

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

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.(SS)A.No.2/Viz/2016
(निर्धारण वर्ष/Block Assessment 1997-98 to 2003-04)

M/s Sri Radha Krishna Vihar
2-2-8, Brindavan Street
Kakinada - 533003

Vs. The Income Tax Officer
Ward-2
Kakinada

[PAN :AAEFS4555N]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से/ Respondent by : Shri Deba K Sonowal, DR

सुनवाई की तारीख / Date of Hearing : 25.07.2018

घोषणा की तारीख/Date of Pronouncement : 08.08.2018

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Visakhapatnam vide I.T.A.No.101/2010-11/CIT(A)-2/CC/RJY/2015-16 dated 20.06.2016 for the assessment year (block) 1997-98 to 2003-04.

2. All the grounds of appeal are related to the order passed by the AO in giving effect to the order of the ITAT.

3. The brief facts of the case are as under:

The assessee filed return of income admitting the undisclosed income of Rs.35,00,000/- for the block period 1997-2004. The assessment was completed u/s 143(3) r.w.s. 158BC on total income of Rs.77,71,782/-. Verification of the block assessment order reveals that the Assessing Officer (AO) has made the following additions to the income returned.

(i)	Difference in cost of construction	Rs.50,30,933
(ii)	Undisclosed income on account of Suppression of canteen rent as per para No.6 of the order	Rs.5,56,800
(iii)	Undisclosed income on account of Inflation in salaries as discussed in para No.7 of the assessment order	Rs.65,785
(iv)	Undisclosed income on account of Unaccounted credit vouchers As discussed in para 8	<u>Rs.1,36,566</u>
	Total	<u>Rs.57,90,084</u>

Thus the total undisclosed income worked out to Rs.92,90,0984/- as under:

Undisclosed income as per return of income	Rs.35,00,000/-
Addition made as above	Rs.57,90,084/-
Total undisclosed income	<u>Rs.92,90,084/-</u>

2.1. The AO allowed telescopic benefit of the additions made in item No.(ii) to (iv) from the cost of construction and arrived at the total undisclosed income of Rs.77,71,782/- in his order passed u/s 143(3) on 31.03.2005 as under:

Returned income as Block Return	Rs.35,00,000/-
Add Difference in cost of construction	<u>Rs.50,30,933/-</u>
	Rs.85,30,933/-
Less: Telescopic benefit allowed	
(ii) Undisclosed income on account of Suppression of canteen rent as per para No.6 of the order	Rs. 5,56,800
(iii) Undisclosed income on account of Inflation in salaries as discussed in para No.7 of the assessment order	Rs. 65,785
(iv) Undisclosed income on account of Unaccounted credit vouchers As discussed in para 8	<u>Rs. 1,36,566</u>
Total Undisclosed Income	<u>Rs.77,71,782/-</u>

Against the order passed u/s 143(3) r.w.s.158BC the assessee filed appeal and the appeal travelled to the ITAT.

3. During the pendency of appeal against the order u/s 143(3), the AO found that there was mistake in the order passed on 31.03.2005, hence issued notice u/s 154 and passed the rectification order u/s 154

dated 31.08..2005 rectifying the mistake. The AO computed the total undisclosed income at Rs. Rs.85,30,933/- as under :

Total income originally assessed	Rs.77,71,782/-
Add : Telescopic benefit allowed to the assessee on the following items :	
1. Undisclosed income on account of suppression of canteen rent	Rs.5,56,800/-
2. Undisclosed income on account of inflation on salaries	Rs.65,785/-
3. Undisclosed income on account of unaccounted credit vouchers.	Rs.1,36,566/-

Revised total undisclosed income	Rs.7,59,151/-
	Rs.85,30,933/-

4. Against the order u/s 154, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) vide order dated 12.01.2006 observed that in the computation of income, the AO accepted the claim of the assessee to allow the benefit of telescoping, in respect of suppression of canteen rent, inflation in salaries and unaccounted credit vouchers against the investment in construction. However, in computation of income the AO forgot to make the above additions and allowed the telescopic benefit and reduced sums in respect of the said three additions without making the additions, which is incorrect computation of income. The Ld.CIT(A) was of

the view that the AO should have computed the total income by aggregating all the additions to the income returned and then allow the telescopic benefit. Having reduced the sums relating to the telescopic benefit without adding to the income returned, the Ld.CIT(A) held that the AO committed an error and it is a mistake apparent from the record which needs to be rectified u/s 154. The Ld.CIT(A) recomputed the income as per the discussion made in the assessment order dated 31.03.2005 according to the Ld.CIT(A), the computation of income should be as under :

Undisclosed income returned in the Block Return	Rs.35,00,000
Difference in cost of construction	Rs.50,30,933

	Rs.85,30,933
Add : Telescoping benefit allowed to the assessee	
In the following items :	
(ii) Undisclosed income on account of Suppression of canteen rent as per para No.6 of the order	Rs.5,56,800
(iii) Undisclosed income on account of Inflation in salaries as discussed in para No.7 of the assessment order	Rs.65,785
(iv) Undisclosed income on account of Unaccounted credit vouchers As discussed in para 8	Rs.1,36,566

	Rs.7,59,151/-

Total undisclosed income assessed	Rs.92,90,084/-
Less: Telescopic benefit (ii to iv above)	<u>Rs. 7,59,151/-</u>
Total undisclosed Income	Rs.85,30,933/-

4.1. Accordingly, the Ld.CIT(A) held that the rectification order passed u/s 154 by the AO on 31.08.2005 determining undisclosed income at Rs.85,30,933/- is correct and in accordance with the discussion made in the assessment order. Since it was a mistake apparent from record, the Ld.CIT(A) confirmed the rectification order of the AO. The assessee has not filed any appeal against the order of the Ld.CIT(A) dated 12.01.2016, hence as far as the computation of total undisclosed income is concerned the order of the Ld.CIT(A) became final.

5. The assessee went on appeal before the appellate authorities against assessment order passed u/s 143(3) r.w.s.158BC dated 31.03.2005 on the addition of unexplained investment in construction made by the AO amounting to Rs.50,30,393/-. The matter went upto the Tribunal and the Hon'ble ITAT in IT(SS)A No.2/Vizag/2007 dated 21.08.2009 deleted the addition in respect of unexplained investment in cost of construction amounting to Rs.50,30,933/-. The AO has given effect to the order of the Hon'ble ITAT, Visakhapatnam on 26.10.2009 and revised undisclosed income at Rs.42,59,151/-. The assessee filed appeal against the consequential order of the AO dated 26.10.2009, but did not succeed before the Ld.CIT(A). Hence, the assessee filed appeal before this Tribunal.

6. We have heard both the parties and perused the material placed on record. As per the assessment order, the AO made the following additions to the returned income:

(i)	Difference in cost of construction	Rs.50,30,933
(ii)	Undisclosed income on account of Suppression of canteen rent as per para No.6 of the order	Rs. 5,56,800
(iii)	Undisclosed income on account of Inflation in salaries as discussed in para No.7 of the assessment order	Rs. 65,785
(iv)	Undisclosed income on account of Unaccounted credit vouchers As discussed in para 8	<u>Rs. 1,36,566</u> <u>Rs.57,90,084</u>

The assessee requested the benefit of telescope of additions in respect of canteen rent, inflation of salaries and unaccounted vouchers amounting to Rs.7,59,151/- which was allowed by the AO and after allowing telescopic benefit, the total undisclosed income worked out to Rs.85,30,933/- which was correctly computed by the Ld.CIT(A) vide his order dated 12.01.2006 and no appeal was filed by the assessee, against the order of the Ld.CIT(A). Hence the computation made by the Ld.CIT(A) became final . We have also gone through the order of the AO passed u/s 143(3) r.w.s.158BC and subsequent rectification order. The Ld.CIT(A)vide

order dated 12.01.2006 held that the AO has correctly made the computation of total income at Rs.92,90,084/- and then reduced the telescopic benefit. Since the AO has made the additions independently in respect of the investments in construction, suppression of canteen rent received, inflation in salaries and unaccounted credit vouchers, before telescopic benefit, the total undisclosed income would be Rs.92,90,084/- which was correctly arrived at by the Ld.CIT(A). Subsequently, the Hon'ble ITAT has deleted the addition of Rs.50,30,933/-. Since addition relating to unexplained investment in construction was deleted by the ITAT no further benefit on account of telescoping required to be allowed in respect of other additions made by the AO. Therefore, the consequential order would result into total undisclosed income of Rs.42,59,151/- as under:

Gross total Income	Rs.92,90,084/-
Less relief granted by the ITAT	Rs.50,30,933/-
Total undisclosed Income.	Rs.42,59.151/-

Therefore, the AO has correctly arrived at the revised undisclosed income at Rs.42,59,151/- and given effect to the ITAT's order correctly. There was no error committed by the AO or the Ld.CIT(A), hence we uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

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

The above order was pronounced in the open court on 8th August, 2018.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिकसदस्य/JUDICIAL MEMBERलेखासदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 08.08.2018 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) न्यायिकसदस्य/JUDICIAL MEMBERलेखासदस्य/ACCOUNTANT MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 08.08.2018 L.Rama, SPS</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Sri Radha Krishna Vihar, 2-2-8, Brindavan Street, Kakinada – 533003
2. राजस्व/ The Revenue –Commissioner of Income Tax (Appeals)-2, Visakhapatnam
3. The Commissioner of Income Tax (Central),Visakhapatnam
4. The Commissioner of Income Tax(Appeals)-2, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM