

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.625/Viz/2019
(निर्धारण वर्ष / Assessment Year : 2014-15)**

Income Tax Officer
Ward-1
Visakhapatnam

(अपीलार्थी/ Appellant)

Vs. M/s Sai Ram Developers and
Builders
C/o Sri G.Janardhana Rao
D.No.48-6-47, Srinagar
Visakhapatnam
[PAN : AAZFS1988C]
(प्रत्यर्थी/ Respondent)

**Cross Objection No.03/Viz/2020
(Arising out of I.T.A.No.625/Viz/2019)
(निर्धारण वर्ष / Assessment Year : 2014-15)**

M/s Sai Ram Developers and Builders
C/o Sri G.Janardhana Rao
D.No.48-6-47, Srinagar
Visakhapatnam
[PAN : AAZFS1988C]
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer
Ward-1
Visakhapatnam

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से / Revenue by
निर्धारिती की ओर से/ Assessee by

: Shri M.N.Murthy Naik, CIT(DR)
: Shri GVN Hari, AR

सुनवाई की तारीख / Date of Hearing

: 25.05.2022

घोषणा की तारीख/Date of Pronouncement

: 22 .07.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by revenue against the order of the
Commissioner of Income Tax (Appeals) [in short, CIT(A)]-1,

Visakhapatnam in ITA No.10350/2016-17/CIT(A)-1/VSP dated 14.08.2019 for the Assessment Year (A.Y.) 2014-15 and the cross objections are filed by the assessee in support of the order of the Ld.CIT(A).

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of real estate and developed a layout as part of its business. The assessee filed its return of income for the A.Y.2014-15 on 27.10.2014 admitting total income from business at Rs.7,02,500/-. The case of the assessee was taken up for scrutiny by issue of notice u/s 143(2) on 03.09.2015. During the course of assessment proceedings, the assessee was asked to submit details of expenditure incurred in the form of layout development charges, labour charges, material expenses and salaries and also the evidences in support of the same. In response to the notice, the assessee submitted ledger extracts for all the aforesaid expenses and later vide letter dt.06.12.2016 submitted that some of the vouchers were torn out and some were disfigured due to HudHud cyclone and filed some of the details for verification of the Assessing Officer (AO). However, the AO completed the assessment on 06.12.2016 and as such could not examine the vouchers. The assessment was completed by disallowing the entire expenditure except salaries of Rs.48,000/-. Thus,

the AO made the addition of Rs.3,87,57,374/- and the total income was assessed at Rs.3,94,59,870/- based on the following reasons :

- a) *The development and selling of the plots has been done by the appellant for nearly 7 to 8 years.*
- b) *The expenditure in this line of business is normally hiked up artificially in the initial year of business.*
- c) *With the passage of time and because of huge appreciation in land prices, the sale deeds / sales are very high as a result of high SRO values and therefore, the appellant has no option but to claim bogus expenditure to suppress the actual profits / income.*
- d) *No real expenditure incurred by the appellant in the final years since the layout has already been developed.*
- e) *The expenditure claimed is very high when compared to that of the A.Y.2013-14.*

3. Aggrieved by the order of the AO, the assessee preferred appeal before the Ld.CIT(A). After considering the submissions of the assessee, the Ld.CIT(A) has partly allowed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the revenue preferred appeal before the Tribunal and raised the following grounds :

1. *The order of the Ld.CIT(A)-1, Visakhapatnam is erroneous both on facts and in law.*
2. *The Ld.CIT(A) has erred in allowing relief to the assessee on disallowance of expenses to the extent of Rs.3,82,57,374/- when the assessee has not produced any supporting evidences for the expenditure debited in the P&L account.*

3. *The Ld.CIT(A) has erred in directing the AO to delete the addition of Rs.3,82,57,374 when the AO has noted that as the development of the layout was completed long back, there is no possibility of claiming such huge expenditure during the financial year relevant to A.Y.2014-15.*

4. *The Ld.CIT(A) has erred in not remanding the matter to the Assessing Officer u/s 46A(3) of the IT Rules, though the bills and vouchers in support of expenditure claimed were not produced before the AO during the assessment proceedings and submitted for the first time during the appellate proceedings only, which fact was also mentioned in the order of the Ld.CIT(A) in para 6.2.*

5. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal.*

5. The Ld.Counsel for the revenue has submitted that the assessee filed some evidences before the Ld.CIT(A), but he has not asked for any remand report from the AO, therefore, the AO had no opportunity to examine the evidences filed before the Ld.CIT(A) and the Ld.CIT(A) arbitrarily considered the evidences placed before him and partly allowed the appeal of the assessee. Therefore, the Hon'ble Tribunal may be pleased to set aside the orders passed by the Ld.CIT(A) and allow the appeal of the revenue.

6. On the other hand, the Ld.Counsel for the assessee has submitted that the assessee admitted total sales of Rs.6,98,83,930/- and claimed expenditure of Rs.3,88,05,374/- apart from opening stock of

Rs.3,03,76,000/-. The AO allowed claim for opening stock and out of total expenditure of Rs.3,88,05,374/-, only Rs.48,000/- was allowed towards salaries and the balance expenditure of Rs.3,87,57,374/- was fully disallowed. He further submitted that due to HudHud cyclone, many of the bills and vouchers got damaged and the same were placed before the Ld.CIT(A) and after examination of the same, he came to a conclusion that most of the vouchers were defaced and torn out due to HudHud cyclone. The Ld.CIT(A) also observed that no purpose would be served by sending these bills and vouchers for verification of the AO at this stage. The Ld.Counsel for the assessee further submitted that the assessee had claimed the expenditure of Rs.4,84,37,430/- during the A.Y.2012-13. But the AO considered and disallowed an amount of Rs.6,00,000/- only. In the present impugned assessment year, the AO has disallowed entire amount of Rs.3,87,57,374/- except meagre amount of salary of Rs.48,000/-. Considering the said fact, the Ld.CIT(A) disallowed an amount of Rs.5,00,000/-, saying that would be sufficient to make up for deficiencies in the vouchers. Therefore, Ld.CIT(A) considered all the aspects and passed order by allowing the assessee's appeal partly. Therefore, the Ld.AR pleaded that the order of the Ld.CIT(A) to be confirmed.

7. We have heard both the parties and perused the material placed on record. Admittedly, the assessee has claimed an expenditure of Rs.4,84,37,430/- during the A.Y.2012-13, but the AO accepted the entire expenditure except an amount of Rs.6,00,000/- due to deficiency in the vouchers and bills. But in the impugned assessment year, the AO has disallowed the entire expenditure due to deficiencies in the bills and vouchers. The assessee has admitted total sales of Rs.6,98,83,930/-, which is not possible without incurring expenditure. The contention of the assessee is that the entire extent of land is about 30 acres and it is difficult to develop the entire land in one financial year. Therefore, the assessee developed certain portion of land and sold the plots. After completion of sale of certain plots, the assessee developed some plots and sold them. Considering the facts and circumstances of the case, we are of the view that the AO is not correct in disallowing the entire expenditure. The Ld.CIT(A) has considered all these aspects and directed the AO to make disallowance of Rs.5,00,000/- due to deficiency of bills and vouchers by comparing the A.Y.2012-13. Therefore, we do not find any infirmity in the order passed by the Ld.CIT(A). So far as the violation of 46A is concerned, the Ld.CIT(A) has categorically mentioned in the order that he has gone through the bills and vouchers which were submitted by the assessee for

verification. The Ld.CIT(A) has found that most of the vouchers were defaced and torn out due to HudHud cyclone, therefore, no useful purpose would be served by sending these bills and vouchers for verification of AO. Hence he has not called for remand report and the Ld.CIT(A) has examined the disallowances made by the AO for the A.Y.2012-13 and disallowed an amount of Rs.6,00,000/-. Therefore, we are of the view that there is no force in the arguments of the DR. Hence the grounds raised by the assessee are dismissed.

8. The assessee filed cross objections in support of the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, the cross objections filed by the assessee becomes infructuous, hence, dismissed.

9. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order Pronounced in open Court on 22nd July, 2022.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :22 .07.2022

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. राजस्व/The Revenue – Income Tax Officer, Ward-1, Visakhapatnam
2. निर्धारिती/ The Assessee– M/s Sai Ram Developers and Builders, C/o Sri G.Janardhana Rao, D.No.48-6-47, Srinagar, Visakhapatnam
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income Tax, Visakhapatnam-1.
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