

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM  
(through web-based video conferencing platform)**

**श्रीवी. दुर्गाराव, न्यायिकसदस्यएवंश्रीडि.एस. सुन्दरसिंह, लेखासदस्यकेसमक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.No.358/Viz/2019  
(निर्धारणवर्ष/Assessment Year:2009-10)**

Irri Surya Prakash Rao  
S/o Veerraju  
Jaggery Merchant  
Nidadavole  
**[PAN : AAEP12478N]**

Vs

Income Tax Officer  
Ward-2, Tanuku

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

Shri G.V.N.Hari, AR  
Smt Suman Malik, DR

सुनवाई की तारीख / Date of Hearing :  
घोषणा की तारीख/Date of Pronouncement :

03.06.2020  
05.06.2020

**आदेश /ORDER**

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

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-11, Hyderabad in Appeal No.213/2017-18/CIT(A)-11/Hyd dated 28.02.2019 for the Assessment Year (A.Y.) 2009-10.

2. In this case, assessment was completed originally u/s 143(3) for the A.Y.2009-10 on 18.11.2011 determining the total income of Rs.3,57,610/- against the declared income of Rs.1,82,610/-. Subsequently, the assessment was reopened u/sec. 147 of the act for violation of provisions of section 40A(3) of the Income Tax Act, 1961 [in short 'Act'] by issue of notice u/s 148 of the Act. The reassessment was completed u/s 143(3) r.w.s. 147 by an order dated 17.08.2015 on total income of Rs.14,36,430/-. In the reassessment order, the Assessing Officer (AO) made the additions relating to payments made to lorries for non- deduction of tax at source u/s.194C of the Act for an amount of Rs.3,08,150/-, payment of commission for non deduction of tax at source u/s 194H of the Act for an amount of Rs.4,01,065/- and the payments in violation of provisions of Sec.40A(3) of the act for an amount of Rs.3,69,600/- aggregating to Rs.10,78,815/-.

3. Against the order u/s 143(3) r.w.s. 147, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) disposed of the appeal ex-parte by an order dated 28.02.2019.

4. Against which the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee has raised the issue with regard to validity of reopening of assessment u/s 147 which was

not adjudicated by the Ld.CIT(A) by speaking order. The assessment year under consideration 2009-10 and the notice was issued on 04.04.2015, that is beyond 4 years. Neither the CIT(A) nor the AO brought out the failure of the assessee to reopen the assessment. Similarly on merits also, the Ld.CIT(A) has not decided the issues by speaking order. Therefore, requested to remit the matter back to the file of the Ld.CIT(A) to decide the issue on merits. The Ld.AR assured proper compliance before the Ld.CIT(A).

5. On the other hand, the Ld.DR fairly conceded to remit the matter back to the file of the Ld.CIT(A).

6. We have heard both the parties and perused the orders of the Ld.CIT(A) and the grounds of appeal raised by the assessee before the Ld.CIT(A). The Ld.CIT(A) has decided the issues without analyzing the issues properly both on merits as well the issue of reopening of assessment. Though the Ld.CIT(A) id permitted to pass exparte order the same should be on merits and by speaking order. Therefore, in the interest of justice, we remit the matter back to the file of the Ld.CIT(A) with a direction to dispose of the appeal on merits by speaking order.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 5<sup>th</sup> June, 2020.

Sd/-

(वी.दुर्गराव)

(V. DURGA RAO)

न्यायिकसदस्य/JUDICIAL MEMBER लेखासदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated :.05.06.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दरसिंह)

(D.S. SUNDER SINGH)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue – Income Tax Officer, Ward-2, Tanuku
2. निर्धारिती/ The Assessee– Irri Surya Prakash Rao, S/o Veerraju Jaggery Merchant Nidadavole.
3. The Pr.Commissioner of Income Tax, Rajahmundry.
4. The Commissioner of Income Tax (Appeals)-11, Hyderabad.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, Visakhapatnam