

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.539/Viz/2018
(निर्धारण वर्ष/Assessment Year : 2012-13)**

Income Tax Officer
Ward-2(2)
Guntur

Vs. M/s Victoria Constructions
D.No.4-5-29/54D
3rd Lane, Vidya Nagar
Guntur
[PAN : AAHFV8434E]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Smt Suman Malik, DR
: Shri I.Kama Sastry, AR

सुनवाई की तारीख / Date of Hearing

: 25.09.2019

घोषणा की तारीख/Date of Pronouncement

: 30.10.2019

आदेश /ORDER

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

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur in Appeal No.10066/2017-18 dated 10.08.2018 for the Assessment Year (A.Y.) 2012-13.

2. In this case, all the grounds of appeal are related to the addition made by the Assessing Officer (AO) on account of difference in opening stock i.e. excess opening stock debited to Profit & Loss account which was not available as closing stock in the previous year's P&L account. In the instant case, the assessment was completed u/s 143(3) r.w.s 263 of the act on total income of Rs.24,79,517/- and the AO made the addition of Rs.20,62,775/-, representing the opening stock difference. On appeal, the Ld.CIT(A) deleted the addition. The tax effect in this case is below Rs.20 lakhs and the department raised the exception stating that the case is covered by exceptions in Board Circular No.3/2018 dated 11.07.2018 as the issue falls under exception as per para 10(c) of the Board Circular. During the appeal hearing, the Ld.DR submitted that the AO had completed the assessment originally u/s 143(3) of the Act vide order dated 07.01.2015 accepting the income returned. Subsequently, there was an audit objection against the order passed u/s 143(3) dated 07.01.2015. The Ld.Pr.CIT has taken up the case for revision u/s 263 and set aside the order of the AO with a direction to redo the assessment. The AO has given effect to the order passed by the Ld.Pr.CIT by passing order u/s 143(3) r.w.s. 263 dated 14.06.2017. In the order u/s 263, the AO made the addition of Rs.20,62,775/- to the returned income relating to the opening stock difference.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO.

4. Against the order of the Ld.CIT(A), the revenue filed appeal and taken the exceptional ground.

5. We have heard both the parties and perused the material placed on record. In the instant case, there was no audit objection against the order passed by the Ld.Pr.CIT u/s 263 of the Act or against the order passed u/s 143(3) r.w.s.263 of the Act. The objection was raised by the audit party in the original assessment made u/s 143(3) and the Ld.Pr.CIT has taken up the case for revision u/s 263 and set aside the assessment with a direction to redo the assessment. Accordingly, the AO passed the order u/s 143(3) r.w.s. 263 of the Act, making the addition. The assessee went on appeal before the Ld.CIT(A) against the order passed u/s 143(3) r.w.s. 263 of the Act and the Ld.CIT(A) allowed the appeal of the assessee. Therefore, we hold that once the action is taken u/s 263 on the audit objection, the appeal filed by the revenue does not fall under exceptions in Board Circular No.3/2018 dated 11.07.2018. The Ld.DR could not explain how the case falls under exceptions to the Board Circular. Hence, the exception claimed by the department is misplaced. Accordingly the appeal of the revenue does not cover under exception of the Board Circular.

4.1. Even otherwise on merits also, the AO made the addition of Rs. 20,62,775/- representing the difference of opening work-in-progress. For the A.Y.2012-13 the assessee has debited the opening work in progress of Rs.1,04,66,384/- relating to Patnaik towers as against the closing work-in-progress of Rs.84,04,059/- in the immediately preceding assessment year which resulted in a difference of Rs.20,62,775/- excess claim and the same was added back to the income as difference in the opening work in progress for the A.Y. 2012-13. The assessee explained that there was a mistake in closing stock in the AY 2011-12 and it had shown the closing work in progress of Rs.84,04,059/- in P&L account without considering the opening work-in-progress of Rs.20,62,775/- which was available in the AY 2010-11. Both the opening stock and the closing stocks to the extent of Rs.20,62,775/- were omitted in the Profit and Loss account of earlier year. Thus, submitted before the AO that there was no difference in the closing work-in-progress and the trading results, hence submitted that there is no case for making the addition. The Ld.CIT(A) had examined the explanation of the assessee in detail and considered that there was no short admission of income as pointed out by the AO and accordingly deleted the addition. For the sake of clarity and convenience, we extract the relevant part of the order of the Ld.CIT(A) which reads as under :

“A careful consideration has been given to the copy of the Return filed, balance sheets and Trading & Profit & Loss a/cs, for Asst. Year 2010-11, 2011-12 & 2012-13, submissions of the appellant and also the decision of the AO on the issue. The AO mainly contended that as the books of account were audited and in the balance sheet as per the Return for the Asst. Year 2011-12, the WIP in question was nowhere mentioned by the appellant, hence, the plea of the appellant was rejected and addition was made by the AO. As per the sub missions of the appellant, in the balance sheet as on 31-03-2011, ‘the WIP was shown at Rs. 1,04,66,834/- towards Patnaik Towers. It was contended that opening WIP of Rs. 20,62,775/- which is appearing in the balance sheet of year 2010 by mistake omitted on both sides of the Trading & Profit a/c but taken the same to Balance sheet along with WIP of Rs. 84,04,059/-. The appellant contended that there is no revenue loss on account of non-presenting the WIP correctly,

The appellant has reflected Rs. 1,04,66,834/- as opening WIP towards Patnaik Towers for the Asst. year 2012-13, whereas, the closing WIP for the Asst. Year 2011-12 was Rs, 84,04,059/-. In this regard the balance sheet for the Asst. year 2011-12 have been perused and found that the closing WIP of Patnaik Towers reflected at Rs. 1,04,66,634/-, hence, there is no mistake in adopting the same as opening WIP for the Asst. year 2012-13. The appellant also has filed explanation w.r.t. non mentioning of WIP at Rs.1,04,66,834/ in the Return for the Asst. year 2011-12. The appellant has reflected the net current assets and liabilities as per the submissions supra, hence, it has to be treated that the appellant reflected the WIP even in the Asst. year 2011-12. The appellant also filed Trading & Profit and Loss account adopting the WIP on both sides to state that there is no revenue loss.- The closing WIP of Rs. 20,62,775/- of Asst. Year 2010-11, if taken as opening WIP for the Asst. Year 2011-12, then naturally the same figure should be shown in the closing WIP of the Asst. Year 2011-12. in this way, the appellant presented the trading account and argued that there is no revenue loss which appears to be correct. Considering all these facts, there is no merit in making addition on this ground by the AO. The balance sheets and Trading & Profit loss a/c for the Asst. years 2011-12 & 2012-13 claimed to have been filed before the A. it is evident that the figure of Rs. 84,04,059/- adopted by the Ad as closing WIP of Asst. Year 2011-12 which is not appearing in the Return, means these papers were considered even by the AO. Having regard to the Balance Sheets and Trading & Profit and Loss a/cs, the Asst. Years 2010-11, 2011-12 & 2012-13, there is no short admission as pointed out by the AO, hence the addition is hereby deleted and the ground is allowed.”

4.2. From the order of the Ld.CIT(A), it is observed that the amount of Rs.20,62,775/- was appearing in the balance sheet of as on 31.03.2010 and by mistake the assessee omitted the closing stock on both sides of the

trading, P&L account of AY 2010-11, but taken the same to the balance sheet correctly at Rs.104,04,059/-. The AO having verified the books of accounts did not find any defect in the books of accounts with regard to the omission or suppression of closing stock for the year ending 31.03.2012 or over statement of expenditure for the year under consideration. Therefore, we hold that the Ld.CIT(A) has rightly deleted the addition and no interference is called for. Accordingly, the appeal of the revenue is dismissed.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 30th October, 2019

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 30.10.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-2(1), Visakhapatnam
2. निर्धारिती/ The Assessee - M/s Victoria Constructions, D.No.4-5-29/54D, 3rd Lane, Vidya Nagar, Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam