

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, 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.142/Viz/2020  
(निर्धारण वर्ष/Assessment Year:2015-16)**

M/s Girija Modern Rice Mill  
D.No.159/1, Enikepadu  
Krishna (Dt.)  
Vijayawada  
**[PAN : AAHFG4582E]**

Vs. Pr.Commissioner of Income Tax  
Vijayawada

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri M.V.Prasad, AR  
: Shri D.K.Sonowal. CIT, DR

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

: 22.09.2020  
: 23.11.2020

**आदेश /ORDER**

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

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax (Pr.CIT), Vijayawada dated 17.03.2020 for the Assessment Year (A.Y.) 2015-16.

2. All the grounds of appeal are against to the order passed by the Pr.CIT, Vijayawada u/s 263 of the Income Tax Act, 1961 (in short 'Act'). In the instant case, the assessee is engaged in the business of running a rice mill and admitted total income of Rs.4,82,180/-. Subsequently, the case was taken up for scrutiny and the assessment was completed u/s 143(3) dated 26.12.2017. In this case, the assessee filed petition before the Jt.CIT u/s 144A and the Ld.Jt.CIT issued directions u/s 144A of the Act. The assessee produced books of accounts, bills and vouchers and the AO has verified the same. After verification of the information, AO found that some of the bills were not supported by proper vouchers or supported by self made vouchers, hence, the AO completed the assessment rejecting the books of accounts and estimated the income @0.5% on gross turnover and assessed the income of Rs.7,32,466/-. Subsequently, the Ld.Pr.CIT called for record and reviewed the case. The Ld.Pr.CIT during the revision found that the following incomes which are not related to the business income required to be brought to tax separately and the AO omitted to consider the same in the assessment.

1. Other income : Rs.3,81,03,903/-
2. Interest on SBI Deposit : Rs.1,46,491/-

Therefore, the Ld.Pr.CIT issued show cause notice and directed the assessee to explain as to why the case should not be taken up for revision u/s 263. In response to the notice issued by the Pr.CIT, none appeared, therefore, the Ld.Pr.CIT held that the assessment order passed by the AO u/s 143(3) dt.26.12.2017 is erroneous and prejudicial to the interest of the revenue within the scope of section 263 of the Act, therefore, set aside the assessment and directed the AO to reexamine the issues and complete the assessment denovo.

3. Against which the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the AO considered all the issues raised by the Ld.Pr.CIT in the show cause notice and completed the assessment estimating the income @0.5% of total turnover of Rs.14,64,93,169/-, thus, assessed the total income of Rs.7,32,466/- against the returned income of Rs.4,82,180/-. The Ld.AR further submitted that all the issues raised by the Pr.CIT were examined by the Jt.CIT also u/s 144A of the Act and issued necessary instructions to the AO. Therefore, argued that since all the issues were examined and the assessment was completed u/s 143(3), the present revision of the Pr.CIT is on difference of opinion, thus argued that there is no case for revision u/s 263 of the Act.

3.1. The Ld.AR further submitted that the sum of Rs.3,81,03,903/- represent write off of paddy creditors to show better profit and there is no other income. The Ld.AR further submitted that the firm has not paid dues to the paddy creditors due to strike in rice mill and ultimately, the rice mill has closed its business.

4.0. In respect of interest on SBI Deposit, the Ld.AR argued that it has a direct nexus with the business since the same was business income. The Ld.AR taken our attention to page No.8 of the paper book, wherein, the AO called for details of deposits made in the bank account of SBI and the sums received, form 26AS.

4.1. Referring to page No.9 of the paper book, in question No.12, the AR has demonstrated that the AO has called for the details of Rs.3,81,03,903/- for which the assessee had furnished the reply stating that the same represent write off of paddy creditors in para No.8 of page No.13 of the paper book. Thus argued that the issues raised by the Ld.Pr.CIT were duly considered by the AO and taken a conscious decision that no separate addition is warranted on account of other income, hence, completed the assessment estimating the income. Since the AO has taken a conscious decision, the Ld.AR argued that present revision of Ld.Pr.CIT tantamount to

difference of opinion and on difference of opinion, the Ld.Pr.CIT is not permitted to invoke the provisions of section 263 of the Act. Accordingly, requested to set aside the order of the Ld.Pr.CIT passed u/s 263 and allow the appeal of the assessee.

5. On the other hand, the Ld.DR supported the orders of the Ld.Pr.CIT and argued that the sum of Rs.3,81,03,903/- and interest on SBI constitute other income which was not properly verified by the AO, therefore, argued that the Ld.Pr.CIT has rightly taken up the case for revision u/s 263, hence submitted that no interference is called for in the order of the Ld.Pr.CIT.

6. We have heard both the parties and perused the material placed on record. In this case, assessment was completed u/s 143(3) after receiving directions from Ld.Jt.CIT u/s 144A of the Act. Thus, the assessment was properly monitored by the Jt.CIT. The AO verified the bills, vouchers and on verification, the AO found that some bills, vouchers were unverifiable in nature, hence estimated the income @0.5% net of depreciation and accordingly assessed the total income of Rs.7,32,466/-. No separate addition was made by the AO in respect of other income which was considered by the Ld.Pr.CIT in the proceedings u/s 263 of the Act. However, we find from the paper book filed by the assessee that the AO has

called for the details of other income vide questionnaire dated 10.11.2017 in question No.4,7,12 and 13. Thus, the AO called for the details of the income from other sources as well as specifically other income of Rs.3,81,03,903/- and the interest on bank deposits and considered the taxability of the same separately or otherwise. The assessee in his reply submitted the details regarding other income of Rs.3,81,03,903/- in page No.13 of the paper book which reads as under :

*"The assessee firm is in severe financial crunch during the financial years 2012-13 and 2013-14. The partners have sold their individual properties for repayment of bank loan. During the financial year 2014-15, the assessee firm has written off the paddy creditors to the extent of Rs.3,95,03,903/- in the profit and loss account u/s 41(1). In the trading account, a sum of Rs.14,00,000/- is being credited and in the profit and loss account a sum of Rs.3,81,03,903/- is being credited. The reason for written off is out of the sales, the firm has paid the bank interest of Rs.2,93,45,457 and other payments were being made. The firm is in loss because of huge interest and depreciation. TO maintain the minimum profit, there is no alternative except to write off the paddy creditors as income. But actually, there is liability due to them. Due to liquidity crunch, the firm has not paid dues to these paddy creditors and they did strike on the rice mill and the rice mill was closed for some time also."*

6.1. With regard to interest on deposits, the assessee explained that the same represent interest on deposits made by the assessee firm as margin money for obtaining bank guarantee. Therefore, argued that the other income mentioned in the profit and loss account is part of business income which was considered by the AO and taken a conscious decision that no separate addition is warranted on account of other income. Since it is

apparent from the assessment record that the assessee had explained that the other income represents business income which was accepted by the AO and did not make any addition, after examining the issue in detail, we are of the considered opinion, that the AO has applied his mind and taken a conscious decision holding that the other income is business income and estimation of income @0.5% meets the ends of justice. This Tribunal also in the case of ABC Engineering Works Vs. DCIT, Circle-2(1), Vijayawada in I.T.A. No.112/Viz/2013 dated 28.08.2019 viewed that write off of sundry creditors constitute business income and no separate addition is required in respect of sundry creditors balances written off. The exact relevant content of the order of the Hon'ble ITAT Is reproduced hereunder :

*"the next item of disallowance is net insurance claims received, scrap sales and sundry creditors credit balances written off. All the three items constitute business transactions which takes the character of business income Further if the AO wants to tax the sundry creditors written off, the same should be taxed under section 41(1) of the Income Tax Act which is not the case of the AD The AO has not brought on record any evidence to show that sundry creditors balances written oft satisfy the conditions laid down in Section 41(1) of the act Therefore, we agree with the Ld.CIT(A) that no separate addition is required to be made with respect of sundry creditors credit balances written off".*

Therefore, it is clear that the present revision is on difference of opinion which the Pr.CIT intends to substitute his opinion in place of decision taken by the AO and revision u/s 263 is not permitted on difference of opinion. This view is supported by the decision of Hon'ble

jurisdictional High Court in the case of Spectra Shares and Scrips (P) Limited Vs. Commissioner of Income Tax – III, Hyderabad [2013] 36 taxmann.com 348 (Andhra Pradesh). Hon'ble jurisdictional High Court in the case laws cited supra held that merely because of difference of opinion, Pr.CIT cannot invoke his powers u/s 263 of the Act. For the sake of clarity and convenience, we extract relevant part of the order of the Hon'ble Andhra Pradesh High Court in para No.59 which reads as under :

"59. ....

*The contention of the Revenue that the Assessing Officer had not applied his mind to the material on record cannot be accepted because the respondent in his order dated 31.03.2011 specifically records a finding at Para 5.1 that there is application of mind by the Assessing Officer. The Revenue cannot raise a plea which is not contained in the order of the respondent and is contrary to it and to the record. The contention of the Revenue that there are no reasons given by the Assessing Officer about the nature of activity of the assessee cannot be accepted because a query was raised by him in the course of the assessment proceedings and was replied by the assessee. Obviously, he was satisfied with the explanation of the assessee and therefore did not think that the issue needs to be specifically mentioned. It is settled law that the Assessing Officer in the assessment order is not required to give detailed reasons and once it is clear that there was application of mind by an enquiry, the respondent, merely because he entertains a different opinion in the matter, cannot invoke his powers u/s. 263 of the Act. It is therefore not correct to say that there was no proper enquiry by the Assessing Officer."*

Similarly, this Tribunal in G.V.R. Associates. v.Income-tax Officer, Ward-1(3), Vijayawada, [2017] 88 taxmann.com 716 (Visakhapatnam - Trib.) held that the estimation of the net profit is one of the permissible methods of assessment of income from business. The Assessing Officer had taken a conscious decision of estimating the net profit from business after

considering the nature and complexity of the books of account maintained by the assessee. Once the Assessing Officer had taken a conscious decision and acted in accordance with law and made the assessment, the same could not be branded as erroneous by the Commissioner, simply because according to him, the Assessing Officer should have made further enquiries. The Ld.DR did not bring any other decision to controvert the decisions relied upon by the assessee. Therefore, respectfully following the view taken by the Hon'ble High Court of Andhra Pradesh and the coordinate bench of this tribunal in the case law cited supra, we hold that there is no case for revision u/s 263, hence, we set aside the order of the Pr.CIT passed u/s 263 and allow the appeal of the assessee.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23<sup>rd</sup> November 2020.

Sd/- (वी.दुर्गा राव) <b>(V. DURGA RAO)</b>	Sd/- (डि.एस. सुन्दरसिंह) <b>(D.S. SUNDER SINGH)</b>
<b>न्यायिकसदस्य/JUDICIAL MEMBER</b>	<b>लेखा सदस्य/ACCOUNTANT MEMBER</b>
दिनांक /Dated : 23.11.2020	
L.Rama, SPS	

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

1. निर्धारिती/ The Assessee–M/s Girija Modern Rice Mill, D.No.159/1, Enikepadu, Krishna (Dt.), Vijayawada
2. राजस्व/The Revenue –Pr.Commissioner of Income Tax, Vijayawada
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 4.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, Visakhapatnam