

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

**BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.160/Viz/2020, 131 & 157/Viz/2020
(निर्धारण वर्ष / Assessment Year : 2011-12 & 2012-13)**

M/s Progressive Poultry Farm
NH-5 Road, Khandavalli
Peravali Mandal

Vs. Income Tax Officer
Ward-1
Tanuku

**[PAN : AACFP7205N]
(अपीलार्थी/ Appellant)**

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: None
: Shri S.P.G.Mudaliar, DR

सुनवाई की तारीख / Date of Hearing

: 02.05.2022

घोषणा की तारीख/Date of Pronouncement

: 11.05.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

Condonation of Delay :

Appeals in I.T.A.No.160/Viz/2020 and 157/Viz/2020 are filed with the delay of 121 days and 124 days respectively. The assessee filed petition for condonation of delay and submitted that the appeals could not be filed in time due to his ill health during Covid pandemic which is beyond his

control. The assessee pleaded for condonation the delay and for admitting the appeals, for which the Ld.DR has raised no objection.

After going through the condonation petition filed, we observe that there is sufficient cause for the delay in filing the appeals during covid pandemic, hence, we condone the delay and admit the appeals for hearing.

2. These appeals are filed by assessee against the orders of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"], Rajamahendravaram in Appeal No.10021&22/2018-19/CIT(A)/RJY dated 06.12.2019 for the Assessment Year (A.Y.) 2011-12 and 2012-13. Since the grounds raised in these appeals are common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under.

3. Brief facts of the case are that the assessee is a partnership firm, has filed it's return of income declaring taxable income of Rs.65,758/-. The case was selected for scrutiny and accordingly, notices were served on the assessee. In response, the assessee furnished certain information. The Assessing Officer (AO) completed the reassessment u/s 143(3) r.w.s. 147 and made an addition of Rs.8,57,883/-.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO holding that the amounts borrowed from the assessee firm are interest bearing funds in the form of capital from the partners and in the form of secured loans. As per provision of 36(1)(iii) of the Income Tax Act, 1961 (in short 'Act'), if any amounts are used for non-business purposes by the assessee, the same are to be disallowed. The Ld.CIT(A) held that since in this case, the partners have made drawings from the assessee firm and used for non business purposes, the provisions of section 36(1)(iii) are squarely applicable.


5. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal. During the course of appeal hearing, none appeared on behalf of the assessee, inspite of service of notice on the assessee.

6. The Ld.DR submitted that the assessee was given sufficient opportunities, but the assessee did not appear before the Ld.CIT(A). Thereafter, the CIT(A) passed the order on merits. Hence, the order passed by the Ld.CIT(A) is to be confirmed.

7. We have heard the Ld.DR and perused the material available on record. The main contention of the Ld.CIT(A) is that the assessee firm gave interest free advances to the then partners out of the borrowed funds. This aspect has come to light during the assessment proceedings during the A.Y.2010-11, wherein an amount of Rs.6.88 lakhs representing interest attributable to diversion of interest bearing funds towards non business purposes, therefore the AO added the same. The Ld.CIT(A) also confirmed the addition made by the AO. It is an undisputed fact that the assessee firm borrowed some interest bearing funds in the form of capital from the partners and in the form of secured loans. It is also an undisputed fact that some of the partners have borrowed some interest free loans from the firm for non business purposes. Therefore, the AO rightly disallowed by applying the provisions of 36(1)(iii) of the Act. The Ld.CIT(A) has also confirmed the same. Therefore, we do not find any infirmity in the orders passed by the AO as well as the Ld.CIT(A) and the grounds raised by the assessee are dismissed.

8. The assessee has filed I.T.A.No.157/Viz/2020 erroneously in duplicate. Hence, the same is dismissed in limine.

9. In the result, appeals of the assessee are dismissed.

ITA No.160/Viz/2020, 131&157/Viz/2020, A.Y.2011-12 & 2012-13
M/s Progressive Poultry Farm, Peravali 

Order Pronounced in open Court on 11th May, 2022.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 11.05.2022

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिकसदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee- M/s Progressive Poultry Farm, NH-5 Road, Khandavalli, Peravali Mandal
2. राजस्व/The Revenue - Income Tax Officer, Ward-1 Aayakar Bhavan, Sajjapuram, Tanuku
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. आयकर आयुक्त (अपील) / Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, Visakhapatnam