

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**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.38/Viz/2023 & 39/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2014-15 and 2018-19)**

District Coop Central Bank Ltd.  
D.No.70-1-28/1  
Nagamallithota Junction  
Pithapuram Road  
Kakinada  
**[PAN : AAAAT 4266G]**

Vs. Asst.Commissioner of  
Income Tax  
Circle-1  
Kakinada

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR  
: Shri ON Hari Prasada Rao, DR

सुनवाई की तारीख / Date of Hearing

: 24.04.2023

घोषणा की तारीख/Date of Pronouncement

: 23.05.2023

**आदेश /ORDER**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

These appeals are filed by the assessee against the orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1048029461(1) dated 15.12.2022 and ITBA/NFAC/S/250/2022-23/1048317778(1) dated 29.12.2022 for the Assessment Year (A.Y.) 2014-15 and 2018-19, arising out of the assessment orders passed by the Assessing Officer (AO) u/s 143(3) of the Income Tax Act, 1961 (in short

“Act”) dated 13.12.2016 for the A.Y.2014-15 and 143(1) of the Act dated 01.10.2019 for the A.Y.2018-19. Since the issue involved in these appeals is common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under and the facts are extracted from I.T.A.38/Viz/2023, A.Y.2014-15.

2. Brief facts of the case are that the assessee is a co-operative society, carrying on banking activities, filed its return of income, declaring total income of Rs.72,520/- on 27.03.2015. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued and served on the assessee. The assessment was completed on 28.12.2016 at an assessed income of Rs.4,33,82,735/- by making addition on account of disallowance of expenditure u/s 40(a)(ia) of the Act, amounting to Rs.80,03,643/- and disallowance of depreciation claimed amounting to Rs.58,61,669/-. Accordingly a sum of Rs.1,38,65,312/- was added back to the income of the assessee.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) by raising the grounds of appeal. During the appellate proceedings, statutory notices were issued and served on the assessee, however, no submissions were made during the entire appellate

proceedings in support of grounds of appeal. Hence, the Ld.CIT(A) held that the assessee had nothing more to submit except raising the grounds. The Ld. CIT(A) relied on the decision of coordinate bench of ITAT in ITA No.1025-1027/Chandi/2005 for the A.Y.2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N.Bhattachargee, 118 ITR 461 (SC), which held that the appeal does not mean merely filing of the appeal, but effectively pursuing it. Keeping in view the aforesaid factual position, the Ld. CIT(A) decided the appeal on merits. On examination of the records available, the Ld.CIT(A) held that the AO has rightly assessed an income of Rs.4,33,82,735/- and confirmed the addition of Rs.1,38,65,312/- made by the AO, since the assessee failed to substantiate it's claim.

4. On being aggrieved, the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal:

*1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*

*2. The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal exparte.*

*3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) ought to have directed the assessing*

*officer to allow further deduction of an amount of Rs.58,61,669/- towards depreciation as there was short claim on part of the appellant to the extent of this amount.*

*4.The learned Commissioner of Income Tax (Appeals) ought to have directed the assessing officer to restrict the disallowance of Rs.80,03,643 made u/s 40(a) (ia) of the Act to 30% of the amount in view of the amendment made to S.40 (a) (ia) applicable from A.Y. 2014-15 on wards.*

*5. Any other grounds may be urged at the time of hearing.*

5. Ground No.1 and 5 are general in nature which does not require specific adjudication.

6. With regard to ground No.2, the Ld.AR submitted that the Ld.CIT(A) has not given any opportunity to present it's case and dismissed the appeal ex-parte, which is not justified. The Ld.AR pleaded that keeping in view the principles of natural justice, one more opportunity may be given before the Ld.CIT (A) to substantiate it's case, for which the Ld.DR has not raised any objection.

7. We have heard both the parties and perused the material available on record. It is apparent from the records, that the appeal filed by the assessee was dismissed ex-parte before the Ld.CIT(A) as there was no response to the notices issued and served by the Ld.CIT(A). However, in order to meet the principles of natural justice, we are inclined to remit the matter back to the file of the Ld.CIT(A) to afford an opportunity of

being heard to the assessee and present it's case. The assessee is also directed to adhere to the notices issued by the department. Accordingly, the ground raised by the assessee is allowed for ststistical purpose.

8. Ground No.3 and 4 are not required to be adjudicated, since it is decided to remit the matter back to the file of the Ld.CIT(A) as per ground No.2.

9. Since the appeal for the A.Y.2014-15 is remitted back to the file of the Ld.CIT(A), the same is applicable for the A.Y.2018-19 *mutatis mutandis*.

10. In the result appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 23<sup>rd</sup> May 2023.

Sd/-

(एस बालाकृष्णन)

**(S.BALAKRISHNAN)**

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 23.05.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

**(DUVVURU RL REDDY)**

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

1. निर्धारिती/ The Assessee– The District Coop Central Bank Ltd., D.No.70-1-28/1, Nagamallithota Junction, Pithapuram Road, Kakinada
2. राजस्व/The Revenue – Asst.Commissoner of Income Tax, Circle-1, Income Tax Office, 3<sup>rd</sup> Floor, Deepthi Towers, Main Road, Kakinada
4. The Principal Commissioner of Income Tax, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 6..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam