

**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**

**I.T.A. No.531/VIZ/2019
(Asst. Year : 2010-11)**

ACIT, Circle-2(1),
Vijayawada.

vs.

Nadella Venkata
Nageswara Rao,
D.No. 59-10-5, Gayatri
Nagar, Vijayawada.

(Appellant)

PAN No. AARPN 3710 B
(Respondent)

Assessee by : Shri M.S.R. Prasad, CA

Department By : Shri V. Rama Mohan, Sr.DR

Date of hearing : 23/01/2020.

Date of pronouncement : 29/01/2020.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Vijayawada, dated 19/06/2019 for the Assessment Year 2010-11.

2. The only issue involved in this appeal is whether Assessing Officer after estimating the income of the assessee can again estimate interest on business income as other source.

3. In this case, the Assessing Officer has estimated the business income of the assessee thereafter again estimated @12.5% of the interest receipts of Rs. 6,49,851/- which comes to Rs. 81,231/-. The Id. CIT(A) by following the decision of the ITAT in assessee's own in earlier round of litigation has observed that once the business income is determined on estimate basis again estimating the interest income on the business is not correct and deleted the addition made by the Assessing Officer. For the sake of convenience, the relevant portion of the order is extracted as under:-

"12. I have carefully considered the facts of the case, the assessment order and the Statement of facts furnished by the appellant. The AO made addition of interest income of Rs.81,231/- in the assessment order passed u/s. .143(3) r.w.s. 254, by estimating the same at 12.5% of the interest receipt of Rs.6,49,851/- credited to the P&L account. The impugned addition was made in the order passed in pursuance of the specific directions of the Hon'ble Tribunal in the appellate order dated 20.12.2017 remitting the issue back to the file of the AO. It has been contended by the assessee in the ground of appeal and the Statement of facts that that the addition made by the AO is against the specific directions of the Hon'ble Tribunal.

13. In view of the contention advanced by the assessee, it would be pertinent to refer to the relevant portion of the appellate order of the Hoh'ble Tribunal, which is extracted as under:

10. We heard both the parties and perused the material on record. Once the income is estimated, there is no reason to make a separate addition on account of interest as income from other sources. In this case, the AO has not made out a case for making the addition of interest as income from other sources

separately. As per the Judicial precedents, once the income is estimated no income required to be brought to tax separately. During the appeal hearing, the Ld. AR did not make out case that the impugned interest is business receipt and the Ld. DR also failed to produce any other evidence to establish that there is a case for making the addition of interest income separately. Therefore, we are of the considered opinion the issue needs further verification to hold whether the interest is a separate source of receipt other than from the source of business or not. Therefore, we set aside the order of the Ld. CIT(A) and remit the matter back to the file of the AO to examine The correctness of assessee's claim that the interest forms part of business income or not and decide the issue afresh on merits. Assessee's appeal on this ground is allowed for statistical purposes.

14. As can be seen from the above, while setting aside the order of the CIT(A) and remitting the issue back to the file of the AO, the Hon'ble Tribunal has rendered a specific finding with regard to the issue and given specific directions to the AO regarding the verification to be made. It was held by the Hon'ble Tribunal that once the income is estimated, there is no reason to make a separate addition on account of interest as income from other sources. It was held that the issue needs further verification to hold whether the interest is a separate source of receipt other than from the source of business or not. The Hon'ble Tribunal therefore set aside the order and remitted the issue back to the file of the AO in order to examine the correctness of assessee's claim that the interest forms part of business income and decide the issue afresh on merits.

15. Thus, on a careful reading of the order of the Hon'ble Tribunal, it is seen that the mandate given by the Hon'ble Tribunal to the AO is only to examine the factual correctness of assessee's claim that the interest forms part of his business income. Once the AO makes the said examination and gives a fact finding on the said matter, he has to merely follow the decision rendered by the Hon'ble Tribunal regarding the implication of such factual finding on the issue of making a separate addition towards interest income. The Hon'ble Tribunal had already laid down the principle that once the business income is estimated, there is no reason to make a separate addition on account of interest as income from other sources unless the said interest is a separate source of receipt other than from the source of business.

16. After making examination of the facts as directed by the Hon'ble Tribunal, the AO rendered a factual finding in the

assessment order that the interest receipt of Rs.6,49,851/- forms part of the business income of the assessee. Once the AO rendered the said fact finding, he was bound to follow the principle laid down by the Hon'ble Tribunal in its order that when the interest is not a source of receipt but is derived from the business itself, there is no reason to make a separate addition on account of interest as income from other sources once the business income has been determined on estimate basis. In view of this, the separate addition of Rs.81,231/- made by the AO by computing the same at 12.5% of the interest receipt, though the business income has been worked out on estimate basis and despite the fact finding that the interest receipt of Rs.6,49,851/- forms part of the business income of the assessee, is found to be contrary to the order of the Hon'ble Tribunal.

17. In view of the foregoing discussion, the AO is directed to delete the addition of interest income of Rs.81,231/- made in the assessment order. This ground of appeal is therefore allowed."

4. As the Id. CIT(A) after considering the order of the ITAT, Visakhapatnam Bench in assessee's own case in earlier round of litigation, directed the Assessing Officer to delete the addition on account of interest income of Rs. 81,231/-, we find no reason to interfere with the order passed by the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

5. In the result, appeal filed by the Revenue is dismissed.

Order Pronounced in open Court on this 29th day of January, 2020.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 29th January, 2020.

vr/-

Copy to:

1. *The Assessee - Nadella Venkata Nageswara Rao, D.No. 59-10-5, Gayatri Nagar, Vijayawada.*
2. *The Revenue - ACIT, Circle-2(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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