

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.191/Viz/2020
(निर्धारण वर्ष / Assessment Year : 2006-07)**

Andhra Pradesh Tanneries Ltd.
IDA, Leather Complex Area
Nellimarla
Vizianagaram
[PAN : AABCA4797L]
(अपीलार्थी/ Appellant)

Vs. Asst.Commissioner of
Income Tax
Circle-3(1)
Visakhapatnam
(प्रत्यर्थी/ Respondent)

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

: Shri Y.A.Rao, AR
: Shri O.N.Hari Prasada Rao, DR

सुनवाई की तारीख / Date of Hearing

: 21.06.2023

घोषणा की तारीख/Date of Pronouncement

: 14.07.2023

ORDER

Per Shri Balakrishnan S, Accountant Member

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]-1, Visakhapatnam in I.T.A. No.0301/2008-09/CIT(A)-1/VSP/2020-21 dated 16.07.2020 for the Assessment Year (A.Y.) 2006-07, arising out of the order passed u/s 143(3) of the Income Tax Act, 1961 (in short "Act) by the Assessing Officer (AO) on 24.12.2008.

2. Brief facts of the case are that the assessee is a public limited company, manufacturing finished leather at Vizianagaram, filed its return of income, declaring loss of Rs.90,41,928/- for the A.Y.2006-07. The case was selected for scrutiny and a notice u/s 143(2) of the Act was issued and served on the assessee on 12.10.2007. The assessment was completed by the Ld.AO by making addition of Rs.1,63,18,559/- due to the reason that the assessee has failed to produce confirmation letters from creditors in the case of Bambolli Holdings Pvt.Ltd.

3. Aggrieved by the order of the Ld.AO, the assessee filed an appeal before the CIT(A). Before the Ld.CIT(A), the Ld.AR submitted that the assessee has not been given adequate opportunity to submit the confirmations from the creditors. The assessee, however submitted the confirmations before the Ld.CIT(A). The Ld.CIT(A), considering the submissions made before him, forwarded the same to the Ld.AO, calling for remand report. The Ld.AO, without providing any opportunity to the assessee, submitted remand report dated 17.07.2017. Considering the objections raised by the Ld.AR that no opportunity was provided by the Ld.AO, the Ld.CIT(A) vide letter dated 04.01.2019, once again directed the AO to provide opportunity to the assessee and submit a fresh remand report. However, it was alleged by the assessee that the remand report

dated 28.02.2019 was submitted neither to the assessee for rejoinder nor to the Ld.CIT(A). The Ld.CIT(A) considering the remand report dated 17.07.2017, dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us. Originally, the assessee had raised 10 grounds of appeal and later revised to 5 grounds of appeal as follows :

1. *The learned Commissioner (Appeals) is not justified in dismissing the appeal, without providing a fresh opportunity to hear the appeal, particularly, when the Commissioner(Appeals) has not received remand report sought from the Assessing Officer with reference to Remand order dated 04.01.2019.*

2. *The authorities below failed to appreciate the actual transactions carried between Appellant and BCL Forgings Ltd through banking channels, which took place int eh acse of the Appellant namely,*

“The Appellant gave inter-corporate Deposit of 1.25 crores given to BCL Forgings Ltd. on 31/03/2005, which was repaid in instalments by B.C.L.Forgings Ltd. during the financial eyar 2005-06 (A/Y2006-08)”

3. *The learned Commissioner (Appeals) erred in passing orders u/s 250, relying on the remand report dated 17/07/2017 received from A.O., which in fact, was not accepted and a fresh report was called vide letter dated 04/01/2022 by the Commissioner (Appeals) and in fact no report was submitted by Assessing Officer to Commissioner (Appeals).*

4. *The Appellant prays for deletion of addition f Rs.1,27,06,038/- partly sustained by Commissioner (Appeals), when genuineness of transactions were not doubted by the Department.*

5. *For these and other grounds that may be urged by the Appellant, at the time of hearing, the Appellant prays for appropriate relief in the interest of justice.*

5. The main contention of the Ld.AR is that the Ld.CIT(A) relied on the remand report dated 17.07.2017 and arrived at a conclusion of dismissing the appeal of the assessee. The Ld.AR also contended that the remand report dated 28.02.2019 was submitted to the assessee while it was submitted before Tribunal on 22.02.2022 . The Ld.AR further submitted that this remand report was not at all considered by the Ld.CIT(A), while passing the order dated 16.07.2020. The Ld.AR, therefore, pleaded that one more opportunity may be provided to the assessee and the matter may be remitted back to the Ld.AO.

6. Per contra, the Ld.DR admitted that the remand report was not available before the Ld.CIT(A) as on 16.07.2020. However, the Ld.DR submitted that the Ld.AO has rejected the assessee's objection, even after considering the submissions / objections made by the assessee. The Ld.DR, therefore, pleaded that since the decision of the Ld.AO remained the same as compared to the remand report dated 17.07.2017, the order of the Ld.CIT(A) may be upheld.

7. We have heard both the sides and perused the material available on record. Admittedly, the remand report dated 04.01.2019 was not available

before the Ld.CIT(A) or before the assessee as on the date of filing of appeal before us. On a query from the Bench, the Ld.AR admitted that he has raised objections to the remand report dated 28.02.2019, which was provided to the assessee, when the Ld.DR submitted the same before the Tribunal. Even though, the conclusion in both the remand reports of the Ld.AO remains the same, we find that no opportunity was provided by Ld.CIT(A) to the assessee to furnish a rejoinder to the remand report. Therefore, following the principles of natural justice, we are inclined to remit the matter back to the file of the Ld.CIT(A) with a direction to consider the remand report dated 28.02.2019 and reasonable opportunity may be provided to the assessee to furnish rejoinder to the remand report dt.04.01.2019 and decide the case on merits by passing a speaking order.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order Pronounced in open Court on 14th July, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

Dated :14.07.2023

L.Rama, SPS

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

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

1. निर्धारिती/ The Assessee- Andhra Pradesh Tanneries Ltd., IDA, Leather Complex Area, Nellimarla, Vizianagaram
2. राजस्व/The Revenue – Asst.Commissioner of Income Tax, Circle-3(1) Visakhapatnam
3. प्रधान आयकर आयुक्त The Principal Commissioner of Income Tax-
1,Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam