

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**

**BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.253/Viz/2021  
(निर्धारण वर्ष / Assessment Year : 2015-16)**

Darshan Managements  
37-10-40/3A, Ayyappanagar  
Murali Nagar  
Visakhapatnam  
**[PAN : ACPD9238E]**  
**(अपीलार्थी/ Appellant)**

Vs. Income Tax Officer  
Ward 2(1)  
Visakhapatnam

**(प्रत्यर्थी/ Respondent)**

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

: Shri C.Subrahmanyam, AR  
: Shri M.N.Murthy Naik, CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 17.05.2022

घोषणा की तारीख/Date of Pronouncement

: 22.07.2022

**ORDER**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

This appeal is filed by assessee against the order of the Principal Commissioner of Income Tax (in short, Pr.CIT), Visakhapatnam-1 in DIN & Letter No.ITBA/COM/F/17/2020-21/1031851226(1) dated 28.03..2021 for the Assessment Year (A.Y.) 2015-16.

2. Brief facts of the case are that the assessee is a firm engaged in the business of consultancy services and deriving commission income from different companies. The assessee firm filed its return of income for the A.Y.2015-16, declaring taxable income of Rs.4,45,900/-. The case was selected for scrutiny under CASS. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act'), assessing the income at Rs.5,45,900/- by making certain disallowances. The Ld.Pr.CIT noticed from the P&L account that the assessee firm has declared expenditure of Rs.7,60,000/- towards remuneration paid to its working partners namely Shir Dadi Surya Kiran and Smt. Dadi Anuradha of Rs.3,80,000/- each. It is also noticed that Smt. Dadi Anuradha is also working as a teacher in Sri Prakash Vidyaniketan, Seethammadhara, Visakhapatnam. Since, one of the partners of the assessee firm, Smt. Dadi Anuradha is engaged in full time teaching profession, remuneration paid to her of Rs.3,80,000/- by the assessee firm is not allowable u/s 40A(2)(a) of the Act. However, it is seen that the AO omitted to disallow the same in the assessment order and no enquiries were made in this regard during the assessment proceedings. Therefore, revisional proceedings were initiated u/s 263 by issuing show cause notice on 20.08.2019 and the same was served on the assessee. On this aspect, contention of the assessee was that Smt. Dadi Anuradha

monitors administration works at the office, such as, verifying the loan processing documents and interacting with the customers and general administration partly in a day. The Ld.Pr.CIT was not satisfied with the explanation offered by the assessee and passed an order u/s 263 with a direction to gather necessary evidences, cause proper verification and pass consequential order after giving opportunity of being heard to the assessee.

3. Aggrieved by the order of the Ld.Pr.CIT, the assessee is in appeal before the Tribunal and raised the following grounds :

1. *That under the facts and circumstances of the case, the order passed by Pr.Commissioner of Income Tax (in short "Pr.CIT") u/s 263 of the IT Act dt.26.10.2017 (SIQ) is contrary to facts of the case and provisions of law.*

2. *The action of the Ld.Pr.CIT in invoking his jurisdiction u/s 263 on an issue which has already been considered and examined by the Assessing Officer in the assessment proceedings is against the provisions of the section, therefore, the impugned order is not valid order in the eyes of law.*

3. *The Ld.Pr.CIT while examining the issue pertaining to payment of salaries to the partner, that was considered and allowed in the assessment proceedings, did not point out the error committed by the Assessing Officer, instead, directed the assessing officer to conduct further enquiries which is not within the scope of provisions of sec.263 of the IT Act.*

4. *For these and other reasons that are to be urged at the time of hearing of the case, the appellant prays that the order passed u/s 263 of the IT Act are liable to be quashed in the interest of justice.*

4. The Ld.Counsel for the assessee has submitted that the AO has examined everything and allowed the remuneration as expenditure to the firm. The said Dadi Anuradha is working as part time teacher and in the evening, other holidays and during vacation period, she used to attend administration work, verified loan processing documents and interacted with parties etc and meagre amount of Rs.3,80,000/- was fixed as remuneration to the working partner. Therefore, there is no prejudice to the interest of the revenue as contemplated by the Ld.Pr.CIT. Hence, the Tribunal may be pleased to set aside the order passed u/s 263.

5. Per contra, the Ld.Counsel for the revenue submitted that there is no verification made by the AO, therefore, proceedings u/s 263 were initiated.

6. We have heard both the parties and perused the material placed on record. The main contention of the assessee is that Smt.Dadi Anuradha is a teacher. After school working hours, she used to attend office for an administration work and verification of loan applications etc and is paid reasonable remuneration of Rs.3,80,000/- only and there is no bar under the law that the working partner should be full time working partner. Therefore, she is working as a part time / temporary teacher in the said

school. Considering the facts and circumstances of the case, there is also possibility to attend the work during holidays and after school hours. Therefore, we are of the view that initiation of proceedings u/s 263 is not valid on this count. Hence, we set aside the order passed by the Ld.Pr.CIT u/s 263 and allow the grounds raised by the assessee.

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

Order Pronounced in open Court on 22<sup>nd</sup> July, 2022.

Sd/- (एस बालाकृष्णन) <b>(S.BALAKRISHNAN)</b> लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (दुव्वूरु आर.एल रेड्डी) <b>(DUVVURU RL REDDY)</b> न्यायिक सदस्य/JUDICIAL MEMBER
Dated : 20 .07.2022	
L.Rama, SPS	

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

1. निर्धारिती/ The Assessee- Darshan Managements, 37-10-40/3A, Ayyappanagar, Murali Nagar, Visakhapatnam
2. राजस्व/The Revenue – Income Tax Officer, Ward 2(1), Visakhapatnam
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income Tax, Visakhapatnam-1.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR,ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam