

**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.A.No.06/Viz/2018  
(निर्धारण वर्ष/Assessment Year : 2007-08)**

Smt. Chebolu Lakshmi  
F.No.3, City View Apartment  
Ramnagar  
Visakhapatnam  
**[PAN : ADAPC6283A]**

Vs. Income Tax Officer  
Ward-2(1)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

सुनवाई की तारीख / Date of Hearing : 30.10.2019  
घोषणा की तारीख/Date of Pronouncement : 08.11.2019

**आदेश /ORDER**

**Per Shri D.S.Sunder Singh, Accountant Member :**

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax (Pr.CIT)-1, Visakhapatnam in F.No. Pr.CIT-1/VSP/263/2016-17 dated 27.03.2017 for the Assessment Year (A.Y.) 2007-08.

2. In this case, assessment was completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'Act') on 16.03.2015 on total income of Rs.3,00,020/-. Subsequently, the Ld.Pr.CIT has taken up the case for revision u/s 263 and observed that the Assessing Officer (AO) has committed an error in computing the capital gains on sale of land admeasuring 153 sq.yds at Allipuram Ward, Visakhapatnam. The said land was sold on 31.05.2006 for a consideration of Rs.22,95,000/- which was acquired for a consideration of Rs.9.00 lakhs, against which the AO had adopted the market value of Rs.14,99,400/- as cost of acquisition, which resulted in under assessment of Rs.5 lakhs. Hence, the Ld.Pr.CIT held that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue and accordingly, set aside the assessment order with a direction to redo the assessment after giving opportunity of being heard to the assessee. Against which the assessee is in appeal before this Tribunal.

3. During the pendency of appeal, the assessee raised additional ground stating that the order passed by the Ld.Pr.CIT u/s 263 is barred by limitation, hence the order is invalid. The additional ground raised by the assessee reads as under :

*“On the facts and in the circumstances of the case, whether the Order dt.27.03.2017 u/s 263 of the Act which was served on 26.12.2017 with an inordinate delay of 9 months is barred by limitation?”*

3.1. During the appeal hearing, the Ld.AR submitted the order passed u/s 263 dated 27.03.2017 was served on the assessee on 26.12.2017 with time a gap of 9 months, hence contended that the order was not passed within the time limit allowed u/s 263 of the Act, hence, submitted that the same is invalid. The Ld.AR further submitted that the entire facts are available on record, no fresh enquiry or investigation is necessary for adjudication of the additional ground. Since the additional ground goes to the root of the revision order, the Ld.AR requested to admit the additional ground.

4. On the other hand, the Ld.DR vehemently opposed for admission of the additional ground.

5. We have heard both the parties and observed that the additional ground raised by the assessee goes to the root of the assessment and questions the validity of order passed u/s 263 of the Act. Since the facts are available on record, no fresh enquiry required to be conducted in this case, we admit the additional ground raised by the assessee for adjudication. Accordingly, additional ground is admitted.

6. During the appeal hearing, the Ld.AR submitted that the order u/s 263 required to be passed within 2 years from the end of the financial year in which the orders are sought to be revised. In the instant case, the order u/s 143(3) r.w.s 147 was passed on 16.03.2015 and thus, the time limit available for passing the order u/s 263 got expired on 31.03.2017. In the instant case though the order was dated 27.03.2017, the said order was served on the assessee on 26.12.2017 i.e. after 9 months of passing the impugned order. The Ld.AR further submitted that though there is no time limit for serving the order, the order required to be served to the assessee within a reasonable time after passing the same. In the instant case, the order was served on the assessee after 9 months which cannot be held to be served within the reasonable time by any stretch of imagination. Had the order was passed on 27.03.2017, there is no reason to serve the order with inordinate delay 9 months. Therefore, the Ld.AR argued that the order u/s 263 was passed beyond the time limit allowed under the Act, hence, requested to quash the order u/s 263. The Ld.AR also relied on the order of this Tribunal in the case of Kamaakshi Shipping Vs. ACIT, Circle-1(1) in I.T.A.No.01/Viz/2018 dated 21.08.2019.

7. On the other hand, the Ld.DR submitted that the order was passed on 27.03.2017 and the Ld.Pr.CIT has also made the order sheet noting which

shows that the order was passed within the time limit available u/s 263 of the Act. The Ld.DR further submitted that as per the Act, there is no time limit for serving the order passed. Hence, requested to uphold the order of the Ld.Pr.CIT and dismiss the appeal of the assessee.

8. We have heard both the parties and perused the material placed on record. As per records of the Ld.Pr.CIT and the order sheet entry, the order was passed on 27.03.2017. However, as per the information placed before us by the assessee, the order was served on 26.12.2017 on the assessee, after the lapse of 9 months. Though the Ld.DR submitted that the order was passed on 27.03.2017 as per the noting in the order sheet and there is no time limit for serving the order, the department required to demonstrate that the order was passed on 27.03.2017 and dispatched within the reasonable time. As per the settled issue, the order required to be communicated to the assessee or served to the assessee within the reasonable time. The Ld.DR was asked to explain the reasons for such inordinate delay of 9 months and the Ld.DR failed to adduce any reasonable cause for such inordinate delay in serving the order. The Ld.DR was asked to produce any evidence, such as notice server register, inward outward registers etc., having sent the order for service to the assessee within reasonable time and the revenue could not furnish any evidence to show

that the order was passed before time limit available in the Act and sent it for service to the assessee. We understand that the AO also received the said order at the same time which shows that the department has not made any efforts to serve the order within the reasonable time and failed to explain the reasons for not serving the order within the reasonable time. The department also failed to produce any evidence to show that the order was passed and dispatched to the assessee as well as the AO, within the reasonable time. Therefore, we are unable to accept the contention of the department that the order was passed before the time limit available under the Act. On identical facts, this Tribunal has considered identical issue in the case of Kamaakshi Shipping (supra) and quashed the order passed u/s 263. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.4 to 4.2 which reads as under.

*"4. We have heard both the parties and perused the material placed on record. As per the records of the Ld.Pr.CIT and the order sheet entry, the order was passed on 27.03.2017, however, as per the information placed before us by the assessee, the order was served on the assessee on 26.12.2017 after lapse of 9 months. As per page No.15 of the paper book, the assessee had demonstrated that the order was posted on 23.12.2017 and delivered on 27.12.2017. As submitted by the Ld.AR, the copy of the order of the Ld.Pr.CIT u/s 263 dated 27.03.2017 was also served on the concerned AO also on 18.12.2017. The assessee came to know regarding passing of order u/s 263 from the AO and had received the copy of 263 order on 26.12.2017 from the AO. The above facts clearly show that the order was served on the assessee as well as to the AO after the lapse of 9 months from the date of passing of the order. During the appeal hearing, the Bench has asked for clarification from the Ld.DR with regard to reasons for such a long delay in serving the order to the assessee as well as the AO. The Ld.DR could not submit any valid and reasonable explanation to support the delay. The Bench also has asked the Ld.DR to produce any evidences*

such as notice service register, dispatch register to establish that the order was passed before 31.03.2017 and sent for dispatch to the assessee and the AO within the reasonable time. No such evidence was furnished by the department. The Ld.DR relied on the decision of Hon'ble Supreme Court in the case of K.U.Srinivasa Rao, Vs. Commissioner of Wealth Tax, Andhra Pradesh reported in (1985) 152 ITR 0128, wherein, the Hon'ble Supreme Court held that the act merely require that the order of assessment shall be made within the prescribed period, but it does not require that it should be communicated within the prescribed period and thus, the Hon'ble Supreme Court held that even though the order was served on the assessee on April 06, 1957, the order was held to be made on or before March 29. In the cited order, the delay was only 9 days, hence, the Supreme Court held that the order deemed to have been made on 29.03.1957. However, in the instant case, though the Ld.PCIT stated to have passed the order on 27.03.2017, the department could not place any evidence to show that the order was dispatched for service to the assessee within reasonable time. The proceedings would be completed only after passing the order and communicated the same to the assessee. Unless the communication is sent to the assessee by serving the order, it could not be held to be passed and does not serve the intended purpose. The department could not demonstrate with tangible evidence that the order was passed within time limit permitted in the act and failed to explain the reasons for such a long delay in serving the order to the assessee. Even to the AO the order was served on the on 18.12.2017, which supports the contention of the assessee that the order was back dated. No other evidence was produced by the departmental representative to show that the cited order was passed u/s 263 before 31.03.2017 and sent for dispatch within a reasonable time. Therefore, the case law relied upon by the Ld.DR is not applicable in the assessee's case. The assessee relied on the decision of Hon'ble High Court of Andhra Pradesh in Ushodaya Enterprises Limited (supra), wherein Hon'ble High Court held that the order served beyond 8 months is invalid. For the sake of clarity and convenience, we extract para No.29 of the cited order of the Hon'ble High Court of Andhra Pradesh which reads as under :

"29. The next question that has been argued before us is the issue of limitation. The impugned order of the Commissioner bears the date 20-11-1995. It purports to revise the order dated 25-11-1991 passed by the Appellate Deputy Commissioner, Kakinada. That order was served on the petitioner on 27-1-1992. For setting aside that order in exercise of revisional powers under Section 20(1), a limitation of 4 years from the date of service of notice is prescribed. It is not in dispute that the last date for passing a final order in exercise of revisional power under Section 20(1) is 27-1-1996 i.e., four years from the date of service of the appellate order: Though the impugned revisional order of the Commissioner bears the date 20-11-1995, admittedly, it was served on the appellant on 30.08.1996. We find from the record that the said order reached

*the Commercial Tax Office concerned on 27.07.1996, as the stamp on the top of the order bears out and thereafter it was sent for service to the appellant who received the same on 3-8-1996. Thus, there is time lag of more than 8 months between the purported date on which the impugned revisional order was passed and the date on which it was served on the assessee, The reason for such inordinate delay remains unexplained. Even after perusal of the relevant record, the learned Government Pleader is not in a position to tell us as to what caused such extraordinary delay. In these circumstances, the ratio of the decision in State of Andhra Pradesh v. Ramakishtaiah and Co., 93 STC 406 is attracted and it must be presumed that the order was not passed on the date on which it was purportedly, passed. In an identical situation, the Supreme Court held :*

*“We are of the opinion that this appeal has be dismissed on the ground urged by the assessee himself. As stated above, the order of the Deputy Commissioner is said to have been made on January 6, 1973, but it was served upon the assessee on November 21, 1973, i.e., precisely 10 ½ months later. There is no explanation from the Deputy Commissioner why it was so delayed. If there had been a proper explanation, it would have been a different matter. But in the absence of any explanation whatsoever, we must presume that the order was not made on the date it purports to have been made. It could have been made after the expiry of the prescribed four years’ period. The civil appeal is accordingly dismissed.”*

4.1. Similarly, this Tribunal in the case of Smt.Kosanam Pushpavathi Vs. ITO cited supra, following the decision of Hon’ble Supreme Court in the case of State of Andhra Pradesh Vs. Khetmal Parekh & M.Ramakishtaiah and Co. held as under :

*“6. We have heard both the parties and perused the material placed on record. In this case, assessment order was stated to have been passed on 04.03.2013, but it was served on the assessee on 05.12.2013 i.e after 9 months. For a query from the bench, the Ld.DR replied that the assessment order and demand notice was served through the departmental notice server. Though the Ld.DR argued that the assessment order was passed on 04.03.2013, no evidence was placed before us to establish that the order in fact was passed on 04.03.2013. Though the limitation period is available for passing the assessment order, but not for service of the assessment order and demand notice, the order must be served on the assessee within the reasonable time as held by the various high courts. The Ld.CIT(A) relied on the decision of CIT Vs. Subrata Roy cited supra, wherein, the facts are completely different and distinguishable. In the said case, the*

order was passed u/s 143(3) on 31.12.2008, but the assessee refused to accept the order, hence the assessment order and the demand notice was sent through registered post which caused delay of 47 days and the Hon'ble High Court held that the delay of 47 days is not time long enough which can even make any one suspicious as regards correctness of the date of the order. In the instant case, there was no such default or refusal from the assessee and the delay was 9 months. The department did not establish with any evidence that the said order was passed on 04.03.2013 and explained the reasons for delay in service of the assessment order and the demand notice. Therefore, we are unable to accept the contention of the department that there was a reasonable cause for delay of 9 months in the service of the demand notice and the assessment order. In the absence of any evidence to establish that the order was passed within the time limit allowed u/s 143(3) and failure of the department to explain the delay of nine months from the date of passing the order, we are unable to accept the contention of the revenue that the order was passed on 04.03.2013. The Ld.AR relied on the decision of ACIT Vs. Orissa Stevedores Ltd., wherein, Hon'ble ITAT Cuttack in (2012) 16 ITR 0431 held that the order passed with a delay of 85 days is barred by limitation. Similarly, the Ld.AR relied on the decision of Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. Khetmal Parekh & M.Ramakishtaiah and Co. in Civil Appeal No.491 of 1977 and 1014 of 1977 held as under :

*"We are of the opinion that the theory evolved by the High Court may not be really called for in the circumstances of the case. We are of the opinion that this appeal has to be dismissed on the ground urged by the assessee himself. As stated above, the order of the Deputy Commissioner is said to have been made on January 6, 1973, but it was served upon the assessee on November 21, 1973, i.e. precisely 10 ½ months later. There is no explanation from the Deputy Commissioner why it was so delayed. If there had been a proper explanation, it would have been a different matter. But, in the absence of any explanation whatsoever, we must presume that the order was not made on the date it purports to have been made. It could have been made after the expiry of the prescribed four years period. The civil appeal is accordingly dismissed. No costs."*

*In the instant case, there was a delay of 9 months in serving the demand notice and the assessment order on the assessee. The department did not explain the reasons for service of the said notice and the assessment order with 9 months delay. Therefore, we hold that there is no material to believe that the assessment order was passed on 04.03.2013. Accordingly, we hold that the assessment order passed u/s 143(3) is barred by limitation and the same is annulled and the appeal of the assessee is allowed."*

4.2. *Since the facts are identical to the case laws relied upon by the assessee and the delay involved in the instant case was more than 9 months which is unreasonable and the department could not explain the reasons for such long delay in serving the order to the assessee as well as the AO, we hold that the order was passed beyond the time limit allowed under the Act, hence, the order passed u/s 263 was unsustainable and quashed. Accordingly the appeal of the assessee is allowed."*

8.1. Since the facts are identical to the case law relied upon by the assessee and the delay in service of the order involved was more than 9 months in this case also, we hold that the order was passed beyond time limit allowed under the Act, hence, the order passed u/s 263 is unsustainable and accordingly quashed.

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

Order pronounced in the open court on 8<sup>th</sup> November, 2019.

Sd/-  
(वी.दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 08.11.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

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

1. निर्धारिती/ The Assessee - Smt. Chebolu Lakshmi, F.No.3, City View Apartment, Ramnagar, Visakhapatnam
2. राजस्व/The Revenue - Income Tax Officer, Ward-2(1), Visakhapatnam
3. The Principal Commissioner of Income Tax-1, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam