

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

M/s. Abhiruchi Foods,  
D.No. 4-41/1, Canal Road,  
Mallipudi, Penumantra Mandal,  
West Godavari District.

vs. ITO, Ward-1,  
Tanuku.

PAN No. AAMFA 5538 M  
(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 : /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–firm M/s.Abhiruchi Foods doing business in food processing unit, filed its e-return of income by declaring total income of Rs. 16,60,110/- Subsequently, case was selected for scrutiny under CASS and

after following due procedure, assessment u/sec. 143(3) was completed on 18/03/2016 by assessing the total income at Rs.20,79,670/-. Subsequently, the Pr.CIT by exercising powers conferred on him u/sec. 263 called the assessment records and examined the same and noticed that as observed from the balance sheet, the funds employed in the business are Rs. 13.62 crores of which about 13.30 crores represent interest bearing funds and the assessee was found to have debited an amount of Rs. 1.41 crores towards interest paid to the banks, creditors and partners. Further noted that out of the interest bearing funds, an amount of Rs. 1.45 crores was advanced to Smt. G.Saroja, one of the partners in the firm, without interest. Therefore, the utilization of interest bearing funds is other than business purpose, ought to have been examined by the Assessing Officer during the assessment proceedings. But, this aspect has been totally overlooked by the Assessing Officer while framing the assessment in the subject case and called the assessee to explain. The assessee has submitted that the entire interest bearing funds are utilized towards meeting the business purpose only. The interest claimed in respect of partners capital is a statutory allowance it is coming to Rs. 33,75,413/-. Thus, interest paid and claimed is totally for business purposes only. Though, Smt. G. Saroja has

not paid any interest during the F.Y. 2012-13, there will not be any loss to the revenue as the interest received by her suffered tax in her individual hands. The Pr.CIT has considered the explanation and observed that as per the provisions of section 36(1)(iii) of the Act, the interest on loans raised by the assessee for its business purpose is admissible deduction. Once the assessee claims any such interest as expenditure in its books of account, the onus is on the assessee to prove that whatever interest bearing funds were raised by the assessee were utilized for the purpose of business. If it transpires that the assessee has advanced certain funds to related parties and charging no interest, the onus lies on the assessee to show before the Assessing Officer to the effect that in spite of outstanding loans on which the assessee is incurring liability to pay interest, there would be sufficient justification to advance the loans to partners for non-business purpose without charging any interest. In the present case, it is a matter of record that the assessee had availed huge amount of loans claiming substantial interest as expenditure in the profit & loss account. Even in the present proceedings, the assessee failed to establish that there was a business compulsion or expediency to make interest free advances to the partners when interest was being paid by the assessee on its borrowings.

No business purpose of the assessee is served by such advances to its partner. Had the money been not advanced to partners, it would have been available to the assessee for its business purposes and to that extent, it may not have been necessary for the assessee to borrow funds from banks/financial institutions. Accordingly, he came to a conclusion that the Assessing Officer failed to examine the issue of interest bearing funds advanced to Smt. G. Saroja without charging interest 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 in view of the observations made by him.

**3.** Aggrieved by the order of the Pr.CIT, the assessee is in appeal before the Tribunal.

**4.** Ld. counsel for the assessee has submitted that the assessment was completed in the case of the assessee u/sec.143(3) after examining all the details. Therefore, the order passed by the Assessing Officer cannot be said to be erroneous and prejudicial to the interest of the Revenue. Counsel for the assessee by pointing out at page No. 19 of the paper book submitted that the Assessing Officer has examined the entire issue in respect of interest payment towards Bank OD, unsecured loans, and Sundry Creditors and also asked specific questions in respect

of the amount of Rs. 1,87,40,309/- towards loans & advances and also asked the details of interest received on the above loans and advances. Therefore, the Assessing Officer after making a detailed enquiry, assessment order was passed. He also pointed out page No. 5 of the paper book that the Assessing Officer has examined the profit & loss account with regard to the entire interest paid to the bank and interest paid to the partners and also examined balance sheet at page No.6 with regard to loans and advances and submitted that all the details are examined, therefore the order passed by the Assessing Officer cannot be said that erroneous and prejudicial to the interest of the Revenue.

**5.** On the other hand, Id.DR relied on the order passed by the Pr.CIT and submitted that the Assessing Officer has not examined the issue of borrowed funds advanced to Smt. G. Saroja and not charging interest thereon, therefore the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue.

**6.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**7.** In this case, assessment was completed u/sec. 143(3) by the Assessing Officer and subsequently, Pr.CIT by exercising powers conferred on him u/sec. 263 asked the assessee to explain

that the interest bearing advances of Rs. 1.58 crore to Smt. G.Saroja one of the partners of the firm without charging any interest. In reply, it was submitted that no interest has been charged, however, the interest paid to the partners suffered tax in their individual hands therefore, no loss to the Revenue. The Pr.CIT not accepted the explanation of the assessee and observed that as per proviso to section 36(1)(iii), the interest on loans raised by the assessee for its business purpose is admissible deduction. Once the assessee claims any such interest as expenditure in its books of account, the onus is on the assessee to prove that whatever interest bearing funds were raised by the assessee were utilized for the purpose of business, accordingly, rejected the explanation of the assessee. From the paper book filed by the assessee as pointed out by the Id.AR at page No. 5, 6 & 19, the Assessing Officer has examined the various issues, however, we find that the Assessing Officer has failed to examine the issue of interest bearing funds advanced to partner Smt. G.Saroja and non-charging of interest thereon. So far as submission given by the assessee is concerned, the interest paid to the partners are already taxed, therefore not charged any interest on advances given to the partner and no loss to the Revenue, is not acceptable for the simple reason that the

Assessing Officer has examined the issue that the interest paid to the partners. We are not able to understand that why he has not examined and why he has not asked the assessee in respect of the issue of interest bearing funds advanced to the partner without charging interest. In our opinion, non-examination of this issue is erroneous and prejudicial to the interest of the Revenue. The Pr.CIT also further noticed that an amount of Rs. 2.45 crores was shown by the partner Smt. G. Saroja as loan received from the firm in her books, but the assessee has shown only 1.5 crore in the balance sheet in the name of the proprietary concern M/s.Sakthi Resources account under the head 'loans & advances'. This discrepancy was not noticed by the Assessing Officer during the course of assessment proceedings. From the assessment order, it is very clear that the above discrepancy has pointed out by the Pr.CIT was not noticed by the Assessing Officer, therefore on this count also, the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue, hence, Pr.CIT directed the Assessing Officer to redo the assessment. The relevant portion of the order of the Pr.CIT is as under:-

- "a) *To quantify the interest expenditure attributable to the advance of Rs. 2,45,50,000/- (as clarified by the assessee) made to Smt. Smt. G. Saroja, Proprietor of Sakthi Resources and disallow such interest out of the interest expenditure*

*claimed in the P & L account under sec. 36(1)(iii) of the I.T. Act.*

- b) *To verify the veracity of the claim of the assessee that the discrepancy of Rs. 1.00 crore in case of Smt. G. Saroja's account is due to wrong posting of the entry as explained by the assessee in the present proceedings with reference to the bank accounts and the income tax returns of the respective parties and make appropriate addition, if necessary on due verification."*

**8.** The Hon'ble Delhi High Court in the case of *Gee Vee Enterprises Vs. Addl. CIT [(1975) 99 ITR 375 (Delhi)]* has considered the role of the Assessing Officer which is as under:-

*"The position and function of the Income Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income Tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income Tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."*

**9.** In view of the above facts and circumstances of the case and also by considering the judgment of the Hon'ble Delhi High Court in the case of *Gee Vee Enterprises (supra)*, we find no reason to

interfere with the order passed by the Pr.CIT. Thus, this appeal filed by the assessee is dismissed.

**10.** 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 – M/s. Abhiruchi Foods, D.No. 4-41/1, Canal Road, Mallipudi, Penumantra Mandal, West Godavari 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.