

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. No.89, 90 & 91/Viz/2020

(निर्धारण वर्ष / Assessment Year :2014-15, 2015-16 & 2016-17)

ATR Warehousing Private Limited, Vs.
D.No. 11-8-34, Daspalla Hills,
Visakhapatnam, Andhra Pradesh,
530003.

PAN: AADCA 2121 Q

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

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

(प्रत्यर्थी/ Respondent)

Sri G.V.N. Hari, Advocate

Sri MN Murthy Naik, CIT-DR

17/10/2022

21/12/2022

ORDER

PER BENCH :

The captioned three appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in appeal No. 212, 213 & 214/2017-18/CIT(A)-3/VSP/2019-20, dated 31/10/2019 arising

out of the orders passed U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 [the Act] for the AYs 2014-15, 2015-16 and 2016-17. Since the issues raised in these appeals are identical, 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.

2. Brief facts of the case pertaining to AY 2014-15 are that the assessee-company is deriving income from business, house property, other sources and agricultural income from warehousing filed its return of income for the AY 2014-15 on 30/11/2014 declaring total income of Rs. NIL (Loss of Rs. 2,83,99,853/-). The main source of business income is license fee collected from the tenants for the ware housing godowns at various places viz., Visakhapatnam, Kakinada and Hyderabad. Sri AT Rayudu and Sri A. Avnash are the Directors of the assessee-company who hold 45% each of the share-holding in the company. The case was selected for scrutiny under CASS and a notice U/s. 143(2) was issued on 31/08/2015 but the assessment got abated as search and seizure operations u/s. 132 of the Act were conducted on 14/10/2015 and in the cases of AT Rayudu, Sri A. Avnash, Smt. A. Ammaji and Smt. Harshitha. In the course of

said proceedings several documents and loose sheets were found and seized. Accordingly, notice U/s. 153A was issued to the appellant on 18/07/2016 and served on the assessee. In response to the said notice the assessee stated that the return of income filed U/s. 139 on 30/11/2014 may be treated as the return filed in response to the notice U/s. 153A. Subsequently a notice U/s. 143(2) was issued on 19/06/2017. In response to the said notice, the assessee's representative appeared and furnished a copy of the computation of total income. Thereafter, a notice U/s. 142(1) and a questionnaire was issued to the assessee and its Authorized Representative to appear before the Ld. AO and the assessee was asked to submit some basic information i.e., audit reports, financial statements, TDS made details, bank account statements, copy of WT return filed etc., and the assessee's Representative furnished the information called for. Thereafter, another notice U/s. 142(1) was issued calling for further details like books of account, bills & Vouchers, details of share holders, breakup of certain items in the P & L Account, balance sheet, confirmation letters in respect of unsecured loans, and applicability of section 14A, ledger extracts of expenditure above Rs. 5 lakhs, sundry creditors and a detailed note

on the transactions with group concerns on the basis of material found and seized in the course of search and seizure operations conducted at the business premises of the applicant and residential premise of the Directors etc. The assessee was asked to furnish the information by 30/08/2017. After considering the submissions of the assessee as well as the material available before the Ld. AO, the Ld. AO rejected the claim of unsecured loans borrowed by the assessee amounting to Rs. 30,00,000/- by holding that the assessee failed to prove that the purported loan transactions with the company, M/s. Transnational Growth Funds Ltd are genuine unsecured loans and thereby, the assessee did not discharge the onus cast on it. Accordingly, the Ld. AO treated the sum of Rs. 30 lakhs as unexplained cash credits U/s. 68 of the Act which is liable to be taxed U/s. 115BBE @ 30%. The Ld. AO further made an addition of Rs. 88,79,611/- rejecting the claim of the assessee that the sum of Rs. 88,79,611/- was the interest on unsecured loans and opined that since the loans relating to AY 2014-15 were held to be not genuine and therefore the relatable interest expenditure is also not allowable. The Ld. AO disallowed a sum of Rs. 1,07,38,770/- on account of the interest paid to APSFC as the

assessee failed to deduct the tax at source on the impugned interest claimed. Further, the Ld. AO disallowed Rs. 7,77,952/- by invoking the provisions of section 14A of the Act. Further, the Ld. AO made addition of Rs. 6,47,948/- which is shown as 'long term loans and advances given'. The Ld. AO opined that these loans and advances are not related to the business activities carried out by the assessee and therefore the interest paid to bank relating to such interest free advances is not allowable U/s. 36(1)(iii) of the Act. Accordingly, the Ld. AO completed the assessment U/s. 143(3) r.w.s 153A of the Act and passed the assessment order on 29/12/2017. On being aggrieved by the additions made by the Ld. AO, against the order 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 as well as discussing the issues at length, partly allowed the appeal of the assessee. On being aggrieved by the decision of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following Grounds of Appeal:

3. 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 by treating the sum of Rs. 53,10,429/- as unexplained expenditure for the mere reason that the same was not recorded in the books of account."*

4. 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 long term basis cannot be disallowed as they are part of the business activity and interest free funds are also received from the customers and hence no disallowance is called for U/s. 36(1)(iii) of the Act. Hence the Ld. AR pleaded to delete the additions made by the Ld. Revenue Authorities.

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

5. 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. 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. 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.

6. With respect to Ground No.4, Ld. AR argued that the Ld. CIT(A) has disallowed a sum of Rs. 53,10,429/- being the payment of interest in cash which has not been recorded in the books of accounts as unexplained expenditure in the hands of the assessee. The Ld. AR submitted that this enhancement of the assessment by the Ld. CIT (A) was made without providing any proper opportunity to the assessee and hence it is bad in law. The Ld. AO argued that this issue was not before the Ld. AO.

Per contra, the Ld. DR supported the order of the Ld. CIT(A).

7. We have heard both the sides and perused the material available before us as well as the orders of the Ld. Revenue Authorities. We find merit in the argument of the Ld. AR that when there is an enhancement to the assessment made by the Ld. AO, an opportunity of being heard to the assessee shall be provided to the assessee. However, in this case, we find that no such opportunity was provided to the assessee. Therefore, following the principles of natural justice, we are of the considered view that the assessee shall be provided a reasonable opportunity with respect to enhancement of disallowance of interest of Rs. 53,10,429/-. Accordingly, in order to provide a reasonable opportunity, we remit the issue back to the Ld. CIT(A) for deciding the issue afresh after affording a reasonable opportunity of being heard to the assessee. Thus, Ground No.4 raised by the assessee is allowed for statistical purposes.

8. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

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9. These two appeals are filed by the assessee against the orders of the Ld. CIT (A)-3, Visakhapatnam for the AY 2015-16 & 2016-17.

10. The assessee has raised four identical grounds in these two appeals (AYs 2015-16 & 2016-17) which are similar to that of the ones raised by the assessee in its appeal for the AY 2014-15 and the only difference is in the figures mentioned in Ground No.4. Since the issues raised in the assessee's appeal for the AY 2014-15 are identical to that of the grounds raised in AYs 2015-16 & 2016-17, our decision given in ITA No.89/Viz/2020 applies *mutatis mutandis* to the appeals in ITA No.90 & 91/Viz/2020 also. Accordingly, grounds raised by the assessee in these appeals are partly allowed for statistical purposes.

11. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

12. Ex-consequenti, all the three appeals filed by the assessee are partly allowed for statistical purposes.

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

Sd/-

(दुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 21.12.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – ATR Warehousing Private Limited, D.No. 11-8-34, Daspalla Hills, Visakhapatnam, Andhra Pradesh, 530003.
2. राजस्व/The Revenue –DCIT, Central Circle-2, MVP Colony, Sector-8, Pratyakshakar Bhavan, Beside Post Office, Visakhapatnam, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax-3, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam