

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.96/Viz/2020

(निर्धारणवर्ष/ Assessment Year :2013-14)

A. Tirupathi Rayudu (HUF),
Visakhapatnam.
PAN:AADHA 7450 H

(अपीलार्थी/ Appellant)

Vs. Deputy Commissioner of
Income Tax,
Central Circle-2,
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.613/Viz/2018

(निर्धारणवर्ष/ Assessment Year :2014-15)

Late Sri A. T. Rayudu (Individual),
Represented by Sri Avinash, Legal
Heir, D.No.11-8-34, Daspalla
Hills, Visakhapatnam.
PAN: AALPA 9219 L

(अपीलार्थी/ Appellant)

Vs. Deputy Commissioner of
Income Tax,
Central Circle-2,
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.614/Viz/2018

(निर्धारणवर्ष/ Assessment Year :2015-16)

Late Sri A. T. Rayudu (Individual),
Represented by Sri Avinash, Legal
Heir, D.No.11-8-34, Daspalla
Hills, Visakhapatnam.
PAN: AALPA 9219 L

(अपीलार्थी/ Appellant)

Vs. Assistant Commissioner of
Income Tax,
Central Circle-2,
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by : Sri GVN Hari, Advocate
प्रत्यार्थीकीओरसे/ Revenue by : Sri MN Murthy Naik, CIT-DR
सुनवाईकीतारीख/ Date of Hearing : 29/09/2022
घोषणाकीतारीख/Date of : 21/12/2022
Pronouncement

ORDER

PER BENCH :

All the captioned appeals are filed by the assesseees against the orders of the Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in appeal No. 195/2017-18/CIT(A)-3/VSP/2019-20, dated 31/10/2019 in the case of Sri A. Tirupathi Rayudu (HUF); appeal No.191& 192/2017-18/CIT(A)-3/VSP/2018-19, dated 28/09/2018 in the case of Late Sri A. T. Rayudu for the AYs 2014-15 and 2015-16 respectively arising out of the orders passed U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 [the Act]. Since the issues raised in these appeals as well as the assesseees are interconnected, for the sake of convenience, these appeals are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

आयकरअपीलसं./ I.T.A. No.96/Viz/2020
(निर्धारणवर्ष/ Assessment Year :2013-14)
[A. Tirupathi Rayudu (HUF)]

2. This appeal filed by the assessee against the order of the Ld. CIT(A)-3, Visakhapatnam for the AY 2013-14.

3. Brief facts of the case are that the assessee is a Hindu Undivided Family [HUF] deriving income from business, house property, other sources and agricultural income, filed its return of income on 31/12/2013 for the AY 2013-14 admitting a total income of Rs. 11,63,250/- and agricultural income of Rs. 5,14,000/-. Subsequently, search and seizure operations u/s. 132 of the Act were conducted on 14/10/2015 in the case of the assessee and its members and M/s. ATR Ware Housing Pvt. Ltd., Visakhapatnam simultaneously. Subsequently, a notice U/s. 153A was issued to the assessee on 18/07/2016. In response to the notice, the assessee submitted that the return of income filed on 31/12/2013 may be treated as return in response to notice U/s. 153A of the Act. Thereafter another notice was also issued to the assessee on 15/11/2016 requesting to file the return electronically for which assessee replied that return was filed electronically on 23/11/2016 declaring the same income as filed U/s. 139(1) of the Act. Consequently, notice U/s. 143(2) was issued on 19/06/2017 and served on 20/06/2017. Thereafter notice U/s. 142(1) was issued on

21/07/2017 and the same was served on the assessee on 25/07/2017. The assessee's Representative appeared on 17/08/2017 and furnished the information called for by the Assessing Officer (Ld.AO). The Ld. AO considering the submissions observed that the assessee did not intend to furnish the information / explanation with respect to the unsecured loans of Rs. 26,00,000/- taken from two persons viz., Sri A. Kannaiah and Sri A. Satyanarayana and therefore the Ld. AO treated the same as unexplained cash credits U/s. 68 of the Act and added to the returned income. Further, the Ld. AO also disallowed the unsecured loan for a sum of Rs 1.52 crores u/s 68 of the Act, agricultural income for Rs 88,500/-and also treated a sum of Rs. 3,92,242/- advanced by the company M/s. ATR Ware Housing Pvt Ltd., to the assessee which holds 45% of the shares in the company as deemed dividend U/s. 2(22)(e) of the Act. Accordingly, the Ld. AO assessed the income at Rs.1,94,43,992/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

4. The Ld. CIT(A) considering the submissions made by the assessee's representative on the unsecured loans taken by the assessee,the Ld. CIT(A) allowed a sum of Rs 1.52 crores. With respect to the balance Rs. 26 lakhs, the Ld. AR contended that it was repaid and should be treated as genuine was not accepted by the Ld. CIT(A), as the Ld. AR has not

produced any confirmation even before the Ld. CIT(A). Further, the Ld. CIT(A) also upheld the order of the Ld. AO with respect to the deemed dividend as the assessee is having substantial interest in the company namely M/s. ATR Ware Housing Pvt Ltd. Aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us.

5. The assessee has raised the following grounds in its appeal:

"The order of the Ld. CIT(A) is bad and unsustainable in the eyes of law as the same is passed without proper application of mind, as it is also contrary to the spirit and provisions of the Income tax Act, 1961:

- (i) *That having regard to the facts and circumstances of the case, the present assessment pursuant to section 153A is not justified as the search conducted on the appellant was based on illegal search warrant.*
- (ii) *That having regard to the facts and circumstances of the case, the present assessment is not justified as no incriminating material was found in the course of search.*
- (iii) *That having regard to the facts and circumstances of the case, the Ld. AO has not erred in passing the impugned assessment order which was passed pursuant to a notice issued U/s. 153A which itself was perverse in law.*
- (iv) *The Ld. CIT(A) has erred in law and on facts in considering the unsecured loans in from A. Kannaiah and A. Satyanarayana amounting to Rs. 26,00,000/- as unexplained cash credits under section 68 of the Act.*
- (v) *The Ld. CIT(A) has erred in law and on facts in considering the advance by ATR Warehousing Private Limited as deemed dividend under section 2(22)(e) amounting to Rs. 3,92,242/-."*

Additional Ground of Appeal:

"On the facts and in the circumstances of the case, whether the addition of Rs. 3,92,242/- made by the assessing Officer towards deemed dividend is beyond the scope of additions that can be made in the assessment U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961."

6. At the outset, the Ld. Authorized Representative [Ld. AR] argued that since the assessee has repaid the loans it should be treated as genuine loan and pleaded for allowing the same. Further, the Ld. AR also pleaded that the advance given by M/s. ATR Ware Housing Pvt Ltd., Visakhapatnam on short term basis cannot be treated as a deemed dividend u/s. 2(22)(e) of the Act and hence pleaded to delete the additions made by the Ld. Revenue Authorities. Further by way of additional ground the Ld. AR questioned the addition of Rs 3,92,242/- as deemed dividend as no incriminating material found during the search.

Per contra, the Ld. Departmental Representative [Ld. DR] relied on the orders of the Ld. Revenue Authorities.

7. We have heard both the sides and perused the material available on record and the orders of the Authorities below. Grounds Nos. (i), (ii) and (iii) pertain to justification of the search conducted and consequential order passed by the Ld. AO which was considered perverse. It is not the fact that no incriminating material found during the search operations. The Ld. AO in his order has clearly corroborated the evidences found at the time of search and seizure in para 5.5 of the order and quoted the reference to the Annexure/A/ATR/PO/Res/1.

Based on the seized material the Ld. AO then proceeded to further verify the creditworthiness, identity of the lenders. These evidences were not produced before the Ld. AO and therefore the Ld. AO made addition to the extent of Rs. 1.78 Crs. Further it is seen from the order of the Ld. CIT(A), the assessee has submitted details in respect of the unsecured loans to the extent of Rs. 1.52 Crs before the Ld. CIT(A) and therefore the Ld. CIT(A) has allowed the same. However, the Ld. CIT(A) has not allowed an amount of Rs. 26 lakhs since no evidences / confirmation letters / creditworthiness of the lenders namely Sri A. Kannaiah and Sri A. Satyanarayana were produced before the Ld. AO or before the Ld. CIT(A).

It is a settled law that once a search was made U/s. 132 of the Act the Assessing Officer is bound to issue notice U/s. 153A of the Act to the assessee. Consequently, the Ld. AO is also empowered to assess or reassess the total income of the assessee for a period of six assessment years. In the instant case, it is also found that some incriminating material with respect to the unsecured loans has been seized by the Ld. Revenue Authorities. Assessments and reassessments pending on the date of search shall abate and it empowers the Ld. AO to re-do the assessment with the same. In respect of non-

abated assessments if any incriminating material is found for the relevant assessment year, section 153A empowers the Ld. AO to reassess the income with respect to the assessment year in which the incriminating material was found. In our considered opinion this would be correct understanding of the provisions of section 153A of the Act as otherwise the necessity of bifurcation of abated and non-abated assessment in section 153A would become redundant and would lose its relevance. In the instant case, the incriminating material found at the time of search with respect to unsecured loans has been reassessed by the Ld.AO with respect to the non-abated assessment for the impugned assessment year. Therefore, we are of the considered view that these grounds raised by the assessee do not have legs to stand and hence dismissed. Having dismissed the legal grounds we now proceed to adjudicate the other grounds raised by the assessee on merits.

8. Ground No.(iv) is with respect to unsecured loans. Admittedly the assessee has failed to produce any confirmation or evidence with respect to the obtaining of unsecured loans from Sri A. Kannaiah and Sri A. Satyanarayana aggregating to Rs. 26 lakhs wherein a sum of Rs. 18,50,000/- has been obtained by

way of cash and Rs. 7,50,000/- by way of cheque. The assessee also failed to produce any information or explanation for obtaining unsecured loans in the form of cash. Further, it is also observed that the assessee has neither paid interest nor provided any evidence with respect to payment of interest and Tax Deduction thereon. In the absence of any cogent evidence, the Ld. CIT(A) has rightly rejected the claim of the assessee and upheld the order of the Ld. AO. The findings of the Ld. CIT(A) is extracted herein below for reference:

"7.1. During the appellate proceedings it was submitted that the loans were repaid and should be treated as genuine. I have considered the assessment order and submissions of the appellant. As regards, to the addition of Rs. 26,00,000/-, it is seen that the appellant has not furnished any information. As no confirmation was produced even during the appellate proceedings, the addition made as above is confirmed and the ground No.4 is rejected."

9. Thus, we are of the considered opinion that the decision taken by the Ld. CIT(A) is in accordance with law. Therefore even on merits we find no infirmity in the order of the Ld. CIT(A) and it does not call for any interference. Accordingly, the Ground No.(iv) raised by the assessee is dismissed.

10. Ground No.(v) is with respect to addition on account of dividend income of Rs. 3,92,424/- U/s. 2(22)(e) of the Act. Section 2(22)(e) of the Act is extracted below for reference:

Sec. 2(22)(e): Any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

11. Further, the assessee has also raised additional ground as follows:

"On the facts and in the circumstances of the case, whether the addition of Rs. 3,92,242/- made by the assessing Officer towards deemed dividend is beyond the scope of additions that can be made in the assessment U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961."

12. The Additional Ground is with respect to assessing the amount of Rs. 3,92,242/- as deemed dividend which is beyond the scope of additions that can be made u/s. 143(3) r.w.s 153A of the Act. However, on reading the assessment order we observe that the Assessing Officer has noticed payments by way of advances to the assessee by M/s. ATR Ware Housing Pvt. Ltd., Visakhapatnam. On merits, we find that the Ld. CIT(A) has rightly

upheld the addition made by the Ld. AO with respect to deemed dividend U/s. 2(22)(e) of the Act to the extent of accumulated profits of the company.

13. We do not find merit in the argument of the Ld. AR that the assessee is having a running current account. Funds are being used by the assessee on a short term basis and later on repaid to the company M/s. ATR Ware Housing Pvt Ltd., depending on their requirements. Even though these accumulations are on a short term basis, section 2(22)(e) of the Act prohibits the same. Section 2(22)(e) clearly state that when a person who is a beneficial owner of shares in which the public are not substantially interested, any advance made to such persons shall be treated as deemed dividend to the extent to which the company possess the accumulated profits. Accordingly, the Ld. Revenue Authorities had rightly held the sum of Rs. 3,92,424/- as deemed dividend U/s. 2(22)(e) of the Act and therefore we are of the considered view that there is no interference required in the order of the Ld. CIT(A) on this issue. Thus, the Ground No. (v) and additional ground raised by the assessee is dismissed.

14. In the result, appeal filed by the assessee is dismissed.

आयकरअपीलसं./ I.T.A. No.613/Viz/2018
(निर्धारणवर्ष/ Assessment Year :2014-15)
[Late Sri A. T. Rayudu (Individual)]

15. This appeal filed by the assessee against the order of the Ld. CIT(A)-3, Visakhapatnam for the AY 2014-15.

16. The assessee has raised the following grounds of appeal:

1. *In not considering the fact that there was no satisfaction note prepared by the ADIT (Inv.) prior to the search.*
2. *In discharging the fact that there was no warrant executed on the appellant nor was there any warrant issued in the name of appellant.*
3. *In not considering the fact that there was no incriminating material pertaining to the assessee for the AY 2014-15 and hence the concluded assessment cannot be re-agitated.*
4. *In sustaining the addition of a sum of Rs. 1,32,990/- which is unwarranted, as the assessee has not expended that sum nor as the Assessee earned that amount as income.*
5. *In placing reliance on the figures mentioned in the page 95 of Annexure-A/ART/PO/Res/05 which is wholly incorrect as that page/sheet has not been authenticated in any manner as belonging to or written by the assessee/appellant.*
6. *Such other grounds that may be raised at the time of hearing."*

17. First we shall take up the Ground No.4 relating to sustenance of addition of Rs.1,32,990/- by the Ld. CIT (A).

18. Brief facts of the case pertaining to this issue are that during the assessment proceedings on perusal of the seized

material the Ld. AO noted that certain advances received by the assessee from Sri Mallikharjuna Rao and Smt. K. Shilpa. In this regard, after considering the submissions and the explanations given by the assessee, the Ld. AO found that they are not satisfactory and held that since the amount to the extent of Rs.6,38,335/- was not reflected in the books of accounts of the assessee on account of payments, the Ld. AO treated the same as unexplained expenditure U/s. 69C of the Act and made addition of Rs. 6,38,335/-. Aggrieved by the decision of the Ld.AO, the assessee went on appeal before the Ld.CIT(A). On appeal, the Ld. CIT(A) after considering the submissions of the assessee and on perusal of the documents produced by the assessee, the Ld. CIT(A) granted partial relief to the assessee to the extent of Rs. 5,05,345/- and sustained the addition to the extent of Rs. 1,32,990/-. Not satisfied with the decision of the Ld. CIT(A), the assessee came up before the Tribunal vide Ground No.4 of the Grounds of Appeal.

19. The Ld. AR pleaded that the Ld. CIT(A) have considered the disallowance of expenditure considering the amount payable by the assessee and has upheld the order of the Ld. AO to the extent of net of amount to be received and amount payable by the

assessee. The Ld. AR therefore pleaded that the difference amount of Rs. 1,32,990/- should also be allowed. The Ld. DR relied on the orders of the Ld. Revenue Authorities.

20. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. In the instant case we find that the Ld. AO has made an addition of Rs. 6,38,335/- on account of payments which is not reflected in the books of accounts. The Ld. AO relied on the confession statement of Sri K. Mallikarjuna Rao, the lender, that the payment was received from the assessee as interest. The Ld. AO treated the sum of Rs. 6,38,335/- as unexplained expenditure U/s. 69C of the Act as the assessee did not offer any satisfactory explanation regarding the said expenditure. Further, it is admitted that Sri K. Mallikarjuna Rao has received Rs.6,38,335/- during the FY 2013-14 itself. The Ld. CIT(A) considering these facts and also noticing that a sum of Rs. 5,05,345/- which is payable in the books of accounts of the assessee netted the disallowance to differential amount of Rs. 1,32,990/- and has directed the Ld. AO to delete the addition of Rs. 5,05,345/- which is payable by the assessee. We are therefore of the considered view that since the Ld. CIT(A) has

rightly considered the receivables and payables and has directed the Ld. AO to disallow a sum of Rs. 1,32,990/-, and hence no interference is required in the decision of the Ld. CIT(A). We therefore, dismiss this ground (Ground No.4) raised by the assessee.

21. Grounds No.1, 2, 3 & 5 raised by the assessee are identical to that of the Grounds No. 1, 2 and 3 raised by the assessee in its appeal for the AY: 2013-14 in **I.T.A. No.96/Viz/2020**. While adjudicating the grounds raised by the assessee pertaining to the AY 2013-14, we have discussed the issues involved therein at length and dismissed the grounds raised by the assessee. Since the issues raised in the present appeal are identical to that of the ones raised by the assessee in **I.T.A. No.96/Viz/2020**, our decision given therein (ITA No. 96/Viz/2020) mutatis mutandis applies to the instant appeal also. Accordingly, Grounds No.1, 2, 3 & 5 raised by the assessee are dismissed.

22. In the result, appeal of the assessee is dismissed.

आयकरअपीलसं./ I.T.A. No.614/Viz/2018
(निर्धारणवर्ष/ Assessment Year :2015-16)
[Late Sri A. T. Rayudu (Individual)]

23. This appeal filed by the assessee against the order of the Ld. CIT(A)-3, Visakhapatnam for the AY 2015-16.

24. The assessee has raised the following grounds of appeal:

1. *In not considering the fact that there was no satisfaction note prepared by the ADIT (Inv.) prior to the search.*
2. *In discharging the fact that there was no warrant executed on the appellant nor was there any warrant issued in the name of appellant.*
3. *In disregarding the fact that there was no incriminating material pertaining to the assessee for the AY 2015-16 and hence the concluded assessment cannot be re-agitated.*
4. *In making an addition of a sum of Rs. 1,86,280/- as deemed dividend U/s. 2(22)(e) of the Income Tax Act.*
5. *In not considering the fact that the monies were returned to the company as the purpose for which it was given to the appellant did not fructify. The money was given by the company to the appellant out of business expediency.*
6. *Such other grounds that may be raised at the time of hearing."*

25. The only issue raised in this appeal is with respect to deemed dividend U/s. 2(22)(e) of the Act ie., in ground no.4 & 5. This issue is identical to that of the Ground No.(v) in ITA No.96/Viz/2020. Since the issue is similar as well as the facts

and circumstances of the case, our decision given thereof while adjudicating the Ground No.(v) in ITA No.96/Viz/2020 in this above paragraphs of this order, mutatis mutandis applies to the Ground No.4 of the instant appeal also. Accordingly, the decision taken by the Ld. CIT(A) is in accordance with law and there is no interference is required. Thus, Grounds No.4 & 5 raised by the assessee are dismissed.

26. Grounds No.1, 2 & 3 raised by the assessee are identical to that of the Grounds No. 1, 2 and 3 raised by the assessee in its appeal for the AY: 2013-14 in **I.T.A. No.96/Viz/2020**. While adjudicating the grounds raised by the assessee pertaining to the AY 2013-14, we have discussed the issues involved therein at length and dismissed the grounds raised by the assessee. Since the issues raised in the present appeal are identical to that of the ones raised by the assessee in **I.T.A. No.96/Viz/2020**, our decision given therein (ITA No. 96/Viz/2020) mutatis mutandis applies to the instant appeal also. Accordingly, Grounds No.1, 2 & 3 raised by the assessee are dismissed.

27. Ground No.6 is general in nature and need no adjudication.

28. In the result, appeal filed by the assessee is dismissed.

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

Sd/-

(दुव्वुळार एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 21.12.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- (i) A. Tirupathi Rayudu (HUF), D.No. 11-8-34, Daspalla Hills, Visakhapatnam, Andhra Pradesh – 530003.
 (ii) Late Sri A. T. Rayudu (Individual), Represented by Sri Avinash, Legal Heir, D.No.11-8-34, Daspalla Hills, Visakhapatnam.
 (iii) Late Sri A. T. Rayudu (Individual), Represented by Sri Avinash, Legal Heir, D.No.11-8-34, Daspalla Hills, Visakhapatnam.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Central Circle-2, MVP Colony, Sector-8, Pratyakshakar Bhavan, Beside Post Office, Visakhapatnam, Andhra Pradesh – 530017.
 (ii) Office of the Commissioner of Income Tax (Appeals)-3, Visakhapatnam.
 (iii) Assistant Commissioner of Income Tax, Central Circle-2, Direct Taxes Building, Sector-8, MVP Colony, Visakhapatnam.

3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax(Appeals)-3, Visakhapatnam.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam