

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.164/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2018-19)**

Sri Keerthi Projects
3-20-14, Near Recruiting Office
Pattabhipuram
Guntur
[PAN : ABJFS1107Q]

Vs. Income Tax Officer
Ward-1(1)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Dr.Satyasai Rath, CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 06.12.2023

घोषणा की तारीख/Date of Pronouncement

: 08.12.2023

आदेश /ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax (PCIT) vide DIN & Order No.ITBA/REV/F/REV5/2022-23/1051741782(1) dated 31.03.2023, for the Assessment Year (A.Y.) 2018-19.

2. Brief facts of the case are that the assessee, a firm carrying out the business in civil work contracts filed it's return of income on 29.10.2018,

declaring a total income of Rs.15,25,100/- for the A.Y.2018-19. The case was selected for "Complete Scrutiny" under CASS to verify excess contribution to PF and SAF. The assessment was completed u/s 143(3) r.w.s. 143(3A) and 143(3B) by NeAC, Delhi on 09.03.2021, determining total income of Rs.86,40,720/- after making the following disallowances / additions :

1. Disallowance of excess contribution made of Rs.23,49,302/- u/s 36 r.w.r.87.
 2. Addition of proportionate income of Rs.57,70,407 @34.75% by applying Gross Profit Margin ratio with respect to Difference of Rs.1,66,05,488/- in receipts shown in ITR and Form 26AS and TDS Credit thereon of Rs.11,65,105/- given.
 3. Disallowance of Rs.1,61,015/- u/s 40(a)(ia) on payment of interest of Rs.5,36,718/- to M/s HDB Finance Services, a Non-Banking Finance Company.
3. On subsequent examination of the relevant assessment record, the Ld.PCIT observed that the assessment order was passed without making proper verification, hence, considered the assessment order as erroneous and prejudicial to the interest of revenue within the meaning and scope of section 263 of the Act. A detailed show cause notice u/s 263 was issued and served on the assessee on 08.03.2023 with the issues viz., (i) unexplained expenditure u/s 69C (ii) receipts offered in ITR vs. Receipts in Form 26AS for the A.Y.2018-19 and (iii) addition to fixed assets.

Despite proper service of the notice and even after affording an opportunity, the assessee failed to provide the necessary information. Hence, the Ld.PCIT considered that the assessee has no explanation to furnish the information in respect of the issues raised in the show cause notice and hence, invoking the revisionary powers u/s 263 of the Act, the Ld.PCIT partially set aside the assessment order with a direction to redo the assessment in accordance with the law after making all necessary inquiries and verification after affording a reasonable opportunity of being heard to the assessee.

3. Aggrieved by the order of the Ld.PCIT, the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. *The order of the learned Principal Commissioner of Income Tax, Vijayawada is erroneous both on facts and in law;*
2. *The learned Principal Commissioner of Income Tax erred in holding that there is any error in the assessment order passed u/s 143(3) r.w.s. 143(3A) and 143(3B) dated 09.03.2021 which is prejudicial to the interest of revenue.*
3. *The learned Principal Commissioner of Income Tax erred in holding that there is any excess contribution to the PF Account and that any disallowance is called for from the PF account;*
4. *The learned Principal Commissioner of Income Tax erred in holding that there is any difference in the receipts admitted by the appellant firm compared to the receipts as per 26AS;*
5. *The learned Principal Commissioner of Income Tax erred in holding that there is an error in the order of assessment made by the*

Assessing Officer in estimating the income at 34.75% of the difference;

6. The learned Principal Commissioner of Income Tax erred in holding that there were investments in acquiring assets the source of which were not examined by the Assessing Officer.

7. The learned Principal Commissioner of Income Tax erred in setting aside the assessment for being redo by the Assessing Officer particularly when there is no error in the assessment order which is prejudicial to the interests of revenue.

8. Any other ground or grounds that may be urged at the time of hearing.

4. It was the only submission of the Ld.AR that the Ld.PCIT issued notice to the assessee on 08.03.2023 and the order was passed on 31.03.2023, within short span of 20 days. The Ld.AR further submitted that the assessee was unable to substantiate it's claim before the Ld.PCIT, therefore, pleaded for one more opportunity of being heard before the Ld.PCIT.

5. On the other hand, the Ld.DR submitted that the assessee was given opportunity to submit the required information, but the assessee failed to avail the same. Hence, contended that the Ld.PCIT is justified in setting aside the assessment partially with a direction to the AO to redo the assessment. He, therefore, pleaded to uphold the order passed by the Ld.PCIT and dismiss the appeal filed by the assessee.

6. We have heard both the parties and perused the material available on record. It is evident from the record that the Ld.PCIT passed order u/s 263 as the assessee failed to provide relevant information in response to the show cause notice before the Ld.PCIT. The Ld.AR submitted before us that the Ld.PCIT issued notice to the assessee on 08.03.2023 and the order was passed on 31.03.2023, within short span of 20 days. The Ld.AR further submitted that the assessee was unable to substantiate its claim before the Ld.PCIT due to paucity of time. He, therefore, pleaded before the Tribunal that the assessee may be given one more opportunity of being heard before the Ld.PCIT to substantiate its claim. Keeping in view the facts and circumstances of the case and in order to meet principles of natural justice, we are inclined to remit the matter back to the file of the Ld.PCIT with a direction to afford another opportunity of being heard to the assessee to substantiate its case and pass order accordingly. The assessee is also directed to adhere to the notices issued and cooperate with the revenue authorities by furnishing information sought with verifiable evidences. Hence, the grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 8th December , 2023.

Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER Dated : 08.12.2023 L.Rama, SPS	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिक सदस्य/JUDICIAL MEMBER
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee– Sri Keerthi Projects, 3-20-14, Near Recruiting Office, Pattabhipuram, Guntur
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1(1), Guntur
3. The Principal Commissioner of Income Tax, Guntur
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam