

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM "DIVN" BENCH, VISA KHAPATNAM
श्री विजय पाल राव, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.154/Viz/2025
(निर्धारण वर्ष / Assessment Year : 2020-21)

Sita Rama Raju Sagi, Bhimavaram – 534202. PAN: EGAPA3925J (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1, Bhimavaram. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Mrs. Hema Latha K, CA
प्रत्यर्थी की ओर से / Revenue by	:	Dr. Satyasai Rath, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	30/04/2025
घोषणा की तारीख/Date of Pronouncement	:	20/05/2025

O R D E R

PER S. BALAKRISHNAN, AM:

This appeal filed by the assessee is directed against the order of the Learned Principal Commissioner of Income Tax-1, Visakhapatnam ("Ld. PCIT") passed U/s. 263 of the Income Tax Act, 1961 ("the Act") vide DIN

& Order No. ITBA/COM/F/17/2024-25/1073408354(1), dated 18/02/2025 for the AY 2020-21.

2. The facts in brief are that the assessee being an individual filed his return of income on 31/03/2021 for the AY 2020-21 admitting a total income of Rs. 6,61,470/-. Subsequently, the case was selected for limited scrutiny through CASS and notices U/s. 143(2) and 142(1) of the Act were issued from time to time. Considering the submissions furnished by the assessee during the course of the assessment proceedings, the Ld. AO completed the assessment proceedings without any additions to the total income thereby accepting the return of income filed by the assessee. The Ld. PCIT by powers vested U/s. 263 of the Act, considered the assessment by the Ld. AO U/s. 143(3) r.w.s 144B of the Act as erroneous insofar as prejudicial to the interest of the revenue. He therefore issued show cause notices on 13/09/2024 and 29/10/2024 through ITBA asking the assessee to furnish any submissions / representations in the revision of income by denying the benefit of carry forward of house property loss and denying the claim of the assessee by treating the rental receipts as income from house property instead of income from business. In response to the show cause notices, the assessee furnished his reply on 8/11/2024. It was submitted by the assessee that the assessee is a Doctor by profession and has let out the property to his patients for a

short time stay who are undergoing treatment in his clinic. The Ld. PCIT after careful perusal of the replies furnished by the assessee observed that the explanation of the assessee is not acceptable since the income generated from renting of rooms shall be classified based on the nature of activities conducted and accordingly it is more appropriate to consider it as professional income rather than income from house property. The Ld. PCIT therefore directed the Ld. AO to re-do the assessment by providing a reasonable opportunity of being heard to the assessee by re-computing the assessee's income by treating the house property income as professional income and also denying the benefit of carry forward loss from house property as the assessee has admitted income from profession U/s. 44ADA of the Act. On being aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us by raising the following grounds of appeal:

- “1. *That under the facts and circumstances of the case, the order passed by the Ld. PCIT U/s. 263 dated 18/02/2025 is not in accordance with the provisions of law.*
2. *Ld. PCIT erred in invoking the provisions of section 263 of the Act to revise the assessment order in sole reason that Assessing Officer is wrong in assessing the rental income as income from house property instead of assessing it as business income.*
3. *Ld. PCIT ought to have known that the proceedings U/s. 263 of the Act can be initiated only when the assessment order is both erroneous and also prejudicial to the interest of the revenue whereas in the present case the assessment order is not erroneous inasmuch as the issue considered for review U/s. 263 of the Act has been examined in the assessment*

proceedings wherein AO applied his mind in verifying the subject issue before completing the assessment.

4. *When the Ld. AO has examined the subject issue and has taken a view to assess the rental income as income from house property, Ld. PCIT has erred in invoking the impugned revision U/s. 263 of the Act only to thrust upon his opinion in assessing the income in a particular manner as he thinks fit by setting aside the assessment which is not allowed under the provisions of section 263 of the Act.*
5. *The contention of the Ld. PCIT while passing the subject order U/s. 263 of the Act that Ld. AO allowed the house property loss to be carried forward without making any enquiry or examination on the issue from his side is erroneous and factually misplaced since Ld. AO made enquiries called for the details of rental income examined its nature before completing the subject assessment.*
6. *For these and other reasons that are to be urged at the time of hearing of the appeal the appellant prays that there is no error in the order passed by AL and in fact the order passed by the Ld. PCIT itself is erroneous both on facts and as well as in law, therefore, the same needs to be set aside in the interest of justice.”*

3. The two issues emanating from the grounds raised by the assessee are as follows:

- (1) Treating the income from house property as income from business and
- (2) denying the benefit of carry forward loss of income from house property.

On this issue, the Ld. AR submitted that the case was selected for limited scrutiny for the purpose of verification of income from house property and the Ld. AO has verified the submissions made by the assessee during the assessment proceedings and by applying his mind and on

being satisfied, accepted the return of income of the assessee. She also submitted that the Ld. AO has issued a notice on 22/10/2021 U/s. 142(1) of the Act wherein specific details were sought with respect to the income from house property and the details of house properties. Further, vide notice U/s. 142(1) dated 17/08/2022, the Ld. AO also sought the complete address and PAN of the tenants along with copy of the rental agreement and bank statements. The assessee submitted the replies including the documentary evidence were filed before the Ld. AO. Thereafter, she also submitted that the Ld. AO has issued a show cause notice on the issue of allowability of interest from house property. She therefore pleaded that the Ld. AO on being satisfied with the replies of the assessee, after examining the documentary evidences, completed the assessment without making additions. She further pleaded that once when the assessment is completed by the Ld. AO on being satisfied with a specific issue, the Ld. PCIT cannot exercise his powers U/s. 263 of the Act when there is a possibility of the second view. On this issue, she relied on various case laws as follows:

- (1) AP High Court in Deccan Jewellers Pvt Ltd vs. Pr. CIT (Central), Visakhapatnam ITTA No. 8, 9 & 14 of 2021.
- (2) CIT vs. Gabriel India Ltd [1993] 203 ITR 108 (Bom.)
- (3) GVR Associates vs. ITO in ITA No. 221/Viz/2015
- (4) M/s. Nue-Tech Engineers vs. CIT-1, Visakhapatnam in ITO No. 570/Viz/2013
- (5) Supreme Court [2000] 109 taxman 66 (SC)



- (6) Andhra Pradesh High Court in Spectra Shares & Scrips (P) Ltd vs. CIT (AP) 354 ITR 35
- (7) Visakhapatnam Tribunal in ITA No. 81/Vizag/2016
- (8) Delhi Tribunal [2019] taxmann.com 92 (Delhi Tribunal)
- (9) Andhra Pradesh High Court in ITTA No. 512 of 2011 & 177 of 2012
- 10) Allahabad High Court in [2019] 110 taxmann.com 170 (Allahabad)
- 11) Allahabad High Court in [2015] 60 taxmann.com 243 (Allahabad)
- 12) Visakhapatnam Tribunal in ITA No. 137/Viz/2014
- 13) Delhi Tribunal in ITA No.3432/Del/2019

She therefore prayed that the order of the Ld. PCIT deserves to be quashed.

4. Per contra, the Learned Departmental Representative ("Ld. DR") argued that the property was on rent to the in-patients on the pretext of professional income since it is integrated to the income derived from profession of the Doctor (the assessee). He also submitted that there is no land-lord and tenant relationship and hence cannot be considered as rental income. He also pleaded that there cannot be two possible views since the rental income derived from in-patients shall be considered only as professional income. Countering the arguments of the Ld. DR, the Ld. AR submitted that even if the income is considered as income from profession, it is revenue neutral and hence prayed for allowing the income as income from house property.

5. We have heard both the sides and perused the material available on record. It is an undisputed fact that the assessee has given on rent

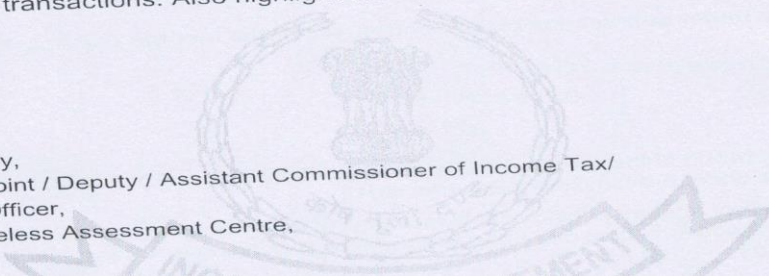
the property to his own patients who are undergoing treatment in the clinic. The Ld. AO has issued notices U/s. 142(1) of the Act dated 22/10/2021 and 17/08/2022 which are reproduced below for reference:

		GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT National Faceless Assessment Centre Delhi			
To, SITA RAMA RAJU SAGI 304 SITA TOWER,ASR NAGAR BHIMAVARAM WEST GODAVARI 534202,Andhra Pradesh					
PAN: EGAPS3925J	Assessment Year: 2020-21	Date: 22/10/2021	DIN: ITBA/AST/F/142(1)/2021- 22/1036539045(1)		
Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961					
Dear Taxpayer,					
Kindly refer to notice u/s 143(2) of the Income-tax Act, dated 29/06/2021 for A.Y 2020-21 for conducting assessment proceedings under E-assessment Scheme, 2019.					
2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2020-21 .					
3. You are requested and required to kindly furnish or cause to be furnished on or before 08/11/2021 by 11:00 AM , the accounts and documents specified in the Annexure to this notice.					
4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)					
Yours faithfully, Additional / Joint / Deputy / Assistant Commissioner of Income Tax, National Faceless Assessment Centre, Delhi					

ANNEXURE

1. Brief note on source of income and business activity carried out during the year under consideration.
2. Computation of income.
3. Bank details specifically mentioning the bank account no. with the bank and branch name. Also furnish statement of all the bank accounts held during the year under consideration.
4. Details of loss claimed under the head income from house property with supporting documentary evidence viz. bank certificate in respect of repayment of loan, loan sanction letter etc.
5. Details of all the house properties owned by you including the rented property specifically mentioning the address of the properties. Also furnish the name and PAN of the tenant alongwith the agreement and the bank statement highlighting the rent receipt transactions. Also highlight the entries of interest payment on loan borrowed.

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi





GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



To,
SITA RAMA RAJU SAGI
304 SITA TOWER, ASR NAGAR BHIMAVARAM
WEST GODAVARI 534202, Andhra Pradesh

PAN: EGAPS3925J	Assessment Year: 2020-21	Date: 17/08/2022	DIN: ITBA/AST/F/142(1)/2022- 23/1044728027(1)
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आयकर अधिनियम, 1961 की धारा 142 की उप-धारा (1) के तहत सूचना
Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

महोदय/महोदया/मैसर्स
Sir/ Madam/ M/s,

निर्धारण वर्ष 2020-21 के लिए निर्धारण के संबंध में, आपको निम्न करने की आवश्यकता है:
In connection with the assessment for the assessment year 2020-21, you are required to:

- क) 23/08/2022 03:44 PM को या उससे पहले अनुलग्नक के अनुसार मांगे गए खातों और दस्तावेजों को प्रस्तुत करें, अथवा प्रस्तुत कराएँ। या
- a) Produce, or cause to be produced, the accounts and documents called for as per annexure on or before 23/08/2022 03:44 PM or
- ख) अनुलग्नक के अनुसार और उसमें निर्दिष्ट बिंदुओं या मामलों पर मांगी गई जानकारी जो कि आयकर अधिनियम, 1961 की धारा 144 ख के अनुसार निर्धारित तरीके से प्रमाणित हो 23/08/2022 03:44 PM को या उससे पहले प्रस्तुत करें।
- b) Furnish the information called for as per annexure and on the points or matters specified therein and authenticated in the prescribed manner as per section 144B of the Income-tax Act, 1961 on or before 23/08/2022 03:44 PM.
- ग) उपरोक्त साक्ष्य/सूचना आयकर विभाग की 'ई-फाइलिंग' वेबसाइट (www.incometax.gov.in) में आपके खाते के माध्यम से 'ई-प्रोसीडिंग्स' सुविधा में इलेक्ट्रॉनिक रूप से प्रस्तुत की जानी है। ई-फाइलिंग वेबसाइट (www.incometax.gov.in) पर 'ई-प्रोसीडिंग्स'/'पहचान विहीन निर्धारण' पर संक्षिप्त नोट उपलब्ध हैं।
- c) The above-mentioned evidence/information is to be furnished electronically in 'e-Proceedings' facility through your account in 'e-Filing' website of Income Tax Department (www.incometax.gov.in). Brief note on 'e-Proceedings'/'Faceless Assessment' are available on the e-Filing website (www.incometax.gov.in).

अनुलग्नक ANNEXURE

- I. आयकर अधिनियम, 1961 की धारा 142(1) के तहत निम्नलिखित खाते या दस्तावेज या जानकारी मांगी गई है:
1. The following accounts or documents or information is/are sought under section 142(1) of the Income-tax Act, 1961:

This office is in receipt of your reply in e-proceedings on 21/01/2022. On perusal of your reply and documents submitted, it is observed that you have not furnished the details/documents as asked vide point no.5 of the notice u/s 142(1) dated 22/10/2021 and further reminders dated 27/11/2021 and 13/01/2022.

You are once again requested to furnish the following details :

- Details of the rented property specifically mentioning the complete address of the property. Also furnish the name and PAN of the tenant alongwith the copy of agreement and the bank statement highlighting the rent receipt transactions.
- Kindly furnish complete details by 23/08/2022 so as to enable this office to complete the proceedings at the earliest.
- .Notice u/s 142(1) dated 22/10/2021 is attached.

Assessment Unit/Verification Unit/Technical Unit/Review Unit
Income Tax Department

NOTE: To know the originator Unit of this Communication, kindly see the Digital Signature.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT



To, SITA RAMA RAJU SAGI 304 SITA TOWER ,ASR NAGAR BHIMAVARAM WEST GODAVARI 534202 ,Andhra Pradesh India	
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PAN: EGAPS3925J	Assessment Year: 2020-21	Date: 29/08/2022	DIN: ITBA/AST/F/143(3)(SCN)/20 22-23/1045022648(1)
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Show cause Notice as to why the proposed variation should not be made

Ms/ Mr/ M/s,

Kindly refer to ongoing assessment proceedings in your case for the Assessment Year 2020-21.

2. The following variation(s) prejudicial to your interest are proposed to be made in your case:-

2.1 During the course of assessment proceedings following notices were issued to the assessee:

Type of notice/communication	Date of notice/communication	Date of compliance given	Response of the assessee received/not received	Date of response received	Response type (Full/part/adjournment)	Remarks if any.
Notice u/s 142(1)	22/10/2021	08/11/2021	Received	23/10/2021	Adjournment	Adjournment allowed
Notice u/s 142(1)	27/11/2021	02/12/2021	Received	06/12/2021	Adjournment	Adjournment allowed
Notice u/s 142(1)	13/01/2022	18/01/2022	Received	14/01/2022 21/01/2022	Adjournment Part reply	Adjournment allowed
Notice u/s 142(1)	17/08/2022	23/08/2022	Received	19/08/2022	Adjournment	Adjournment

				25/08/2022	Full reply	allowed -
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2.2 The case has been selected for limited scrutiny under CASS for verification of Income from House property.

2.3 The assessee replied in e – proceedings on 25/08/2022 and submitted receipt of municipal taxes paid stating that inadvertently, due to mistake he had not claimed the municipal taxes from rental income.

The municipal taxes paid cannot be allowed to the assessee as he offered the income u/s 44ADA of the Income Tax Act, hence, the municipal taxes paid are deemed to have already been given full effect

2.4 Further, on verification of the details filed by the assessee, it is seen from the computation of income submitted by the assessee that income from house property has been wrongly computed and it has not been computed as per the Income Tax Act. Same is illustrated as under:

House property computation by assessee			House property computation as per Income Tax Act		
Rent	received	-	Rent received	-	5,00,000
	5,00,000				
Less: Sec.24 deduction-30%			Less: Sec.24 deduction @ 30%		
1. Statutory deduction	1,50,000		1. Statutory deduction	1,50,000	
2. Current Year interest	(22,15,186)		2. Current Year interest	(2,00,000)	
			House property income 1,50,000		
	House property loss				
	(18,65,186)				

The maximum allowable deduction on account of interest paid on loan for house property is Rs.2,00,000/- only.

Thus, the assessee has earned Rs.1,50,000/- as income from house property. Hence, the assessee is hereby required to show cause as to why an amount of Rs.1,50,000/- should not be added to the total income.

You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly.

3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 16:39 hours of 05/09/2022, whereby you may either:-

a. accept the proposed variation; or
b. file your written reply objecting to the proposed variation; or
c. If required, in addition to filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request **can only be** made by clicking the Seek Video Conferencing button available against the SCN , in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time through video conference.

4. In case no response is received by the given time and date, the assessment shall be finalized taking into account the variation(s) stated above.

Assessment Unit
Income Tax Department



Further, the Ld. AO has also issued show cause notice dated 29/08/2022 which is reproduced above. It is noticed that the Ld. AO has issued show cause notice calling for explanation from the assessee. The assessee in response furnished elaborative explanation. The Ld. AO considering the explanation furnished by the assessee accepted the explanation by treating the rental income as income from house property. Accordingly, it is observed that the Ld. AO has verified the rental income earned by the assessee and has accepted the explanation of the assessee for treating such rental income as income from house property instead of income from business. Thus, the Ld. AO has made enquiries to his satisfaction and has applied his mind while deciding the

character of income by accepting the submissions of the assessee and therefore, it cannot be set-aside on the ground of lack of enquiries. It is not mandatory for the Ld. AO to give finding on each and every issue he has undertaken during the scrutiny proceedings. Further, it was also submitted by the Ld. AR that the case was selected for limited scrutiny, solely for the purpose of examining the income from house property. Thus, when the Ld. AO is being satisfied on the explanation provided by the assessee for which the limited scrutiny has been initiated it cannot be termed as inadequate or improper enquiry by the Ld. AO. Thus, there is no reason to believe that the Ld. AO did not examine the issue at the assessment stage. Since the scrutiny was based on the sole reason for examining the income from house property, it could not be said that the Ld. AO would not have gone through the material available on record. The Ld. AO has taken one of the possible views in the mater as per law and if the Ld. PCIT does not agree with that view of the Ld. AO, the assessment order cannot be treated as erroneous insofar as it is prejudicial to the interest of the revenue. Considering these facts and circumstances in the light of the material available on record, it cannot be considered as case of inadequate or no enquiry and thus Explanation-2 to section 263 of the Act cannot be attracted. Therefore, the assessment could not be held to be erroneous insofar as it is prejudicial

to the interest of the revenue. We therefore set-aside the impugned order passed U/s 263 of the Act and restore the assessment order.

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

Pronounced in the open Court on 20th May, 2025.

Sd/-
(VIJAY PAL RAO)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated :20/05/2025

OKK - SPS

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

1. निर्धारिती/ The Assessee – Sita Rama Raju Sagi, flat No. 302, Lotus Icon ASR Nagar, Bhimavaram, Andhra Pradesh-534202.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Old Usha Mansion, Juvvalapalem Road, Sivaraopeta, Balusumoodi Bheemavaram-534202, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam