

आयकर अपीलीयअधिकरण, 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. Nos.71 & 72/Viz/2021

(निर्धारण वर्ष / Assessment Year :2012-13 & 2013-14)

Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.
(अपीलार्थी/ Appellant)

Vs. Sri K V Madhava Verma,
Viskhapatnam.
PAN: AAXPK 9920 G
(प्रत्यर्थी/ Respondent)

CO No.46 & 47/Viz/2021

(In आयकर अपील सं./ I.T.A. No. 71 & 72/Viz/2021

(निर्धारण वर्ष / Assessment Year : 2012-13 & 2013-14)

Sri K V Madhava Verma,
Viskhapatnam.
PAN: AAXPK 9920 G
(अपीलार्थी/ Appellant)

Vs. Asst. Commissioner of
Income Tax, Circle-1(1),
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, Advocate

प्रत्यर्थी की ओर से / Revenue by

: Sri SPG Mudaliar, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 16/06/2022

घोषणा की तारीख/Date of
Pronouncement

: 21/07/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeals are filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Visakhapatnam (in short Ld. CIT(A) in ITA No.91/2015-16/CIT(A)-1/VSP/2020-21, dated 21/09/2020 and ITA No. 0029/2016-17/CIT(A)-1/VSP/2020-21, dated 21/09/2020 arising out of order passed U/s. 143(3) of the Income Tax Act, 1961 (in short "Act"). Since two issues of the total issues raised by the Revenue in both the Appeals are identical, these two appeals are clubbed, heard together and disposed off in this consolidated order.

2. Brief facts of the case are that the assessee being an individual filed his return of income for the AY 2012-13 and 2013-14 on 30/09/2012 & 29/09/2013 declaring total income of Rs. 23,98,250/- and Rs. 20,31,280/- respectively for the relevant assessment years. Subsequent to the summary assessment, the case was selected for scrutiny under CASS and the statutory notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. The AO after considering the submissions made by the Ld. AR of the assessee, concluded the assessments making additions of Rs. 5,22,70,600/- and Rs. 1,66,64,987/- for the AY

2012-13 and 2013-14 respectively. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), Visakhapatnam. The Ld. CIT(A) considering the submissions and additional evidences made by the assessee, partly allowed the appeal. Aggrieved by the orders of the Ld. CIT(A), the Revenue is in appeal before us.

3. The Revenue has raised two common grounds in both the AYs ie., Ground No.2 & 3 for the AY 2012-13 and Grounds No. 3 & 4 in AY 2013-14 which read as under:

Grounds No.2 & 3 for the AY 2012-13:

2. *The Ld. CIT (A)-1, Visakhapatnam is not justified in deleting the addition made by treating the advances to the extent of Rs. 3,38,00,000/- as unexplained cash credits U/s. 68 of the Act. The Ld. CIT(A) ignored the material facts like non-transfer of the shares even after 9 years from the date of receiving the advances towards sale of shares.*
3. *The Ld. CIT(A)-1, Visakhapatnam is not justified in deleting the addition made by treating the advances to the extent of Rs. 57,95,500/- as unexplained cash credits U/s. 68 of the Act. The Ld. CIT(A) ignored the material facts like non-execution of the sale deeds due to a legal issue or for other reasons while no other supporting documents, including any confirmation letters, from the customers were furnished.*

Grounds No. 3 & 4 in AY 2013-14

3. *The Ld. CIT(A)-1, Visakhapatna, is not justified in deleting the addition made by treating the advances to the extent of Rs. 48,08,000/- as unexplained cash credits U/s. 68 of the Act. The Ld. CIT(A) ignored the material facts like non-transfer of the shares even after 8 years from the date of receiving the advances towards sale of shares.*
4. *The Ld. CIT(A)-1, Visakhapatnam is erred in deleting the addition made by treating the advances to the extent of Rs. 45,08,000/- as unexplained cash credits U/s. 68 of the Act. The Ld. CIT(A) ignored the material facts like non-execution of sale deeds due to a legal issue or for other reasons while no other supporting documents including any confirmation letters from the consumers were furnished.”*

4. The first issue with respect to the ground raised by the Revenue is addition of Rs. 338 lakhs for the AY 2012-13 and Rs. 48 lakhs for the AY 2013-14 being the amount received by the assessee towards sale of shares. The Ld. Departmental Representative (the Ld. DR) submitted that the assessee has sold the shares held by the assessee in M/s. Chiraditya Power Private Limited. The assessee received the consideration in tranches from 27/1/2011 to 31/3/2012 an amount of Rs. 3,38,00,000/- as advance for the sale of shares of the above mentioned company. The Ld. DR further submitted that the assessee has not filed any evidence with respect to transfer of shares during

the AY. The Ld. DR also submitted that the additional evidences under Rule 46A of the IT Rules, 1962 like MoU and details of amount received from prospective buyer of the company was filed before the Ld. CIT(A) and further stated that the MoU is unregistered. The Ld. DR also submitted that the shares have been transferred after a period of almost seven years. The Ld. DR also produced a copy of the company master data downloaded from the Ministry of Corporate (MCA) website, to state that the company has been struck off by the Registrar of Companies (RoC) for non-compliance. On the second issue pertaining to advances received from prospective buyers of the flats, the Ld. DR submitted that no confirmation letters were received from the prospective buyers evidencing the buying of flats from the assessee before the Ld. AO.

Per contra, the Ld. Authorized Representative (Ld. AR) argued that the assessee entered into the MoU being in the nature of slump sale of the company namely Chiraditya Power Private Limited. The Ld. AR further argued that the MoU for transfer of shares between individuals need not require registration as the buyer and the seller have agreed to the terms and conditions as stated in the MoU. On the second issue pertaining to the advance from the prospective buyers of the

flats, the Ld. AR submitted that the sale agreement copies of the confirmation letters have been filed before the Ld. CIT(A).

5. We have heard both the sides and perused the materials available on record and the order of the authorities below. Admitted facts are that the assessee entered into a MoU with Mr. Santosh Varalawar and Mr. D. Saibaba vide MoU dated 6/12/2017 for the sale of shares belonging to the assessee in M/s. Chiraditya Power Private Limited for a total sale consideration of Rs. 9 Crs. It is also not disputed that the transaction did not get through due to the fact that the gas supply to M/s. Chiraditya Power Private Limited was cancelled by ONGC. In view of this, after negotiations, the final consideration by the parties was agreed to the extent of advance payment made by the prospective buyers of the company as full and final settlement for the transfer of the entire 3.2 MW Gas Based Mini Power Plant by way of sale of shares. It is also admitted that the company is not ACTIVE compliant company as per the Companies Act, 2013 due to the fact that it has not filed statutory returns as prescribed under the Act. The Ld. AR submitted that the transfer of shares of the company is between the individuals and not between the companies ie., M/s. Chiraditya Power Private Limited

and the prospective buyer. It is also admitted that Mr. Santosh Varalwar and Mr. D. Saibaba who are prospective buyers of the company as per the MoU has paid Rs. 3.86 Crs through their Associated Entities and group companies as detailed in 4.2.4 of the order of the Ld. CIT(A). It is also not disputed that the identity of the investors namely Mr. Santosh Varalwar and Mr. D. Saibaba and their creditworthiness has been filed before the AO along with the PAN details of the prospective investors. The AO has not disputed the identity and has also erred in not causing any enquiry with the parties. The AO concluded the assessment simply on the basis of non-transferability of the shares to the prospective investors even after nine years and considered it as a non-genuine transaction. We find from the MoU that the assessee has relinquished all its rights over the plant and has given possession to the prospective investors. The MoU terms clearly establishes that the intention of the assessee is to sell the plant to the prospective buyers and merely because of delay in transfer of shares does not entitle the Assessing Officer to treat it as unexplained cash credit U/s. 68 of the Act. We note from the records that the shares deemed to have been transferred in FY 2017-18. The Assessing Officer, as rightly pointed out by the Ld. CIT(A) should have examined this aspect and should have taxed

the income as capital gains in the hands of the assessee instead of treating it as unexplained investment U/s. 68 of the Act. We extract below para 4.2.10 of the CIT(A) order for reference:

“4.2.10. The above terms clearly establish that the appellant had sold the plant by way of MoU probably, he was not able to transfer the shares till 2007. In these circumstances the shares deemed to have been transferred to the investors in the FY 2017-18. The Assessing Officer is directed to examine this aspect and bring to tax the capital gains. There is a definite transfer of plant in lieu of shares. Be that as it may, as Assessing Officer’s observation that, the transaction is not genuine as there is no transfer of shares, is not correct. The Assessing Officer is directed to examine the GPA and sale deed in favour of investors as well. The alternative view expressed by Assessing Officer in remand report (para 4.5 of Remand report) is answered in MoU dated 6/12/2017. On overall circumstances of the case, the addition made by Assessing Officer U/s. 68 of the Act is liable to be deleted as it is established as an advance against the intended sale of shares held by the appellant. The transaction is reasonably explained by the appellant with evidences.”

6. In view of the above findings, we find no infirmity in the order of the Ld. CIT(A) and we hereby direct the Assessing Officer to examine the aspect of treating the sale of shares as capital gains in the hands of the assessee. Needless to say the assessee has to be provided with one more opportunity before passing any order in accordance with law by the Ld. AO.

7. With respect to the advances received for the AY 2012-13, from the sale of flats, the confirmation from the prospective buyers were made before the Ld. CIT(A) by the Ld. AR of the

assessee. The Ld. CIT(A) remanded the matter to the Ld. AO for verification of the documents and called for the remand report from the AO. The AO submitted his remand report. After considering the evidences adduced by the Ld. AR, the Ld.AO treated the amount of Rs.57,95,500/- as unexplained cash credits. It is noted from the remand report of the ld. AO that the assessee has refunded an amount of Rs. 26 lakhs as on 31/3/2014 as the assessee could not execute the project due to litigation. The Ld. AR also produced a letter as given in paper book page 121 wherein the Joint Sub-Registrar-1, Vizianagaram has refused to register the documents considering the land as LCC land as per the Revenue Records. Further, it is also noted from the submissions made by the Ld.AR, a Writ Petition has been filed before the Hon'ble High Court which is still pending before the Hon'ble High Court. The Ld.AR submission that the project has been taken over by M/s. Aishwarya Constructions wherein the assessee is a Managing Partner and has received advances which are to be adjusted by M/s. Aishwarya Constructions as the original project supposed to be constructed by Sthira Infra Projects Pvt. Ltd, could not be executed due to pending litigation. The assessee has also submitted that since the advances paid by the prospective buyers has been taken by

the assessee in its personal concern the CIT(A) has rightly directed the AO to delete the addition of Rs. 20,60,000/- received as advanced from the prospective buyers. However the assessee has also admitted the fact that an amount of Rs. 11,35,000/- is pending for settlement with the prospective buyers as they could not be identified. The Ld. CIT(A) has rightly disallowed the amount of Rs. 11,35,000/- which is pending for settlement and were are of the considered view that there is no infirmity in the order of the Ld. CIT(A) on this ground.

8. With respect to additions of Rs 45,08,000/- made during the AY 2013-14 it is observed that the assessee has produced confirmation letters from Sri BV Rao, Sri JRG Verma, Sri N. Apparao, Sri P. Kondala Rao, Sri P. Srinu and Sri Y. Balaraju as per the sale agreement executed. The Ld. AO has also confirmed that the amount was not refunded through prospective buyers by the assessee. Since the Agreement of Sale produced by the assessee confirms the intention of the buyers to buy the flats from the assessee the contention of the assessee that the identity of the creditors and the genuineness of the transaction was not proved by the assessee was not accepted. We therefore find no infirmity in the order of the Ld. CIT(A) and hence no interference

is required with respect to the ground adjudicated by the Ld. CIT(A).

9. **Ground No.4 raised in AY 2012-13:**

“4. The Ld. CIT(A) is not justified in deleting the addition made by treating the credit entry for Rs. 9,81,000/- (sic) in the capital account of the assessee as unexplained cash credits U/s. 68 of the Act. The Ld. CIT(A) ignored the material fact that assessee himself had submitted during assessment proceedings that the said sum was received towards sale proceeds from regular business.”

10. The Ld. AR submitted that initially, the assessee wanted to retain the flat and hence the cost incurred during the FY 2011-12 for a sum of Rs. 9,81,100/- has been taken to the capital account. The Ld. AR further submitted that the assessee later decided to sell the flat and the flat was sold in the FY 2012-13 for Rs. 38,18,000/- which has been accounted as a turnover in the relevant assessment year. Accordingly, the Ld. AR pleaded that this addition may please be deleted. The Ld. DR on the other hand supported the order of the Ld. AO.

11. We have perused the materials available on record and heard both the sides. We find from the submissions made by the Ld. AR vide the copy of the ledger account has been extracted by the Ld. CIT(A) in para 4.1 of the order, the assessee has reversed the transaction and sold the Flat No.501 and has accounted it as

a turnover in the P & L Account for the relevant AY. The Ld. CIT(A) has rightly considered the facts and directed the Assessing Officer to delete the addition. In view of the findings that the assessee has sold the flat and offered it as assessable for the AY 2013-14, we find no infirmity in the order of the Ld. CIT(A) and therefore this ground raised by the Revenue is dismissed.

12. Grounds No.1 and 5 raised by the Revenue in the appeal for the AY 2012-13 are general in nature and need not be adjudicated.

13. **Ground No.2 of ITA No.72/Viz/2021 (AY 2013-14):**

“Ground No.2: The Ld. CIT(A) erred in holding that no disallowance U/s. 14A r.w. Rule 8D is warranted since there is no exempt income earned during the year under consideration. The Ld. CIT(A) has deleted the addition made towards disallowance of expenditure of Rs. 7,90,451/- U/s. 14A ignoring the fact that the Assessing Officer has followed the clarification given by the CBDT vide Circular No.5/2014, dated 11/2/2014, that Rule 8D of the IT Rules r.w.s 13A of the IT Act provides for disallowance of the expenditure even where the taxpayer in a particular year has not earned any exempt income.”

14. The Ld. AR submitted that since the assessee has not earned any exempt income during the relevant assessment year and hence disallowance U/s. 14A r.w.r 8D is not warranted. The Ld. AR pleaded that the order of the Ld. CIT(A) be upheld. The Ld. DR relied on the order of the Ld. AO.

15. We find from the record that the assessee has not earned any exempt income to invoke the provisions of section 14A r.w.r 8D of the IT Rules, 1962. Various High Court and Coordinate Benches of the Tribunal have laid down the ratio that there is no requirement for disallowance U/s. 14A of the Act where the assessee has not earned any exempt income. We, therefore respectfully following the judicial precedents on this issue, find no infirmity in the order of the Ld. CIT(A) and this ground raised by the Revenue is dismissed.

16. **Ground No.5 of ITA No.72/Viz/2021 (AY 2013-14)**

Ground No.5. The Ld. CIT (A) is not justified in deleting the addition made by treating the credit entry for Rs. 55,66,536/- in the capital account of the assessee as unexplained cash credits U/s. 68 of the Act. The Ld. CIT(A) has failed to appreciate that this is a colourable device employed by the assessee to route the proceeds of the returns on the investments without offering the same to the tax.”

17. The Ld. DR submitted that the assessee has received dividend income of Rs. 55,66,536/- for the investment made in M/s. Akash Engineering and Tech Pte Ltd, Singapore. The Ld. DR submitted that the assessee has received bonus shares out of the accumulated reserves of the Singapore company and hence it should be taxed as a dividend income in the hands of the

assessee. Per contra, the Ld. AR argued that the assessee has received only bonus shares and no income has been credited to the books of account of the assessee. In order to match with the investments the assessee has increased the cost of investment by crediting the capital account of the assessee in the books of account. Further, it is noted that Akash Engineering and Tech Pte Ltd, Singapore is not a domestic company and provisions of section 115(O) of the Act are not applicable to the said transaction. We also find from the page 59 of the paper book that Akash Engineering and Tech Pte Ltd have confirmed issue of 1,25,000 bonus shares to the assessee during the year 2012 and also has stated that no dividend has been declared by the company to its members. We are of the considered view that the issue of bonus shares cannot partake the character of the dividend in the hands of the assessee. The Ld. CIT(A) has rightly appreciated these facts and we therefore find no infirmity in the order of the Ld. CIT(A) and this ground raised by the Revenue is dismissed.

18. **Ground No.6 of ITA No.72/Viz/2021 (AY 2013-14)**

“Ground No.6: The Ld. CIT(A) is not justified in deleting the addition made by disallowing the agricultural income for Rs. 10,00,000/-. The Ld. CIT(A) has ignored key material facts like non-furnishing of any supporting documents by the assessee to prove that the said

income of Rs. 10,00,000/- is earned from sale of agricultural produce.”

19. The Ld. DR argued that the assessee has received an amount of Rs. 10 lakhs as an agricultural income as declared in his return of income. However, no evidence was produced before the AO for earning of such agricultural income and hence the Ld. AO has rightly treated the income as income from other sources. Per contra, the Ld. AR submitted that the amount has been received by cheque arising out of sale of standing crops of Mango from the lands the assessee holds in Vizianagaram District. The Ld. AR also submitted Adangal copy in support of his claim of agricultural income.

20. We have heard the rival contentions and perused the material available on record. We find that the Ld. AR failed to produce any evidences regarding the sale of Mangoes from the said agricultural land of the assessee. In the absence of any supporting evidences regarding quantity of the Mangoes sold and expenses incurred in earning of such agricultural income, the Ld. AO has rightly disallowed the agricultural income and treated it as income from other sources. In view of the above, we find no infirmity in the order of the Ld. AO and we uphold the order of

the AO on this ground and accordingly Ground No.6 raised by the Revenue is allowed.

21. In the result, appeals of the Revenue for both the assessment years are partly allowed.

C.O. 47/Viz/2021

22. Grounds No. 1, 2, 4 & 5 raised by the assessee in its cross objection are supportive in nature and therefore these grounds need no further adjudication. Ground No.3 raised by the assessee in the Cross Objection for the AY 2013-14 is dismissed since the ground raised by the Revenue is dismissed.

C.O. 46/Viz/2021

23. Ground No.1 & 2 raised by the assessee are supportive in nature and hence need no adjudication. Ground No.3 raised by the assessee in the cross objection is dismissed since the ground raised by the Revenue in its original appeal is dismissed.

Pronounced in the open Court on the 21st July, 2022.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :21.07.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – Sri K.V. Madhava Verma, 9-365, Police Quarters Road, Visalakshi Nagar, Visakhapatnam, Andhra Pradesh – 530043.
2. राजस्व/The Revenue – The Assistant Commissioner of Income Tax, Circle-1(1), Pratyakshakar Bhavan, Sector-8, MVP Double Road, Visakhapatnam, Andhra Pradesh – 530 017.
3. The Principal Commissioner of Income Tax-1, Visakhapatnam.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-1, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam