

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. Nos. 162/Viz/2022 & 189/Viz/2022

(निर्धारणवर्ष/ Assessment Years : 2012-13 & 2013-14)

Deputy Commissioner of Income
Tax, Circle-1,
Rajamahendravaram.

Vs. M/s. Andhra Paper Limited
(M/s. International Paper
APPM Ltd),
Sri Ram Nagar,
Rajamahendravaram.
PAN: AACT 8849 D

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

CO Nos: 22 & 23/Viz/2022

(In आयकरअपीलसं./ I.T.A. Nos. 162/Viz/2022 & 189/Viz/2022)

(निर्धारणवर्ष/ Assessment Years : 2012-13 & 2013-14)

M/s. Andhra Paper Limited
(M/s. International Paper APPM
Ltd),
Sri Ram Nagar,
Rajamahendravaram.
PAN: AACT 8849 D

Vs. Deputy Commissioner of
Income Tax, Circle-1,
Rajamahendravaram.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

: Sri K. Chakrapani

प्रत्यर्थीकीओरसे/ Revenue by

: Sri MN Murthy Naik, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 07/02/2023

घोषणाकीतारीख/Date of

: 28/02/2023

Pronouncement

ORDERPER BENCH :

The captioned appeals are filed by the Revenue and the Cross objections are filed by the assessee. Since the issues raised in both the Revenue's appeals and the Cross objections raised by the assessee are interconnected, for the sake of convenience, they are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

ITA No: 162/Viz/2022 (AY: 2012-13)**(By Revenue)**

2. This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)-NFAC] in DIN & Order No. ITBB/NFAC/S/250/2022-23/1043723324(1), dated 04/07/2022 arising out of the order passed U/s. 143(3) of the Act dated 27/03/2015 for the AY 2012-13.

3. Briefly stated the facts are that the assessee is a Limited Company engaged in manufacturing of paper, paper boards filed its return of income for the AY 2012-13 admitting a total income of Rs. NIL, on 29/09/2012. Further, the assessee filed the revised return of income on

21/11/2013 declaring NIL income. Subsequently, the case has been taken up for scrutiny under CASS with a reason to examine "Large Refund claim of Advance Tax and High Ratio of Refund to TDS". Notice U/s. 143(2) of the Act was issued and served on the assessee. Notice U/s. 142(1) of the Act dated 7/4/2014 and 11/4/2014 were issued respectively calling for the information. In response, Sri K. Chakrapani, General Manager (Taxation) and Sri Aditya, Senior Officer were authorized by the assessee-company and they furnished the required information called for by the Ld. AO. After examining the replies made by the assessee, the Ld. AO made following disallowances:

(i)	Depreciation on Goodwill	-	Rs. 27,22,713/-
(ii)	Expenditure U/s. 35D	-	Rs. 5,14,730/-
(iii)	Unabsorbed depreciation	-	Rs. 48,78,000/-
(iv)	Disallowance of Miscellaneous Expenses	-	Rs. 36,47,979/-
(v)	Disallowance of sundry creditors	-	Rs. 30,35,000/-
(vi)	Disallowance of consumption of Stores and others	-	Rs. 7,11,06,000/-
(vii)	Disallowance of repairs & Maintenance	-	Rs. 5,61,78,040/-
(viii)	Disallowance U/s. 14A	-	Rs. 37,60,200/-
(ix)	Disallowance of raw material Purchase	-	Rs. 24,94,07,400/-
(x)	Disallowance of forwarding & Transport Charges	-	Rs. 2,18,20,000/-

4. The Ld. AO while making the above disallowances observed that the assessee could not produce the details of bills and vouchers for

examination and has produced only the copies of the ledger account. Therefore, the Ld. AO estimated the above disallowances of the total expenses incurred by the assessee under the respective heads and framed the assessment. Aggrieved by the order of the Ld. AO, the assessee has filed an appeal before the CIT(A)-NFAC. The Ld. CIT(A)-NFAC considering the submissions of the assessee during the appeal proceedings partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the Revenue is in appeal before us.

5. The Revenue has originally raised ten grounds of appeal and revised it to six grounds as follows:

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in restricting the disallowance of general expenses of Rs. 15,47,549/- to 20% of these expenses, when the assessee failed to prove its genuineness before the Assessing Officer.*
- 3. That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition towards sundry creditors amounting to Rs.30,35,000/- when the assessee failed to prove the identity, genuineness and creditworthiness of the creditors before the Assessing Officer.*
- 4. That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting the certain percentage of disallowances made by the Assessing Officer from the expenses; @ 20% from "consumption of stores, spares and others", @ 30% from "Repairs & Maintenance", @ 10% from "raw material purchases", @ 30% from "forwarding & transport charges" and @ 40% from "research & development*

expenses" when the assessee failed to prove the genuineness of expenditure before the Assessing Officer.

5. *That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting the disallowance of interest on loans at Rs. 37,60,200/- made by the Assessing Officer when it is evident from the record that the assessee made investment in mutual funds to an extent of Rs. 250.68 lakhs and offered meager interest of Rs. 21,000/- as interest from mutual funds.*
6. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or the time hearing of appeal."*

6. Grounds No. 1 & 6 are general in nature and do not require any adjudication.

7. With respect to Ground No.2 on the disallowance of general expenses of Rs. 15,47,549/- restricting the disallowance to 20% of Rs. 15,47,549/- by Ld CIT(A), the Ld. DR submitted that the assessee failed to provide any details before the Ld. AO inspite of opportunities provided to the assessee. The Ld. DR further submitted that the Ld. AO has rightly disallowed the expenses which were not incidental to the business and hence pleaded that the order of the Ld. AO on this ground be upheld. Per contra, the Ld. AR submitted that the details of ledger accounts bearing the details of the expenses have been submitted to the Ld. AO. The Ld. AR further submitted that some of the sample invoices were also submitted before the Ld. AO for examination. The Ld. AR therefore pleaded that the order of the Ld. CIT(A)-NFAC be upheld.

8. We have heard both the sides and perused the material available on record and the orders of the Authorities below. The Ld. AO while examining the P & L Account observed that certain miscellaneous expenses were not incidental to the business of the assessee and details of expenses were not furnished before him. However, the Ld. AO has failed to give the details of the various expenses but has merely mentioned that no details are furnished and hence the disallowance was made. The Ld AO's findings are extracted below:

"8. The examination of Misc. Expenses vide Schedule 2.21 to Profit & Loss Account shows that following expenses have been claimed by the assessee.

<i>Sl No.</i>	<i>Head of Expenses</i>	<i>Amount (Rs.)</i>	<i>Remarks</i>
1.	<i>Other expenses - Pooja</i>	5,49,071	<i>These expenses are not incidental to the business at all. So the same is disallowed.</i>
2.	<i>Other expenses - General</i>	15,47,549	<i>No details were furnished. So, the expenses are disallowed.</i>
3.	<i>Full time Directors' incidental expenses</i>	8,14,113	
4.	<i>Other Directors' incidental expenses</i>	7,37,246	<i>Remuneration is paid to the Directors. So further expenses are not allowed.</i>
	<i>Total</i>	36,47,979	

In view of the aforesaid remarks, the entire amount of Rs. 36,47,979 is disallowed and added back to the total income."

Before us the Ld. AR claims that all the details of expenses have been submitted before the Ld. AO and also before the Ld. CIT(A)-NFAC. We

further find that the Ld. CIT(A)-NFAC has simply observed that the Ld. AO has not verified about the nature of business use of the expenses claimed by the assessee as miscellaneous expenses. The findings of the Ld. CIT(A)-NFAC are extracted below:

"4. Ground No.8 of the appeal is against disallowing general expenses amounting to Rs. 15,47,549/-. The Ld. AO has simply stated that details were not furnished. Nothing has been stated about nature of business use and verifiability of these expenses. In view of the overall facts of the case, it will be reasonable to restrict the addition to 20% of these expenses i.e., to Rs. 3,09,510/- resulting in relief of Rs.12,38,039/-. The ground of appeal is 'partly allowed'."

The Ld. CIT(A)-NFAC has also erred in giving the finding whether these expenses warrant any disallowance based on the submissions made by the Ld AR before the Ld. CIT(A)-NFAC. The Ld Revenue Authorities have not examined but has merely stated that evidences were not produced before them. In such a situation the Ld AO could have rejected the books of accounts. The Ld AO has not categorically substantiated the adhoc percentile disallowances with details in the Assessment Order. In these circumstances, we deem it fit to remit the mater back to the file of the Ld. AO to verify the details of expenses and compute the disallowance, if any, by passing a speaking order on this issue. Accordingly, this ground raised by the Revenue is allowed for statistical purposes.

9. With respect to Ground No.3 disallowance of sundry creditors amounting to Rs. 30,35,000/- the Ld. DR submitted that these creditors are more than three years old and no details of such creditors are available with the assessee. The Ld. DR further submitted that confirmation of balances from creditors was also not furnished. The Ld. DR therefore pleaded that the order of the Ld. AO be upheld. Per contra, the Ld. AR submitted that the details of the sundry creditors were noticed by Ld AO, arising out of the aging analysis that has been submitted before the Ld. AO and also before the Ld. CIT(A)-NFAC. The Ld. AR further submitted that the Ld. AO did not ask for any further enquiries on our submissions. Without providing any opportunity for us to substantiate the long pending creditors the Ld. AO erred in disallowing the same while framing the assessment. He therefore pleaded that the order of the Ld. CIT (A)-NFAC be upheld.

10. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. It is found from the assessment order that the Ld. AO has merely stated that the details of sundry creditors are not available and confirmation letters are not furnished and hence could not be verified. The Ld. AO has merely based on the surmises and conjectures treated the creditors more than 3 years old as bogus and added it to the total income. On the contrary, the Ld.

CIT(A) found that the Ld. AO has not stated any specific reasons or conducted any enquiries during the assessment proceedings to examine the genuinity of the sundry creditors present in the books of account. However, the Ld. CIT(A)-NFAC also failed to examine the documentary evidence submitted before him, as claimed by the Ld. AR which were provided online to the Ld. CIT(A)-NFAC during the appeal proceedings. In the light of the above circumstances, we deem fit to remit the matter back to the file of the Ld. AO with a specific direction to examine the sundry creditors name wise, year wise and decide the case accordingly pass a speaking order on this issue, by providing one more opportunity to the assessee. Therefore, this ground raised by the Revenue is allowed for statistical purposes.

11. With respect to Ground No.4 on the disallowance of consumption of stores, spares and other expenses, the Ld. DR submits that no details were provided by the assessee except for filing the ledger statements. No vouchers or bills were produced before the Ld. AO for examination and hence the Ld. AO has considered the ad-hoc disallowance of various expenses. He therefore pleaded that the order of the Ld. AO be upheld. Per contra, the Ld. AR submitted that relevant details of vouchers along with ledger copies were produced before the Ld. AO which were also mentioned by the Ld. AO in para 14 of the assessment order. The Ld. AR

also submitted that there is no provision in the Income Tax Act to disallow expenses on percentage basis without assigning any proper reasons while examining the bills and vouchers. The Ld. AR further submitted that the above expenses are normal business expenses incurred by the assessee and therefore no disallowance is warranted. He therefore pleaded that the order of the Ld. CIT(A)-NFAC be upheld.

12. We have heard both the sides and perused the materials available on record and orders of the Authorities below. Similar to the other grounds raised by the Revenue, we find that the assessee has submitted the ledger account copies and sample bills and vouchers before the Ld. AO and also before the Ld. CIT(A)-NFAC. However, the Ld. AO has failed to identify the expenditure invoice wise but has generally disallowed a portion of expenditure on adhoc basis without providing any valid reasons for the same. Similarly, while deleting the addition made by Ld AO, the Ld. CIT(A)-NFAC has also failed to mention the examination of the bills and vouchers submitted before him but has merely stated that the Ld. AO has disallowed a huge amount without bothering to go into the details and reasonableness and without comparing with the earlier years. In view of the above discussions, we find that both the Ld. AO and the Ld. CIT(A)-NFAC have not examined the bills and vouchers submitted by the assessee before either disallowing or allowing the claim of the

assessee. We therefore direct the Ld. AO to examine these expenses and decide the matter in accordance with law after providing one more opportunity to the assessee and pass a speaking order. Therefore, this ground raised by the Revenue is partly allowed for statistical purposes.

13. Ground No.5 with respect to disallowance of interest on loans at Rs. 37,60,200/- as per section 14A of the Act. The Ld. DR submitted that the Ld. AO has rightly disallowed the interest as per the provisions of section 14A of the Act. The Ld. DR further submitted that the assessee in suo motto has disallowed only Rs. 2,40,000/- u/s. 14A of the Act while filing the return of income whereas the assessee failed to consider the interest expenditure on the funds utilized for the purpose of investments. The Ld. DR pleaded that the order of the Ld. AO be upheld. Per contra, the Ld. AR submitted that the assessee on his own account has disallowed a sum of Rs. 2,40,000/- suo motto which was neither disputed nor considered by the Ld. AO. The Ld. AR pleaded that in the absence of any dissatisfaction being recorded by the Ld. AO regarding suo motto disallowance, any further disallowance by the Ld. AO on the interest amount is not valid in law. The Ld. AR relied on the decision of the Hon'ble Karnataka High Court in the case of Essilor India (P.) Ltd vs. DCIT [137 Taxmann.com 60 (Karnataka)]. He therefore pleaded that the order of the Ld. CIT (A)-NFAC be upheld.

14. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly, the Ld. AO has failed to record his satisfaction that the claim made by the assessee regarding the suo motto disallowance of Rs. 2,40,000/- u/s. 14A of the Act while filing its return of income is not in accordance with the disallowance made u/s. 14A r.w Rule 8D(1) of the Act. The reliance placed by the Ld. AR in the case of Essilor India (P.) Ltd (supra) wherein it has been held that where the Assessing Officer has failed to record his satisfaction with regard to the claim of the assessee that it had incurred any expenses to earn any exempt income except for a sum as claimed by the assessee, the impugned disallowance u/s. 14A by invoking Rule 8D by the Ld. AO was unjustified. Similarly, we find that Hon'ble Calcutta High Court in the case of Principal Commissioner of Income Tax vs. West Bengal Infrastructure Development Finance Corporation Ltd [2022] 143 taxmann.com 135 (Calcutta) has held that where the Assessing Officer has failed to give any cogent reason of dissatisfaction regarding computation of disallowance U/s. 14A but has reached the conclusion on a mere ground that the disallowance made suo motto was not convincing, impugned addition made in reference to same was to be deleted.

15. Judicially following the above decisions of the Hon'ble High Courts, we are inclined to dismiss this ground raised by the Revenue and we find no infirmity in the order of the Ld. CIT(A)-NFAC on this issue. Accordingly, this ground raised by the Revenue is dismissed.

16. In the result, appeal of the Revenue is partly allowed for statistical purposes.

ITA No. 189/Viz/2022 (AY: 2013-14)

(By Revenue)

17. This appeal filed by the Revenue against the order of the Ld. CIT(A)-NFAC, Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1044556463(1), dated 08/08/2022 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] dated 29/12/2016.

18. The Revenue has raised four grounds in its appeal and they read as under:

- “1. *The order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting the disallowance made by the AO at 40% of the expenses claimed under the head “Research & Development expenses”, when the assessee failed to prove the genuineness of expenditure before the Assessing Officer.*
3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in restricting disallowance to 20% out of the total disallowance of Rs. 34,56,716/- made by the AO on account of ‘General Expenses – others’ and granting relief of Rs. 27,65,373/- when the assessee has failed to prove its genuineness before the Assessing Officer.*

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

19. Grounds No. 1 & 4 are general in nature and they need no adjudication.

20. Grounds No.2 & 3 with respect to disallowance of Research & Development Expenses and General Expenses made by the Ld. AO. Similar issues were decided by us while adjudicating the Revenue's appeal in ITA No. 162/Viz/2022. Hence, the decision taken by this Bench in Para No. 8 while adjudicating the identical issues in appeal No. 162/Viz/2022 *mutatis mutandis* applies to the instant grounds raised by the Revenue also.

21. In the result, appeal of the Revenue is partly allowed for statistical purposes.

CO Nos.22 & 23/Viz/2022 (AY: 2012-13 & 2013-14)

(By assessee)

22. These cross objections raised by the assessee are supportive in nature and therefore the adjudication of the Cross Objections raised by the assessee becomes infructuous.

23. Ex-consequenti, both the Revenue's appeals are partly allowed for statistical purposes and the Cross Objections raised by the assessee are disposed off.

Pronounced in the open Court on the 28th February, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 28.02.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s. Andhra Paper Limited (M/s. International Paper APPM Ltd), Sri Ram Nagar, Rajamahendravaram, Andhra Pradesh – 533105.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax O/o. DCIT, C-1, AayakarBhawannVeerabhadrapuram, Rajamahendravaram, Andhra Pradesh -533106.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam