L A/c wherefrom it may be verified that loss is a small amount of 4.59 Lakhs only.*

(b) *Payment of Interest to Bank is to the tune of 24.17 lakhs. Your goodselves have stated that the entire amount is claimed against the interest from M/s.Abhiruchi Foods and the utilization of funds is verifiable. The Funds from the bank are in general used for the purpose of the business through which an income is earned. it may be in the form of Purchases, Expenses, stocks, Debtors and interest yielding Assets. In fact there is a bank loan of 2.21 Crores and the Investment in M/s.Abhiruchi Foods is Rs.3.27 Crores. Though there is no one to one correlation between the Bank O.D and the Investment in the Firm, it may be observed that investment is out of the OD from Bank and claim of interest as expenditure against the Income received, is also not wrong.*

(c) *Receipt of Share Income and the disallowance of expenditure u/s 14A of the Income Tax Act, 1961. In this respect it is brought to your kind attention that the share income from the Firm has no nexus with the investment in the Firm. Whereas the interest received from the firm is totally connected with the investment in the firm. The claim of expenditure is in respect of funds utilized for the purpose of investment i.e. an income yielding asset and no way related to the share income in the firm. Every partner is entitled to claim a share in the Profits and Losses of the Firm without having regard to the amount of capital invested by him. But the interest on capital will be received only in respect of the amount invested. Thus there will not be any interest and expenditure relatable to the exempted share income. Therefore it is not correct to propose a disallowance u/s 14A of the Income Tax Act, 1961.*

(d) *Reflection of Unsecured Loans-Huge Difference of Rs.1 Crore: I have taken a loan of Rs.2.45 Crores from M/s.Abhiruchi Foods. All the amounts were received through Bank Transfers only. As such there is no difference between the amount received from M/s.Abhiruchi Foods as per the books of the firm and as per my books. However in the books of M/s.Abhiruchi Foods a wrong credit was made in Sakthi resources A/c. The funds received from Sakthi Fruits, a proprietary concern of one of the partners viz C. Bala*

*Gangadhar Reddy are wrongly Credited to Sakthi resources A/c. In fact Sakthi fruits represent the Capital introduced by G.Bulu Gangadhar Reddy, one of Partners in M/s. Abhiruchi Foods. As both the names are more or less similar, the accountant wrongly credited the Sakthi Resources account instead of G.Bala Gangadhar Reddy Capital A/c. But for this wrong credit there is no actual difference between the figures. The error was rectified in the subsequent year."*

By considering the same, the Pr.CIT came to a conclusion that the Assessing Officer has not examined all the issues raised by him and therefore the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue and directed the Assessing Officer to redo the assessment.

- 3.** Aggrieved by the order of the Pr.CIT, the assessee is in appeal before the Tribunal.
- 4.** Ld. counsel for the assessee has relied on the grounds of appeal whereas, Id.DR strongly supported the order of the Pr.CIT.
- 5.** We have heard both the sides, perused the material available on record and orders of the authorities below.
- 6.** In this case, assessee has claimed huge loss of Rs. 51.84 lakhs, which was not examined by the Assessing Officer as pointed out by the Pr.CIT. The Pr.CIT has pointed out that an amount of Rs. 24.17 lakhs was shown towards interest paid to the banks. The amount of Rs. 31.62 lakhs was claimed to have been utilized for investment in M/s.Abhiruchi Foods, from which the assessee received remuneration and interest and pointed out that the

Assessing Officer has not examined whether interest free bearing funds are utilised for the purpose of business or not. The Pr.CIT pointed out that the Assessing Officer failed to examine the disallowance u/sec. 14A of the Act. Further, Pr.CIT pointed out that the loans advanced to M/s. Abhiruchi Foods amounting to Rs.1.25 crores whereas in the balance sheet of M/s. Abhiruchi Foods shown only Rs. 1.25 crores. Thus huge difference of Rs.1.00 crore was not questioned by the Assessing Officer during the assessment proceedings. All these aspects as pointed out by the Pr.CIT were not examined by the Assessing Officer. Therefore, the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. We find no reason to interfere with the order passed by the Pr.CIT. Thus, this appeal filed by the assessee is dismissed.

**7.** In the result, appeal filed by the assessee is dismissed.

Order Pronounced in open Court on this 23<sup>rd</sup> day of August, 2019.

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

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 23<sup>rd</sup> August, 2019.**

**vr/-**

*Copy to:*

1. *The Assessee – Smt. Gudimetla Saroja, D.No. 4-37, Mallipudi Street, Main Road, Penumantra Mandal, W.G. District.*
2. *The Revenue – ITO, Ward-1, Tanuku.*
3. *The Pr.CIT, Rajahmundry.*
4. *The D.R., Visakhapatnam.*
5. *Guard file.*

By order

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