

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.73/Viz/2021

(निर्धारण वर्ष / Assessment Year: 2017-18)

Asst. Commissioner of Income
Tax, Circle-1(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

Vs. Sri Tirumala Steel Enterprises,
26-8-62, Rajaram Mohan Roy
Road, Velampeta,
Visakhapatnam.
PAN: AALFS 6152 N
(प्रत्यर्थी/ Respondent)

C.O. No. 22/Viz/2023

(In आयकर अपील सं./ I.T.A. No.73/Viz/2021)

(निर्धारण वर्ष / Assessment Year: 2017-18)

Sri Tirumala Steel Enterprises,
26-8-62, Rajaram Mohan Roy
Road, Velampeta,
Visakhapatnam.
PAN: AALFS 6152 N

(Cross Objector)

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से / Revenue by

Vs. Asst. Commissioner of
Income Tax, Circle-1(1),
Visakhapatnam.

(Appellant in appeal)

Sri GVN Hari, AR

Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 13/07/2023

: 10/08/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Visakhapatnam in ITA No. 10559/CIT(A)-1/VSP/2020-21, dated 16/09/2020 arising out of the order passed U/s. 143(3) of the Act for the AY 2017-18. The assessee has filed the Cross Objection.

ITA No.73/Viz/2021
(By Revenue)

2. Brief facts of the case are that the assessee-firm is engaged in the business of trading the products of Iron & Steel filed its return of income for the AY 2017-18 on 29/10/2017 declaring total income of Rs. 3,99,04,090/- and the assessee revised the return on 10/11/2017. Subsequently, the case was selected for complete scrutiny as per the CBDT Guidelines. Accordingly, the notice U/s. 143(2) of the Act was issued on 28/09/2018. Thereafter, upon change in incumbent, a letter along with notice U/s. 142(1) of the Act dated 17/09/2019 was also issued calling for certain information. In response to the said notices, the assessee filed the submissions through e-proceedings as called

for from time to time. A survey operation U/s. 133A of the Act was conducted in the case of the assessee on 11/10/2017 consequent to the search and seizure operation in the case of M/s. DRK Reddy Educational Society, Visakhapatnam. During the search operation, it was unearthed that the assessee firm has purchased Acres 2.515 cents of land in Anandapuram during the period January, 2017 & March, 2017 for a total consideration of Rs.5,45,88,000/- as per SRO value. During the course of survey, the Managing Partner of the firm Shri Grandhi Ramjee was asked to explain the cash payment made over and above the SRO value for acquiring the said land. In his sworn in statement, the Managing Partner admitted that the assessee-firm has paid Rs. 4,65,27,000/- in cash over and above the sale consideration mentioned in the registered sale deed which the Ld. AO noted that the assessee-firm had paid to Shri Dwarampudi Satyanarayana Reddy Rs. 4,65,27,000/- over and above the SRO value and the same was not recorded in the books of account of any of his business concerns including M/s. Sree Tirumala Steel Enterprises. It was also observed by the Ld. AO that the cash payments were made during October, 2016 and February, 2017 relevant to the FY 2016-17. Therefore, the Ld. AO opined that the said cash of Rs. 4,65,27,000/- is an unaccounted /

undisclosed income or cash during the FY 2016-17. The Ld. AO however noticed that the assessee declared only the amount of Rs.3,65,00,000/- while filing the return of income for the AY 2017-18 under the category "income offered at the time of survey operations" as against the income admitted in the sworn statement for Rs. 4,65,27,000/-, and after allowing the expenditure, net profit is shown at Rs. 3,28,22,384/-. The assessee took the telescoping benefit as requested in the sworn statement regarding the income offered under the IDS income of Rs. 1 Cr in the hands of the partners and firm. However, the Ld. AO observed that the IDS income of Rs. 1 Cr was offered for assessment years prior to AY 2017-18. The Ld. AO therefore issued a show cause notice to explain as to why the undisclosed income of Rs. 4,65,27,000/- which was offered during the survey proceedings and admitted in the sworn statement, should not be treated as unexplained cash and brought to tax under special rates mentioned U/s. 115BBBE of the Act. In response to the show cause notice the assessee submitted its reply on 18/12/2019 which is reproduced by the Ld. AO at para-4 of his order. But the Ld. AO did not accept the submissions of the assessee by holding that the amended provisions of section 115BBE w.e.f 15/12/2016 are retrospectively effective from

1/4/2016 ie., for AY 2017-18. Regarding the applicability of telescoping, the Ld. AO discussed the issue at para-6 of his order and denied the telescoping benefit on the IDS payment of Rs. 1 Crs in the hands of partner and firm which was declared by the assessee during AY 2016-17. Accordingly, the Ld. AO concluded that the amount of Rs. 4,65,27,000/- is undisclosed income of the assessee-firm and shall be subjected to tax U/s. 68 r.w.s 115BBE of the Act. Aggrieved by the order of the Ld. AO, the assessee went on appeal before the Ld. CIT(A).

3. On appeal, the Ld. CIT(A) after considering the submissions of the assessee and on perusal of the material available before him, granted relief to the assessee and partly allowed the assessee's appeal. Aggrieved by the order of the Ld. CIT (A), the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:

"1. The order of the Ld. CIT (A)-1, Visakhapatnam is erroneous on facts and in law.

2. The Ld. CIT(A) has erred both in law and on facts in treating the cash payments of Rs. 4,65,27,000/- as 'unaccounted but explained', especially when the unaccounted receipts from the demonetization period were to be treated as 'unexplained' as it had been preceded by IDS and then succeeded by PMGKY schemes.

3. *The Ld. CIT(A) has erred in law in allowing the taxation of the aforesaid 'unexplained' amount of Rs. 4,65,27,000/- at normal tax rate instead of the tax rate applicable U/s. 115BBE of the Act, since the same is not warranted on facts of the case.*

4. *The Ld. CIT(A) has failed to appreciate that the provisions of section 115BBE of the Act are applicable for AY 2017-18 itself as intended in the statement of the object and reasons of the bill 'Taxation Laws (Second Amendment) Bill, 2016 and therefore not invoking the said provisions is not justified.*

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

4. Before us, at the outset, with respect to disputed amount of Rs. 4,65,27,000/-, the Ld. DR drew our attention to the finding of the Ld. AO and stated that the assessee has clearly accepted in the sworn statement recorded U/s. 131(1A) of the Act on 11/10/2017 that the cash payments to the extent of Rs. 4,65,27,000/- were paid between October 2016 and February 2017 and this time period overlaps with demonetization period (9th November, 2016 – 30th December, 2016) and subsequent to PMGKY scheme. Therefore, these cash payment shall also be treated on par with undisclosed income detected during the demonetization period. The Ld. DR further submitted that since the assessee stated that these are business receipts generated outside the books of account, but could not be linked to any

business transactions sources from which these cash proceeds are generated. The Ld. DR further mentioned that the assessee has opted neither IDS 2016 nor PMGKY scheme to disclose the undisclosed income as intended by the Government of India rather the assessee simply shown the said undisclosed income in the said profit and loss account as other income i.e., 'income offered at the time of survey operations' claiming the tax rate at 30% and also expenditure against such incomes. The Ld. DR also argued that if the survey U/s. 133A of the Act would not happen on the assessee-firm, then the undisclosed income would not come into existence. Therefore, the Ld. DR submitted that the assessee's case is clearly covered under the provisions of section 115BBE of the Act as invoked by the Ld. AO. Further, with respect to the issue that whether the assessee-firm is eligible for telescoping benefit or not, the Ld. DR argued that the IDS Scheme 2016 is only for the prior assessment years till AY 2016-17 only and not for the AY under consideration i.e., 2017-18. Therefore, the Ld. DR submitted that the IDS disclosure that was made to disclose the undisclosed amounts of prior assessment years cannot be considered for AY 2017-18. Hence, the IDS amount paid by the assessee-firm and partner cannot be allowed for the purpose of telescopic benefit. The Ld. DR further

submitted that without appreciating these facts, the Ld. CIT(A) granted relief to the assessee and therefore, the Ld. DR pleaded that the order of the Ld. CIT(A) be set-aside and that of the Ld. AO be sustained.

5. On the other hand, the Ld. AR heavily relied on the order of the Ld. CIT(A) and reiterated the submissions made before the First Appellate Authority and strongly argued in support of the same. The Ld. AR argued that as per the sworn statement recorded the assessee has explained the sources of cash as the business receipts of M/s. Tirumala Steel Enterprises generated out of the books of account. The Ld. AR vehemently argued that the source is therefore explained. The Ld. AR further argued that no material evidence was brought on record by the Ld. AO to prove that it is not a business income. Since the source is explained, the Ld. AO has erred in making the addition U/s. 68 of the Act. The Ld. AR further submitted that since the provisions of section 68 and 69 cannot be invoked, invoking the provisions of section 115BBE is not valid in law. The Ld. AR also submitted that the Revenue has not raised any ground regarding telescoping benefit while filing the appeal. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

6. We have heard both the parties and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The undisputed facts are that there was a survey U/s. 133A of the Act on 11/10/2017 in consequence of search U/s. 132 in the case of DRK Reddy Educational Society. The assessee had purchased Ac. 2.515 Cents for a consideration of 5.45 Crs and the cash component of Rs. 4.65 Crs was paid over and above the SRO value. This fact was also agreed by the assessee in the sworn statement U/s. 131(1A) of the Act recorded on 11/10/2017. It is also an undisputed fact that the amount of Rs. 4.65 Crs was paid between October 2016 to November, 2017 which includes the demonetization period i.e., 9th November, 2016 to 30th December, 2016. The assessee's contention regarding the source of income is undisclosed income generated outside the books of account by the assessee-firm. The submissions of the assessee before the Ld. Revenue Authorities as well as before us is that an amount of Rs. 1 Cr was disclosed under IDS 2016 in the AY 2016-17 and the remaining amount of Rs. 3,65,27,000/- was disclosed as additional income in the AY 2017-18, while filing the return of income. The case of the Ld. AO is that during the survey operations there was no excess stock found in the

business and therefore the undisclosed income is considered as unexplained. The Ld. AO also opined that since the payments are made during the demonetization period, it is held as unexplained. The Ld. AO while considering the reply of the assessee regarding the telescoping benefit of Rs. 1 Cr which was declared under IDS 2016 also observed that the assessee has increased the value of the land at Rs. 10.62 Crs which includes the cash payments of Rs. 4.65 Crs. The Ld. AO further observed in his order the increase in the asset value was balanced in the form of increase of capital of the assessee-firm. Under these circumstances, the Ld. AO held that the benefit of telescoping could not be allowed to the assessee. Further, we find that the Ld. CIT(A) in para 4.14 of the order has verified the income declared under IDS 2016 which was filed by the assessee on 26/09/2016 and based on such finding the Ld. CIT(A) has allowed the telescoping benefit claimed by the assessee. Further, we find force in the argument of the Ld. AR that the Ld. AO has not brought any material evidence to prove that it is not the business income of the assessee. Even before us, the Revenue has not produced any records supporting the claim of the Ld. AO. Further, we find that the Ld. AO has also failed to examine how the assessee generated the cash deposit outside the books of account. No documentary

evidence was also gathered by the Revenue with respect to the excess stock as contended by the Ld. AO. Further, from the sworn statement of Sri Grandhi Ramjee, in response to Q. No. 15, he had admitted that an amount of Rs. 4,65,27,000/- was generated by the assessee firm outside the books of account during the FY 2016-17. Further, in response to Q. No. 16, he has also admitted that the assessee-firm has offered Rs. 1 Cr under IDS scheme in the name of the assessee-firm and partners and has requested to give the telescoping benefit to pay the tax on the balance amount of Rs. 3,65,27,000/-. For the sake of reference, we hereby extract below the Q. No. 15 and 16 and their answers from the sworn statement of Sri Grandhi Ramjee:

"Q. 15. Please give the source of cash of Rs. 4,65,27,000/- paid to Sri Dwarampudi Satyanarayana Reddy for purchase of Anandapuram Land?"

A. The aforesaid cash of Rs. 4,65,27,000/- paid to Sri Dwarampudi Satyanarayana Reddy for purchase of Anandapuram land is out of business profit of M/s. Sree Tirumala Steel Enterprises generated outside the books of account during the Financial Year 2016-17.

Q. 16. Since the aforesaid cash of Rs. 4,65,27,000/- is paid in cash from profits generated outside the books of account please state why it should not be considered as undisclosed income of your firm M/s. Sree Tirumala Steel Enterprises?"

A. I agree to admit the aforesaid cash of Rs. 4,65,27,000/- as additional income of our firm M/s. Sree Tirumala Steel Enterprises over and above the profit as per the books of account for AY 2017-18. However, I would like to state that we have admitted Rs. 1,00,00,000/- under the Income Disclosure Scheme in the name of our firm M/s. Sree Tirumala Steel Enterprises and its partners ie., myself and my wife in the month of September,

2016 and we have also paid entire tax by September, 2017. I, therefore, request you to kindly give telescopic benefit and allow me to pay tax on the balance of Rs. 3,65,27,000/- only."

7. Considering the above admissions, we are of the considered view that the Ld. CIT(A) has rightly held that the assessee had explained nature and source of payment of Rs. 4.65 Crs vide para 4.10 of his order which is reproduced herein below for reference:

"4.10. In the instant case, the income of Rs. 4.65 Crs for the AY 2017-18 represents partly the transaction found in a search U/s. 132 of the Act. The transaction of the appellant was found in the search case of DRK Reddy Educational Society. The transaction has not been recorded in the books of account maintained in the normal course of business. Therefore, it is purely undisclosed income but cannot be unexplained as it does not form part of books of account. The appellant had also explained the source being cash generated out of business. It is for the Assessing Officer to examine how the sales were generated and the manner in which the undisclosed income is generated. The Assessing Officer's contention that no excess stock was found has not basis in the absence of any details of stock. The only point on which the survey conducted is the value of investment and no other details. In the absence of such finding, I am inclined to the finding of the AO regarding the observation in stock. In my considered opinion, the appellant had explained that nature and source of payment of Rs. 4.65 Crs."

8. We therefore find no infirmity in the order of the Ld. CIT(A) on this issue and hence we intend to dismiss the grounds raised by the Revenue.

9. With respect to the telescoping, the Revenue has not raised any ground and hence there is no need to adjudicate the same.

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

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(By assessee)

11. With respect to the Cross Objection raised by the assessee which is in support of the decision of the Ld. CIT(A), since we have upheld the order of the Ld. CIT(A), the adjudication of the CO becomes mere academic exercise. Therefore, the CO raised by the assessee is dismissed as infructuous.

12. In the result, appeal of the Revenue is dismissed and the CO raised by the assessee is dismissed as infructuous.

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

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :10.08.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Sri Tirumala Steel Enterprises, 26-8-62, Rajaram Mohan Roy Road, Velampeta, Visakhapatnam – 530001, Andhra Pradesh.
2. राजस्व/The Revenue – Assistant Commissioner of Income Tax, Circle-1(1), Prathyakshakar Bhavan, Sector-8, MVP Double Road, Visakhapatnam – 530017, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam