

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

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.498/Viz/2019
(निर्धारण वर्ष/Assessment Year:2011-12)**

Asst.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

Vs. Shri Rajendra Bhararia
B-405, VUDA Apartments
MMTC Colony
Seethammadhara
Visakhapatnam
[PAN :AFZPB9622B]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

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

सुनवाई की तारीख / Date of Hearing

: 16.07.2020

घोषणा की तारीख/Date of Pronouncement

: 29.07.2020

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)]-9, Hyderabad in ITA No.10185/CIT(A)-9, Hyd/2018-19 dated 29.04.2019 for the Assessment Year (A.Y.)2011-12.

2. In this case, the assessment was originally completed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') by an order dated 13.01.2014 on total income of Rs.17,08,810/-. In the original assessment proceedings, the Assessing Officer (AO) has disallowed the interest of Rs.78,000/- and completed the assessment u/s 143(3). Subsequently, the assessment was reopened u/s 148 of the Act for the reason of claiming the set off of remuneration received, against the loss on sale of shares and the income from other sources. The AO has observed that the assessee has received the remuneration which required to be taxed as income from salary and the loss from income from other sources is not allowable to be set off against the salary income as claimed by the assessee as per section 71(2A) of the Act and accordingly recorded the reasons and reopened the assessment. The reassessment was completed u/s 143(3) r.w.s. 147 by an order dated 27.11.2015 on total income of Rs.18,98,000/- withdrawing the set off of loss allowed in the original assessment.

3. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee observing that the assessee was admitting the remuneration under the head 'income from other sources' regularly and not under the head 'income from salary'. In the

earlier year and subsequent years also, the assessee had admitted the said income as income from other sources consistently and there was no change in the facts. In the year under consideration also, the assessee had admitted the income under the head 'income from other sources' and the AO completed the assessment accepting the income from other sources, therefore, viewed that the issue was already examined by the AO and has taken a conscious decision to assess the same as income from other sources and hence the reopening of assessment was a change of opinion. Placing reliance on the decision in the case of Kelvinator India (SC) in Civil Appeal Nos 2009-2011 of 2003 Commissioner of Income Tax, Delhi Versus M/s Kelvinator of India Limited with Civil Appeal No.2520 of 2008 dated 08.01.2010, the Ld.CIT(A) quashed the notice issued the notice u/s 148 and allowed the appeal of the assessee.

4. Against which the revenue has filed appeal before this Tribunal challenging the order of the Ld.CIT(A) on the ground that issue of notice u/s 148 is well within the purview of explanation 2 of section 15 of the Act and it does not exclude the receipt by the Director from the scope of section 15 of the Act. On the quantum of tax effect also, the revenue claimed the case under exception as per Circular No.17/2019 dated 08.08.2019. During

the appeal hearing, the Ld.DR submitted that the AO has completed the original assessment without examining the issue with regard to taxability of remuneration under the head 'income from other sources' or 'salary income'. The remuneration required to be taxed under the head 'salary income' but not under the head other sources. This fact has come to the notice of the AO due to audit objection. The loss of expenditure claimed by the assessee is not allowable under the head 'salary income', therefore, submitted that the AO has rightly reopened the assessment and the Ld.CIT(A) has committed blatant error in quashing the notice, hence, requested to set aside the order of the Ld.CIT(A) and restore the assessment order.

5. Per contra, the Ld.AR submitted that perusal of reasons recorded by AO clearly shows that there was no fresh information received by the AO and on the same information which was already examined at the time of original assessment, the AO has taken a different view which constitute difference of opinion thus argued that the AO is not permitted to reopen the assessment on difference of opinion. The Ld.AR further submitted that the assessee has admitted the remuneration under the head 'income from other sources' and claimed the set off of loss from other sources and the AO

has completed the assessment accepting the same. The Ld.AR further submitted that there was no employer and employee relation between the company and the assessee, thus the remuneration received by the assessee was rightly admitted under the head 'other sources'. Therefore, argued that no interference is called for in the order of the Ld.CIT(A), hence requested to uphold the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material placed on record. The assessee has received the remuneration from M/s Sampath Vinayaka Steels (P) Ltd and A.S.Steel City Chits (India) Pvt. Ltd. and offered the same as income from other sources. The assessee was admitting the said remuneration as income from other sources regularly. As observed from the order of the Ld.CIT(A) in the earlier year as well as in the subsequent year also, the assessee had admitted the remuneration received from the company as income from other sources, which was accepted by the department and the head of income was not changed in the subsequent years even after completion of reassessment also, which shows that the department has accepted the contention of the assessee. Since the assessee has admitted remuneration under the head 'income from other sources' and the AO completed the original assessment accepting the income

admitted by the assessee, it cannot be said that the AO has not examined the issue with regard to taxability of income whether the same to be brought to tax as salary income or income from other sources. The entire material with regard to receipt of remuneration, admission of income under the head 'income from other sources' was placed before the AO at the time of original assessment. Though the rule of res judicata does not apply to the Income Tax assessments, rule of consistency does apply to income tax proceedings. The AO is not permitted to take different stand in different assessment years of the same assessee, on same set of facts, which leads to inconsistency. Therefore, as rightly observed by the Ld.CIT(A), following the rule of consistency, in the assessee's own case, the income required to be taxed under the head 'income from other sources' and we are of the considered opinion that having accepted the income as income from other sources u/s 143(3), the AO has taken a conscious decision to assess the income under the head 'income from other sources'. Therefore, reopening of assessment to assess the remuneration under the head 'income from salary' instead of 'income from other sources' constitutes difference of opinion and the AO is not permitted to reopen the assessment on difference of opinion. Therefore, we do not find any reason to interfere

with the order of the Ld.CIT(A) and accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

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

Order pronounced in the open court on 29th July, 2020.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER दिनांक /Dated : 29.07.2020 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
--	--

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

1. राजस्व/The Revenue – The Asst.Commissioner of Income Tax, Circle-3(1) Visakhapatnam
2. निर्धारिती/ The Assessee–Shri Rajendra Bhararia, B-405, VUDA Apartments MMTC Colony, Seethammadhara, Visakhapatnam
3. The Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-9, Hyderabad
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