

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. 246/Viz/2022

(निर्धारण वर्ष / Assessment Year : 2018-19)

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

Vs. Vijaynagar Food and
Nutraceuticals Pvt Ltd,
Visakhapatnam.
PAN: AADCV 9495 L
(प्रत्यर्थी/ Respondent)

C.O. No. 2/Viz/2023

(In आयकर अपील सं./ I.T.A. No. 246/Viz/2022)

(निर्धारण वर्ष / Assessment Year : 2018-19)

Vijaynagar Food and
Nutraceuticals Pvt Ltd,
Visakhapatnam.
PAN: AADCV 9495 L
(अपीलार्थी/ Cross Objector)

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

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, Advocate

प्रत्यर्थी की ओर से / Revenue by

: Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 09/03/2023

घोषणा की तारीख/Date of

: 29/03/2023

Pronouncement

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in DIN & Order No. ITBA/APL/S/250/2022-23/1046192142(1), dated 06/10/2022 arising out of the order passed U/s. 153A r.w.s 144 of the Income Tax Act, 1961 [the Act] dated 29/9/2021 for the AY 2018-19.

2. Briefly stated the facts of the case are that the assessee is engaged in the business of manufacturing coconut value added products filed its e-return of income for the AY 2018-19 admitting a total loss of Rs. 24,89,19,490/-. A search action U/s. 132 of the Act was conducted on the assessee on 10/01/2020 along with its group concerns. Consequent to search action U/s. 132 of the Act, the case was centralized with Central Circle-1, Visakhapatnam vide order of the Pr. CIT-1, Visakhapatnam U/s. 127 of the Act in F.No. Pr. CIT-1/VSP/127/2020-21 dated 4/11/2020. The Ld. AO issued a notice U/s. 153A of the Act calling for the return of income. Since there was no response, the Ld. AO issued notice U/s. 142(1) of the Act calling for the information along with the detailed questionnaire. The assessee's Representative partly filed

the information on 11/09/2021. On examination of the submissions made by the Ld. AR, the Ld. AO found from the incriminating material which was seized vide Annexure-A/VBPL/OFFICE/04 noticed that the assessee company has received Rs. 6,12,05,651/- as loans and advances from M/s. Vijaynagar Biotech Private Limited (VBL). The Ld. AO therefore considered the amount received by the assessee company as deemed dividend U/s. 2(22)(e) of the Act and has accordingly added the deemed dividend to the total income of the assessee under the head 'income from other sources'. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A) considering the submissions made by the assessee's Representative, allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

3. The Revenue has raised the following grounds of appeal:

- “(i) The order of the Ld. CIT(A) is erroneous on grounds of facts and law.*
- (ii) The Ld. CIT(A) erred in holding that the additions do not fall in the category of undisclosed income or income unearthed during the search, as the assessment completed in this case was U/s. 153A of the Act to assess total income of the assessee which statutorily is not limited to only assess undisclosed income consequent to search action.*

- (iii) *The Ld. CIT(A) failed to appreciate that the explanation 3(b) to section 2(22)(e) is an independent provision and the provisions of section 2(32) do not match 'mutatis mutandis' apply to the present case.*
- (iv) *Any other ground that may be urged at the time of hearing."*

4. Ground No.3 is with respect to addition of Rs. 6,12,05,651/- as deemed dividend u/s. 2(22)(e) of the Act. The Ld. DR submitted that the Director of the assessee company Shri Datla Ranga Raju owns 19.05% of the shares in M/s. Vijaynagar Biotech Private Limited (VBL). The Ld. DR further submitted that the same director holds more than 10% in the assessee company. The Ld. DR further submitted that since there is a common shareholding and the Director Sri Datla Ranga Raju is a common Director in both the companies, the Ld. AO has rightly treated the advances received by the assessee company as deemed divided and pleaded that the order of the Ld. AO be upheld. Per contra, the Ld. AR relied on the order of the Ld. CIT(A).

5. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. We find that the Ld. CIT(A) in para 4.3 of his order held as follows:

"4.3. I have considered ground No.5, gone through the submissions made on behalf of the appellant and seen

the remand report and order of the Ld. AO carefully. I find that the submissions of the appellant with respect to the legal provisions on deemed dividend as explained above and the facts of the case are in order and hence the provisions of section 2(22)(e) of the Act are not attracted in view of specific explanation in section 2(32) of the Act as to when a shareholder of a company is said to be having substantial interest in the company. In the case of the appellant Sri D. Ranga Raju is holding only 19.05% shares of the appellant there fore he cannot be said to be having substantial interest in the appellant company. Moreover, as pointed out that the appellant company is not a shareholder of VBL. Considering the above this ground of appeal is allowed."

6. We find that the Ld. CIT(A) has rightly applied the provisions of section 2(32) of the Act and has deleted the deemed dividend u/s. 2(22)(e) of the Act as Sri D. Ranga Raju is holding below 20% of the shares of the assessee company as prescribed U/s. 2(32) of the Act. We extract section 2(22)(e) below:

*(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;*

Further we also extract the definition of "substantial interest" as per section 2 (32) of the Act below:

*"person who has a substantial interest in the company", in relation to a company, means 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, **carrying not less than twenty per cent of the voting power** ;*

In view of the above definition, in the instant case Shri Datla Ranga Raju owns 19.05% of the shares in M/s. Vijaynagar Biotech Private Limited (VBL) which is below the prescribed limit of 20% in order to have substantial interest in a company. The ground raised by Revenue on Explanation 3(b) to section 2(22)(e) refers to a concern other than a company and hence not relevant for the instant case. We therefore find that there is no requirement to interfere in the order of the Ld. CIT(A) on this ground. Accordingly the appeal of the Revenue on this ground is dismissed.

7. Ground No.2 with respect to legal issue raised by the Revenue, since the appeal is adjudicated on merits against the Revenue, this legal issue need not be adjudicated.

8. Ground Nos. 1 & 4 are general in nature and needs no adjudication.

9. In the result, appeal of the Revenue is dismissed.

10. Cross Objection raised by the assessee is supportive in nature and therefore the adjudication of the CO becomes infructuous.

Pronounced in the open Court on the 29th March, 2023.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
---	---

Dated : 29.03.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. Vijaynagar Food and Nutraceuticals Private Limited, 9-29-15/7, 3rd Floor, Padmavathi Towers, Balaji Nagar, Upstairs Canara Bank Regional Office, VIP Road, Siripuram, Visakhapatnam, Andhra Pradesh – 530003.
2. राजस्व/The Revenue – Assistant Commissioner of Income Tax, Central Circle-1, 5th Floor, Direct Taxes Building, Sector-8, MVP Double Road, Visakhapatnam, Andhra Pradesh-530017.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-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