

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 206/VIZ/2018
(Asst. Year : 2013-14)**

Grandhi Subhakar,
Flat No. 201, D.No.9-19-
41/3(2), Bachina Residency,
SBI Colony, Visakhapatnam.

vs. ITO, Ward-3(3),
Visakhapatnam.

PAN No. AEVPG 1445 A
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.

Department By : Shri D.K. Sonawal – CIT DR

Date of hearing : 18/03/2019.

Date of pronouncement : 22/03/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax-1, Visakhapatnam, dated 30/03/2013 for the Assessment Year 2013-14.

2. The assessee has filed revised grounds of appeal which are as follows:-

- "1. *The order of the learned Pr. Commissioner of Income Tax-1, Visakhapatnam is contrary to the facts and also the law applicable to the facts of the case.*
2. *The learned Pr. Commissioner of Income Tax is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order dated 28.01.2016 u/s 143(3) of the Act is neither erroneous nor prejudicial to*

the interests of revenue.

3. *The learned Pr. Commissioner of Income Tax is not justified in directing the assessing officer to verify the correctness of the claim of the appellant towards:
 - a. *Interest of Rs.6,59,971/-*
 - b. *Chit loss of Rs.6,65,217/-**
4. *The learned Commissioner of Income Tax ought to have appreciated that the assessing officer initiated enquiries in respect of the above issues and as such it is not a case of 'lack of inquiry 'to enable the learned Pr. Commissioner of Income Tax to invoke the provisions of S.263.*
5. *Any other ground that may be urged at the time of appeal hearing."*

3. Facts of the case in brief are that assessee deriving income from two partnership firms in the capacity of partner, filed his return of income by declaring total income of Rs. 4,14,550/-. The case of the assessee was selected for scrutiny under CASS. Subsequently, after following due procedure assessment was completed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "Act") on 28/01/2016 by assessing total income of Rs.4,79,080/-. Subsequently, Pr.CIT by exercising powers conferred under section 263 has examined the issue and noticed that the assessee has paid interest of Rs. 6,59,791/- to the firm M/s. Sree Tirumala Steels, in which assessee was a partner. The overdrawals made were utilized for personal purpose and has claimed as his business expenditure against remuneration

received from M/s. Sree Tirumala Steels which was allowed by the Assessing Officer, though the same is not allowable deduction.

Further it is noticed that the assessee has claimed chit loss of Rs. 6,65,217/- from income from other sources. The Assessing Officer has accepted the same after satisfying with the explanation of the assessee that the chit bid amount of Rs. 36.00 lakhs was invested in the firm M/s. Shine Steels, wherein the assessee is a partner. However, on perusal of the capital account of the assessee in the books of M/s. Shine Steels, it is noticed that the assessee has invested in the said firm Rs. 18,85,000/- only as against the bid amount of Rs. 36.00 lakhs. Ignoring this fact the Assessing Officer has allowed the entire chit loss claimed under the head 'income from other sources', instead of allowing the proportionate chit loss on the bid amount against income from M/s. Shine Steels received by way of interest & remuneration. The chit amount not invested of Rs. 17,15,000/- which works out to Rs. 3,16,900/- ought not to have been allowed either under the business head or income from other sources. Thus, in view of the above, assessment order dated 28/01/2016 passed under section 143(3) is *prima-facie* erroneous in law and prejudicial to the interest of the Revenue and therefore, the same is proposed to be revised under section 263 of the Act. Accordingly, Pr.CIT has

issued a show-cause notice dated 20/03/2018 by asking the assessee why the assessment order under section 143(3) dated 28/01/2016 should not be revised as per the above discussion. In response to the show-cause notice issued by the Pr.CIT, the assessee has filed written submissions before the Pr.CIT on 31/03/2008 which are reproduced as under:-

"1) The interest of Rs. 6,59,971/- claimed by me against my taxable income is justified, as it is allowable expenditure. The amounts overdrawn by me were utilized for productive purposes only and not for personal purpose. This issue was thoroughly examined by the then learned assessing officer and allowed the same correctly.

2) The chit Loss of Rs.6.65,217/- claimed by me against my taxable Income was also allowable expenditure. This issue was also thoroughly examined by the then learned assessing officer and allowed the same correctly. In this connection / make the following submissions for your kind consideration.

The assessee subscribed to M/s.A.S.Steel City Chits (India) Pvt. Ltd., and Margadarsi Chit Funds Pvt Ltd. and after contributing some subscription he participated and auctioned and became the successful bidder and hence he received prized chit money of Rs. 18 lakhs and Rs. 18 lakhs respectively and consequently incurred chit loss. The both prized chit monies were invested by the assessee in M/s.Shine Steel a partnership firm of Visakhapatnam in which the assessee is a partner. So he received interest of Rs. 4,90,829/- from the said firm on his capital in the previous year 2012.13 relevant to the Asst. year 2013-14. So the assessee is eligible to claim the chit loss of Rs.6,65,217/- against the above interest income as per the provisions of the law and also as per judicial pronouncements. In fact the I-/on 'b/c Jurisdictional High court of Andhra Pradesh also held in the case of CiT vs. Kovvur Textile('1982,I1361ITR 67(AP) that chit loss was allowable against the Income of the assessee.

In the following recent cases it was held the chit loss was an allowable expenditure against the Income of the assessee.

- 1) Ms. V. Kay Translins (P) Ltd. vs. Income-tax Officer*
- 2) Rajees vs. Income-tax Officer.*

So the impugned Chit loss of Rs. 6,15,217/- was fully allowable expenditure/Loss against my taxable Income and it is not justified

to propose to allow part of the said Chit Loss in your above cited show cause notice.

In view of the above facts, circumstances, objections and explanations the impugned assessment order dated 28/01/2016 pass u/s. 143(3) of the I.T. Act in my own case is not at all erroneous in law and prejudicial to the interests of the revenue in any view of the matter.

I therefore earnestly pray your honour to kindly drop your proposal to revise the impugned assessment order dated 28/01/2016 in my own case for the Asst. Year 2013-14 in the interests of justice."

4. The above detailed submission has been considered by the Pr.CIT and directed the Assessing Officer to redo the assessment after giving reasonable opportunity of hearing to the assessee.

The relevant portion of the Pr.CIT's order is extracted as under:-

"4.1 The first part of the assessee's contention that the interest claimed of Rs. 6,59,791/- is allowable for the reason that the amounts overdrawn were utilized for productive purposes only and not for personal purpose and the same was thoroughly verified by the AO and allowed the interest in the assessment is not acceptable in view of the reason that the assessee has not furnished details of the concerns with whom the amounts overdrawn were invested and the proceeds from the said impugned investments either before the assessing officer during the assessment proceedings or before the undersigned during the present proceedings. The AO has simply accepted the assessee's claim without making proper verification regarding the utilization of the amounts overdrawn and thereby the correctness of the interest claim. With regard to the second part relating to the claim of chit loss, the explanation furnished by the assessee contending that he is entitled for the deduction of entire chit loss with a reason that the entire chit bid amount of Rs. 36 Lakhs was invested in the firm M/s Shine Steels and he has also derived interest income of Rs. 4,90,829/- during the F.Y 2012-13 on the same is a fresh information and was never furnished before the assessing authority during the assessment proceedings nor did the AO verify the correctness of the assessee's claim that the entire bid

amount of Rs. 36 lakhs was invested in the firm and thereby entitled to the claim of entire chit loss before allowing the same. Therefore, as the AO has allowed the assessee's claim of interest of Rs. 6,59,971/- and the chit loss of Rs.6,65,217/- without making proper verifications/enquiries regarding business nexus of the interest expenditure claimed and the extent of admissibility of chit loss the assessment order passed is rendered erroneous and prejudicial to the interest of revenue in the light of the Explanation-2 to Sec. 263 of the IT Act.

4.2 From the foregoing discussion and the reasons mentioned in the show cause notice issued it is manifestly clear that the assessment order dated 28.01 .2016 passed by the Assessing Officer in the case of the assessee for A.Y. 2013-14 is not only erroneous but also prejudicial to the interests of revenue as the AO has passed the order without making proper inquiries or verifications that should have been made regarding entitlement of claim of interest and chit loss and as such the twin conditions as contemplated in sec. 263 are satisfied in the present case. Consequently, the assessment is set aside to the file of the AO with a direction to the Assessing Officer to examine the correctness and entitlement of the assessee's claim of interest of Rs.6,59,971/- and the chit loss of Rs.6,65,217/- in the light of the discussions made above and the explanation filed by the assessee before the undersigned during the present proceedings, as the same was filed for the first time, which was not a part of assessment proceedings and complete the assessment accordingly. Needless to say, the assessee shall be afforded reasonable opportunity of being heard to state his case before completion of the set aside assessment."

5. On being aggrieved, assessee carried the matter in appeal before this Tribunal.

6. Ld. counsel for the assessee has submitted that the Assessing Officer has made a detailed enquiry in respect of chit loss and allowed the claim made by the assessee, therefore, the

order passed by the Assessing Officer cannot be said to be erroneous and prejudicial to the interests of the Revenue.

7. On the other hand, Id. Departmental Representative has strongly supported the order passed by the Pr.CIT.

8. We have heard both the parties, perused the material available on record and gone through orders of the authorities below.

9. The case in hand is on two counts. The Pr.CIT has exercised the powers under section 263 of the Act. The first count is with regard to interest payment of Rs. 6,59,971/-. The Assessing Officer without making enquiry simply allowed the claim of the assessee. The second count is with regard to chit loss of Rs.6,65,217/-. In the assessment order, the Assessing Officer has accepted the claim of the assessee without making any enquiry. The Pr.CIT has specifically pointed out in his order that assessee has invested in the firm of Rs. 18,85,000/- as against the bid amount of Rs. 36.00 lakhs, ignoring this fact the Assessing Officer has allowed the entire chit loss claimed under the head 'income from other sources', instead of allowing the proportionate chit loss on the bid amount against income from M/s. Shine Steels received by way of interest & remuneration. Therefore, the order passed by the Assessing Officer is *prima-facie* erroneous and prejudicial to

the interests of the Revenue as pointed out by the Pr.CIT. We find that the Assessing Officer simply accepted the explanation of the assessee and assessment is completed. Therefore, the Pr.CIT has examined all the facts and gave a finding that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. We fully agree with the order passed by the Pr.CIT. We find no reason to interfere with the order passed by the Pr.CIT. Thus, this appeal filed by the assessee is dismissed.

10. In the result, appeal filed by the assessee is dismissed.

Order Pronounced in open Court on this 22nd day of March, 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 22nd March, 2019.

vr/-

Copy to:

1. *The Assessee-Grandhi Subhakar, Flat No. 201, D.No. 9-19-41/3(2), Bachina Residency, SBI Colony, Visakhapatnam.*
2. *The Revenue-ITO, Ward-3(3), Visakhapatnam.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The D.R., Visakhapatnam.*
5. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.