

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.119/Viz/2021

(निर्धारण वर्ष / Assessment Year :2018-19)

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

Vs. M/s. Linton Projects Pvt. Ltd.,
D.No. 16-5-23,
Yelugubantivari Veedhi,
Vizianagaram.
PAN: AABCL 6461 E
(प्रत्यर्थी/ Respondent)

(अपीलार्थी/ Appellant)

C.O. No.14/Viz/2023

(In आयकर अपील सं./ I.T.A. No.119/Viz/2021)

(निर्धारण वर्ष / Assessment Year :2018-19)

M/s. Linton Projects Pvt. Ltd.,
D.No. 16-5-23, Yelugubantivari
Veedhi, Vizianagaram.
PAN: AABCL 6461 E

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

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri C. Subrahmanyam, AR

प्रत्यर्थी की ओर से / Revenue by

: Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 13/07/2023

घोषणा की तारीख/Date of

: 10/08/2023

Pronouncement

ORDER

PER DUVVURU RL REDDY, Judicial 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 Appeal No. 375/2019-20/10428/CIT(A)-3/VSP/2020-21, dated 29/03/2021 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2018-19. The assessee has filed the Cross Objection.

I.T.A. No.119/Viz/2021
(Revenue's Appeal)

2. Brief facts of the case are that the assessee is engaged in the business of construction of apartments. The assessee-company has filed its return of income for the AY 2018-19 on 29/09/2018 admitting a loss of Rs. 40,681/-. A search & seizure operations U/s. 132 of the Act was conducted on 15/09/2017 by the DDIT(Inv.) Unit-III(1), Visakhapatnam at the premises of M/s. Linton Projects Pvt Ltd., in connection with the search and seizure operations in the group case of Shri Alakram Satyanandam & Group. Consequent to search, the assessee company was centralized with Central Circle-2, Visakhapatnam

vide proceedings of the Pr. CIT-1, vide order in F.No. Tech/127 order/Pr.CIT-1/VSP/2017-18, dated 25/01/2018. Subsequently, adhering to the CBDT Guidelines, notices U/s. 143(2) and 142(1) of the Act were issued on 21/8/2019 and 19/11/2019 respectively. During the AY 2018-19 the assessee company received unsecured loans to the tune of Rs. 93,55,868/- and the Ld. AO asked the assessee to produce the ledger accounts, confirmation letters along with evidences to prove the creditworthiness of the parties. Since the assessee company has not filed any information a show cause notice was issued on 12/12/2019 by the Ld. AO. In response, the assessee filed its reply on 20/12/2019 submitting copies of ledger account without evidences with reference to creditworthiness of the party. On perusal of the reply submitted by the assessee-company, the Ld. AO opined that since all the persons who lend money to the assessee-company have built their capital by receiving bogus cash gift or bogus unsecured loan which were added back as unaccounted income in the hands of the individuals and they are shown in the form of asset in the hands of the assessee-company, the amount of Rs. 93,55,868/- was added to the assessee's total income on substantive basis and protectively in the hands of the individual loan creditors as unexplained cash credit U/s. 68 r.w.s

115 BBE of the Income Tax Act, 1961. Thus, the total income of the assessee was determined at Rs. 93,55,868/- and tax demand of Rs. 87,45,160/- was raised by the Ld. AO. Aggrieved by the order of the Ld. AO, the assessee carried the matter in appeal before the Ld. CIT(A).

3. On appeal the Ld. CIT(A) considered the submissions of the assessee's Representative and granted relief to the assessee with respect to disallowance of Rs. 93,55,868/- vide paras 5.2 to 5.6 of his order and partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

- “(i) On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the AO towards unexplained credits U/s. 68 r.w.s 115BBE of the IT Act when the assessee has failed to establish the creditworthiness of the parties from which it has received unsecured loan as the loan creditors have built their capital by receiving bogus cash gift or bogus unsecured loans.*
- (ii) The Ld. CIT(A) has erred in deleting the addition made by the AO U/s. 68 r.w.s 115BBE without appreciating the fact that the onus is on the assessee to satisfy all the three conditions as required U/s. 68 of the IT Act, 1961.*
- (iii) Any other ground of appeal that may arise at the time of hearing.”*

4. At the outset, the Ld. DR submitted that the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 viz., (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. In the present case, the assessee has failed to establish the creditworthiness of the parties from whom the assessee has received unsecured loan as the loan creditors have built their capital by receiving bogus cash gift or bogus unsecured loans. In such situation, the Ld. DR mentioned that, the action of the Ld. AO making the addition by invoking the provisions of the section 68 r.w.s 115BBE of the Act is justifiable. The Ld. DR further mentioned that the Ld. CIT(A) without appreciating these facts, granted relief to the assessee by directing the Ld. AO to allow the disallowance and therefore the Ld. DR pleaded that the order of the Ld. CIT(A) on this issue may be set aside and that of the order of the Ld. AO be upheld. Thus, the Ld. DR strongly relied on the order of the Ld. AO and argued in support of the same.

5. On the other hand, Ld. AR countering the arguments of the Ld. DR submitted that the assessee has furnished the evidences as sought for by the Ld. AO by way of confirmation letters from the lenders of the unsecured loans twice during the course of

assessment proceedings. The Ld. AR further submitted that before the Ld. CIT(A), the assessee's Authorized Representative has submitted the copies of acknowledgements received from the Ld. AO in proof of having submitted the confirmations. In such situation, the observation of the Ld. AO stating that the assessee has not filed the information during the course of assessment proceedings is devoid of merit. The Ld. AR further submitted that considering the above facts and submissions made by the assessee's Representative, the Ld. CIT(A) discussed the issue at length and granted relief to the assessee. Therefore, the Ld. AR pleaded that the order of the Ld. CIT(A) need not be interfered with as it holds good and the issue was adjudicated in accordance with the law.

6. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee has received unsecured loans to the tune of Rs. 93,55,868/- during the AY 2018-19. The case of the Ld. AO is that the assessee has not filed any confirmation letters, bank statements of the loan creditors and creditworthiness of the creditors during the course of assessment proceedings. Therefore, the Ld. AO made addition

in the absence of any evidence furnished by the assessee. On appeal, the Ld. CIT(A) deleted the addition stating that the assessee has filed all the confirmation letters, bank statements and creditworthiness of the creditors. Moreover, in para 5.5 of the Ld. CIT(A)'s order, the Ld. CIT(A) observed that the assessee has also furnished the acknowledgments given by the Ld. AO in proof of having submitted the confirmation letters before the Ld. CIT(A). Considering all these submissions of the assessee, the Ld. CIT (A) directed the Ld. AO to allow the disallowance of unsecured loans of Rs. 93,55,868/-. On perusal of the order of the Ld. CIT (A), we find that the Ld. CIT(A) has not discussed anything except stating that the assessee has filed confirmation letters, bank statements and creditworthiness of the creditors. In our considered opinion that Ld. CIT(A) ought to have remanded the evidences submitted before him to the Ld. AO and sought for a verification / remand report from the Ld. AO. In the absence of any verification of the confirmation letters, bank statements etc., submitted by the assessee, we cannot come to a conclusion that the Ld. CIT (A) has adjudicated the issue on merits and in accordance with law. Therefore, keeping in view all the facts discussed above, we hereby set-aside the order of the Ld. CIT(A) on this issue and remit the matter back to the file of the Ld. AO

to examine the issue afresh after considering the confirmation letters filed by the assessee before the Ld. CIT(A). We also hereby direct the assessee to furnish all the details which were placed before Ld. CIT (A), should also be filed before the Ld. AO and cooperate promptly with the Ld. AO in deciding the issue afresh. We reiterate that on furnishing the details by the assessee, the Ld. AO should verify and examine them in accordance with law and pass a speaking order. It is ordered accordingly.

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

C.O. No.14/Viz/2023
(By Assessee)

8. With respect to the Cross Objection raised by the assessee, while adjudicating the Revenue's appeal we have set-aside the order of the Ld. CIT (A) and allowed the Revenue's appeal for statistical purposes as mentioned herein above, and therefore in our considered opinion the adjudication of the Cross Objection raised by the assessee becomes infructuous. Hence, the CO raised by the assessee is dismissed as infructuous.

Pronounced in the open Court on 10th August, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 10/08/2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – m/S. Linton Projects Pvt Ltd., D.No. 16-5-23, Yelugubantivari Veedhi, Vizianagaram, Andhra Pradesh.
2. राजस्व/The Revenue – The Deputy Commissioner of Income Tax, Central Circle-2, Pratyakshakar Bhavan, Sector-8, MVP Double Road, Visakhapatnam, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. .गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam