

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.195/Vizag/2012**  
(निर्धारण वर्ष / Assessment Year: 2009-10)

VDM Charitable Trust,  
Eluru  
[PAN: AAATV5072F]  
(अपीलार्थी / Appellant)

CIT,  
Rajahmundry  
Vs.  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR  
प्रत्यार्थी की ओर से / Respondent by : Shri P. Hari Prasada Rao,  
DR  
सुनवाई की तारीख / Date of hearing : 15.09.2016  
घोषणा की तारीख / Date of Pronouncement : 07.10.2016

**आदेश / ORDER**

**PER G. MANJUNATHA, Accountant Member:**

This appeal filed by the assessee is directed against order of the CIT, Rajahmundry u/s 263 of the Income Tax Act, 1961 (hereinafter called as 'the Act') and it pertains to the assessment year 2009-10.

2. The brief facts of the case are that the assessee is a society registered u/s 12AA of the Act, filed its return of income for the

assessment year 2009-10 on 30.9.2009 declaring nil total income after claiming exemption u/s 11 of the Act. The assessment was completed on 14.12.2009 u/s 143(3) of the Act, accepting return filed by the assessee.

3. The CIT, Rajahmundry issued a show cause notice dated 8.8.2011 and asked to explain why the assessment order passed by the A.O. u/s 143(3) of the Act, dated 14.12.2009 shall not be revised under the provisions of section 263 of the Act. The CIT proposed to revise the assessment order for the reason that on examination of assessment record, it is found that the A.O. has failed to examine certain issues which rendered the assessment order erroneous, in so far as it is prejudicial to the interest of the revenue in terms of section 263 of the Act. The CIT, in the said show cause notice, observed that the A.O. failed to verify genuineness of expenditure claimed under the head vehicle maintenance, lease rent payment to Usha Cardiac Centre, inspection charges, donation paid to other Trust/Societies, interest on term loan and depreciation claim made by the assessee. The CIT, further, observed that the assessee has spent huge amount towards construction of building and acquisition of other fixed assets, however, the A.O. has not examined the details of construction along with sources of amount invested towards construction. It was further observed that

the assessee has shown certain unsecured loans, however, the A.O. has failed to obtain necessary details with regard to the name and address of the loan creditors and their confirmation letters. The A.O. without examining the above issues, simply completed assessment by accepting return filed by the assessee without discussing in the assessment order as to whether the said items have been examined with reference to necessary evidences, thereby the assessment order passed by the A.O. appears to be erroneous in so far as it is prejudicial to the interest of the revenue. With these observations, issued a show cause notice and asked to explain why the assessment order passed u/s 143(3) of the Act, shall not be revised under the provisions of section 263 of the Act.

4. In response to show cause notice, the assessee submitted that the assessment order passed by the A.O. u/s 143(3) dated 14.12.2009 is not erroneous in so far as it is prejudicial to the interest of the revenue, as the A.O. has examined all the issues pointed out in the show cause notice at the time of assessment proceedings. The assessee further submitted that it has furnished books of accounts and other relevant information in response to the questionnaire issued by the A.O. and the A.O. has called for each and every details about the issues pointed out in the show cause notice. The A.O. after satisfied with the explanations offered by the assessee has chosen to accept the return filed, therefore,

the assessment order passed by the A.O. cannot be considered as erroneous in so far as it is prejudicial to the interest of the revenue.

5. The CIT after considering the explanations furnished by the assessee held that the assessment order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of the revenue, as the assessing officer has failed to examine the issues pointed out in the show cause notice. The CIT, further, observed that the A.O. has completed assessment by accepting return filed by the assessee, without examining the specific points referred to in the show cause notice with regard to certain expenditure and additions to fixed assets. The CIT, further, observed that the A.O. has failed to examine the sources for investment in construction of building and also failed to examine the nature and source of unsecured loans. The CIT questioned various issues right from correctness of certain expenditure claimed by the assessee such as vehicle maintenance expenditure, inspection charges, interest on term loans and depreciation. According to the CIT, the A.O. never examined the above issues with reference to any documentary evidences and also the assessment record does not show an iota of evidence so as to say that the A.O. has called for details before accepting the explanations offered by the assessee. The CIT further observed that the A.O. not only examined the issues pointed out in

the show cause notice, but failed to apply his mind before completion of assessment. Therefore, the assessment order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, set aside the assessment order passed by the A.O. and directed the A.O. to give effect to order u/s 263 of the Act, by passing a consequential order within the stipulated time frame after affording reasonable opportunity of being heard to the assessee. Aggrieved by CIT order, the assessee is in appeal before us.

6. The Ld. A.R. for the assessee submitted that the assessment order passed by the A.O. u/s 143(3) of the Act, dated 14.12.2009 is not erroneous, in so far as it is prejudicial to the interest of the revenue, as the A.O. has examined all the issues pointed out by the CIT in the show cause notice. The A.R. further submitted that the CIT was not correct in directing the A.O. to conduct further enquiries with regard to the issues which were already examined by the A.O. at the time of assessment proceedings. The A.R. further submitted that the A.O. has examined all the issues pointed out by the CIT by way of specific questionnaire and the assessee has submitted relevant details on various occasions, which was considered by the A.O. before completion of assessment. Therefore, the CIT was not correct in coming to the conclusion that assessment order passed by the A.O. is erroneous in so far as it is

prejudicial to the interest of the revenue. The A.R. further submitted that the CIT has raised number of issues in the revision proceedings, however, failed to come to the definite conclusion that the A.O. has not examined the above issues. The CIT merely observed that the A.O. has not conducted proper enquiry or the enquiries conducted by the A.O. is inadequate, therefore, he wants further verification on the issues. The assessee has submitted all the information before the A.O. and the A.O. has verified all the issues and applied his mind before completion of assessment, therefore, the CIT cannot come to the conclusion that there is lack of enquiry on the part of the A.O. in examining the issues.

7. The Ld. A.R. referring to the consequential order passed by the A.O. u/s 143(3) r.w.s. 263 of the Act, submitted that the assessing officer has passed consequential order wherein he has accepted all the issues pointed out by the CIT in the revision proceedings, except the issue with regard to the disallowance of inspection charges. The A.O. has disallowed inspection charges for want of proper bills and vouchers, except this all the issues noticed by the CIT have been examined and accepted as found to be correct. Therefore, it is abundantly clear that the issues pointed out by the CIT are already examined by the A.O. and hence, the CIT was not correct in holding that the assessment order

passed by the A.O. is erroneous. On the other hand, the Ld. D.R. strongly supported the order of Ld. Commissioner.

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The CIT assumed jurisdiction to revise the assessment order for the reason that the A.O. has not conducted proper enquiry before completion of assessment, therefore, the assessment order passed by the A.O. u/s 143(3) of the Act dated 14.12.2009 is erroneous in so far as it is prejudicial to the interest of the revenue. The CIT revised the assessment order for the reason that the A.O. has completed the assessment without examining the various issues which caused prejudice to the interest of the revenue. The CIT, further, was of the opinion that the A.O. has completed the assessment by accepting return filed by the assessee. According to the CIT, the assessment order passed by the A.O. is cryptic and brief. The A.O. has not discussed anything about the issues in his assessment order and hence opined that the A.O. has not examined the issues pointed out in his show cause notice. The CIT further observed that the A.O. failed to examine certain expenditure claimed by the assessee such as vehicle maintenance, inspection charges, donations, salary and wages, interest paid on term loans and depreciation claim on fixed assets. It was further observed

that the assessee has spent huge amount on acquisition of fixed assets being construction of buildings, however, the sources for such investments has not been examined. Similarly, the assessee shown certain unsecured loans in the balance sheet however, the A.O. has not examined nature and sources of loan creditors with necessary confirmation letters. The assessment record does not reveal an iota of evidence so as to say that the A.O. has called for necessary details before accepting explanations furnished by the assessee. From this it is abundantly clear that the A.O. not only failed to examine the issues, but also failed to apply his mind on various issues, which rendered the assessment order erroneous in so far as it is prejudicial to the interest of the revenue.

9. It is the contention of the assessee that the A.O. has examined all the issues pointed out by the CIT in the show cause notice. The assessee further contended that all the issues pointed out by the CIT have been examined by the A.O. by way of specific questionnaire on various occasions and the assessee has filed necessary details to the satisfaction of the A.O. The A.O. after satisfied with the explanations furnished by the assessee has chosen to accept return filed by the assessee. The order passed by the A.O. may be cryptic and brief, but that itself does not give evidence to say that the A.O. has not examined



the issues pointed out by the CIT. We find force in the arguments of the assessee for the reason that the A.O. has examined the issues pointed out by the CIT in the show cause notice at the time of completion of assessment by way of specific questionnaire. We further observed that the assessee has filed necessary details before the A.O. and the A.O. having satisfied with the explanations furnished by the assessee has completed the assessment.

10. The assessee filed a paper book containing information filed before the A.O. On verification of the details filed by the assessee, we find that the A.O. has issued a questionnaire, for which the assessee has filed its reply dated 3.11.2009 explaining each and every item questioned by the CIT in the proceedings u/s 263 of the Act. We further observed that as pointed out by the Ld. A.R. for the assessee, the assessing officer has passed consequential order u/s 143(3) r.w.s. 263 of the Act. On perusal of the consequential order passed by the A.O., we find that the A.O. has accepted each and every item questioned by the CIT(A) in the proceedings u/s 263 of the Act, except in respect of inspection charges, where the A.O. has made certain additions by observing that the assessee has failed to substantiate the expenditure claim under the head inspection charges with necessary evidences. Except this, all the issues pointed out by the CIT has been accepted by

the A.O. From this it is abundantly clear that the A.O. has examined the issues pointed out by the CIT and accordingly the CIT was not correct in holding that the A.O. has not examined the issues at the time of completion of assessment.

11. Another important aspect to be noted here is that even the A.O. has made certain disallowances towards inspection charges, after disallowance of such expenditure the taxable income of the assessee is nil. The assessee is registered u/s 12AA of the Act, claiming the benefit of exemption u/s 11 of the Act. During the year under consideration, the assessee has spent amount over and above the gross receipts from the property held under Trust towards charitable purpose. After making additions towards inspection charges, still the expenditure incurred by the assessee towards charitable purpose is well within the limit specified u/s 11 of the Act, consequently, there is no element of taxable income. Therefore, we are of the opinion that the assessment order passed by the A.O. is not erroneous in so far as it is prejudicial to the interest of the revenue.

12. The CIT assumed jurisdiction to revise the assessment order on the ground that there is a lack of enquiry on the part of the A.O. in examining certain issues referred to in his show cause notice. The CIT questioned the issues right from verification of certain expenses,

additions to fixed assets, unsecured loans and other issues. The assessee has filed a paper book, which contain the details furnished before the A.O. On perusal of the paper book filed by the assessee, we find that that the assessee has submitted relevant details before the A.O. and the A.O. after satisfied with the explanation furnished by the assessee has chosen to complete the assessment by accepting income returned. Therefore, we are of the view that once the issues which were subject matter of revision u/s 263 of the Act, have been examined by the A.O. at the time of assessment, then the CIT has no jurisdiction to entertain fresh enquiry on the same issues, because he had a different opinion on the issues. In our view, the issues pointed out by the CIT have been thoroughly examined by the A.O., therefore, the CIT was not correct in coming to the conclusion that the A.O. has not examined the issues before completion of assessment.

13. The CIT has power to revise assessment order u/s 263 of the Act, but to invoke the provisions of section 263 of the Act, the twin conditions must be satisfied i.e. (1) the order of the A.O. is erroneous (2) further it must be prejudicial to the interest of the revenue. Unless both the conditions are satisfied, the CIT cannot assume jurisdiction u/s 263 of the Act. It is not necessary that every order which is erroneous may be prejudicial to the interest of the revenue or vice versa. In some

cases the order passed by the A.O. may be erroneous but it may not be prejudicial to the interest of the revenue or vice versa. Unless the order passed by the A.O. is erroneous and also prejudicial to the interest of the revenue, the CIT cannot assume jurisdiction to revise the assessment order, this is because the twin conditions i.e. the order is erroneous and the same is prejudicial to the interest of the revenue are co-exist. In the absence of specific observation from the CIT, to prove the assessment order (i) erroneous and also prejudicial to the interest of the revenue, the CIT cannot revise the assessment order.

14. The assessee has relied upon the decision of Hon'ble High Court of Bombay, in the case of CIT Vs. Nirav Modi (2016) 138 DTR (Bombay)

81. The Hon'ble High Court of Bombay, under similar circumstances held that the power of revision can be exercised only where no enquiry is required under the law is done. It is not open to enquire in cases of inadequate enquiry. The relevant portion of the order is reproduced hereunder:

*Held: It is a settled position in law that powers under s. 263 can be exercised by the CIT on satisfaction of twin conditions viz, the assessment order should be erroneous and prejudicial to the Revenue. By erroneous is meant contrary to law. Thus, this power cannot be exercised unless the CIT is able to establish that the order of the AO is erroneous and prejudicial to the Revenue. Thus where there are two possible views and the AD has taken one of the possible views, no occasion to exercise powers of revision, can arise. Nor can revisional power be exercised for directing a fuller inquiry to find out if the view taken is erroneous, when a view has already been taken after inquiry. The power of revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry.*

(Para 6)

*Revenue contends that the exercise of powers under s. 263 is justified as in this case, as no inquiry in respect of the gifts received during the subject years was done by the AO. This according to the Revenue is evident from the assessment orders dt. 31st Dec., 2009 and 30th Dec., 2010 which do not even make a mention of the gifts received much less discuss and/or deal with the same. During the assessment proceedings for both the assessment years, the AO issued query memos to the assessee, calling upon him to justify the genuineness of the gifts. The assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their bank accounts. On perusal, the AO was satisfied about the identities of the donors, the source from where these funds have come and also the creditworthiness/capacity of the donor. Once the AO was satisfied with regard to the gifts, there was no further requirement on the part of the AO to disclose his satisfaction in the assessment order passed thereon. Thus, this objection on the part of the Revenue, cannot be accepted—Idea Cellular Ltd. vs. Dy. CIT (2008) 215 CTR (Born) 288 : (2008) 3 DTR (Born) 179 : (2008) 301 ITR 407 (Born) followed.*

(Para 7)

*It is next submitted that the donor had not been examined by the AO. It is not in every case that every evidence produced has to be tested by cross-examination of the person giving the evidence. It is only in cases where the evidence produced gives rise to suspicion about its veracity that further scrutiny is called for. If there is nothing on record to indicate that the evidence produced is not reliable and the AO was satisfied with the same, then it is not open to the CIT to exercise his powers of revision without the CIT recording how and why the order is erroneous due to not examining the donors. Thus, this objection to the impugned order by the Revenue is also not sustainable.*

(Para 8)

*Enquiry of a source of source is not the requirement of law. Once the AO is satisfied with the explanation offered on inquiry, it is not open to the CIT in exercise of his revisional powers to direct that further enquiry has to be done. At the very highest, the case of the Revenue is that this is a case of inadequate inquiry and not of "no enquiry." It is well-settled that the jurisdiction under s. 263 can be exercised by the CIT only when its a case lack of enquiry and not one of inadequate enquiry. It is very important to note that the CIT in his order under s. 263 has recorded the fact that there has been no adequate inquiry. Thus, this is not a case of no inquiry, warranting order under s. 263—CIT vs. Gabriel India Ltd. (1993) 114 CTR (Born) 81 : (1993) 203 ITR 108 (Born) and CIT vs. Shreepati Holdings & Finance (P) Ltd. (IT Appeal No. 1879 012013, dt. 5th Oct.; 2013) followed; /TO vs. D.G. Housing Projects Ltd. (2012) 74 DTR (Del) 153 (2012) 343 ITR 329 (Del) and CIT vs. Vikas Polymers (2010) 236 CTR (Del) 476: (2010) 47 DTR (Del) 348: (2012) 341 ITR 537 (Del) relied on.*

(Para 9)

*The CIT in exercise of its powers under s. 263 has merely restored the assessment to the AO to decide whether the gifts were genuine and, if not, then the assessment could be completed on application of s. 68. In this case, the order passed by the AO is not per se erroneous and further the CIT has not given any reasons to conclude that the order is erroneous. In fact, he directs the AO to find out whether the order is erroneous by making further enquiry.*

*(Para 10)*

15. The assessee has relied upon the decision of coordinate bench of Visakhapatnam Tribunal, in the case of Nutech Engineers Vs. CIT in ITA No.570/Vizag/2013 dated 10.6.2016. The coordinate bench of this Tribunal, under similar circumstances held that once the A.O. examined the issues on which the CIT wants further verification, the CIT cannot assume jurisdiction on the same issues which were already examined by the A.O. by stating that the A.O. has conducted inadequate enquiry or there is a lack of enquiry. The relevant portion of the order is reproduced hereunder:

*"CIT(A) assumed jurisdiction to revise the assessment order on the sole ground that there is a lack of enquiry on the part of the A.O. in examining the issues referred to in his show cause notice. The question of low net profit declared by the assessee and also TDS on rent and hire charges have been considered by the A.O. at the time of completion of assessment. The assessee filed a paper book which contains the details furnished before the A.O. at the time of assessment. On perusal of the paper book filed by the assessee, ITAT find that the A.O. has issued a detailed questionnaire in respect of net profit and also TDS in respect of rent and hire charges. The A.O. after satisfied with the explanations furnished by the assessee has accepted the income returned. Therefore, ITAT are of the view that once the issues which are subject matter of revision u/s 263 of the Act, have been examined by the A.O. at the time of assessment, the CIT has no jurisdiction to entertain fresh enquiry on the same issues, because he has a different opinion on the issues. In ITAT considered opinion, the issue of net profit and TDS on rent and hire charges has been examined by the A.O. at the time of assessment, therefore, the CIT was not correct in coming to the conclusion that the A.O. has not examined the issues".*

16. Considering the facts and circumstances of the case and also applying the ratios of the case laws discussed above, we are of the view that the assessment order passed by the A.O. u/s 143(3) of the Act, dated 14.12.2009 is not erroneous in so far as it is prejudicial to the interest of the revenue. Therefore, we quash the order passed by the CIT u/s 263 of the Act and restore the assessment order passed by the A.O. u/s 143(3) of the Act.

17. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 7<sup>th</sup> Oct'16.

Sd/-  
(वी. दुर्गराव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

Sd/-  
(जी. मंजुनाथा)

**(G. MANJUNATHA)**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 7.10.2016

VG/SPS

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

1. अपीलार्थी / The Appellant – M/s. V.D.M. Charitable Trust, Bishop's House, Xavier Nagar, Eluru
2. प्रत्यार्थी / The Respondent – DCIT, Circle-1, Eluru
3. आयकर आयुक्त / The CIT, Rajahmundry
4. आयकर आयुक्त (अपील) / The CIT (A), Rajahmundry
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /  
DR, ITAT, Visakhapatnam
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वरिष्ठ निजी सचिव (Sr.Private Secretary)  
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ITAT, VISAKHAPATNAM