

आयकर अपीलिय अधिकरण, 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.248/Viz/2022

(निर्धारण वर्ष / Assessment Year :2015-16)

The Deputy Commissioner of
Income Tax, Central Circle-1,
3rd Floor, Rajkamal Complex,
Lakshmipuram Main Road,
Guntur-522 007,
Andhra Pradesh.

(अपीलार्थी/ Appellant)

Vs. M/s. Polisetty
Somasundaram Pvt Ltd.,
D.No. 3-30-17, Sundaram
Colony, Ring Road,
Gujjanagundla, Guntur,
Andhra Pradesh-522006.
PAN: AABCP 3168 Q

(प्रत्यर्थी/ Respondent)

C.O. No. 03/Viz/2023

(In आयकर अपील सं./ I.T.A. No.248/Viz/2022)

(निर्धारण वर्ष / Assessment Year :2015-16)

M/s. Polisetty Somasundaram Pvt
Ltd.,
D.No. 3-30-17, Sundaram Colony,
Ring Road, Gujjanagundla,
Guntur, Andhra Pradesh-522006.
PAN: AABCP 3168 Q

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से / Revenue by

Vs. The Deputy Commissioner of
Income Tax, Central Circle-1,
3rd Floor, Rajkamal Complex,
Lakshmipuram Main Road,
Guntur-522 007,
Andhra Pradesh.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr Satya Sai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 10/10/2023

: 31/10/2023

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)-3, Visakhapatnam [Ld. CIT (A)] in DIN & Order No. ITBA/APL/S/250/2022-23/1046438026(1), dated 21/10/2022 arising out of the order passed by the Ld. AO U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 [the Act] for the AY 2015-16. The assessee has filed cross objections.

2. Brief facts of the case are that the assessee is a Private Limited Company engaged in trading of Tobacco and filed its return of income for the AY 2015-16 on 28/12/2015 admitting a total income of Rs. 24,01,89,770/- comprising of 'income from other sources' of Rs. 13,91,496/- and 'Long Term Capital Gains' of Rs. 23,87,98,274/-. Subsequently, the assessment was completed U/s. 143(3) wherein the Ld. AO made an addition of Rs. 5,86,00,000/- towards LTCG by disallowing the cost of improvement. A search and seizure operation was conducted in the group cases of the M/s. Polisetty Somasundaram U/s. 132 of the Act on 28/01/2020. The assessee was also covered under

the search and therefore a notice U/s. 153A of the Act was issued to the assessee on 19/03/2021 calling for its return of income for the AY 2015-16. In response, the assessee filed its return of income admitting the same total income of Rs. 24,01,89,770/- as filed U/s. 139(1) of the Act. Subsequently, a notice U/s. 143(2) was issued on 29/06/2021 and a notice U/s. 142(1) of the Act was issued on 4/9/2021 calling for certain information. The assessee from time to time furnished the information and objections before the Ld. AO. The Ld. AO after considering the material on record found that Sri Polisetty Amarnath, a Director of the assessee-company has withdrawn Rs. 14.47 Crs on various dates from State Bank of Hyderabad [SBH] as detailed below:

Sl No	Date	Amount of Cash withdrawn (Rs)
1.	18/6/2014	24,00,000
2.	19/6/2014	3,25,00,000
3.	20/6/2014	3,11,00,000
4.	18/7/2014	1,50,00,000
5.	19/7/2014	40,00,000
6.	28/7/2014	2,00,00,000
7.	7/8/2014	2,00,00,000
8.	8/8/2014	1,97,00,000
	Total	14,47,00,000

3. The Ld. AO therefore requested the assessee to explain the purpose of cash withdrawals during the FY 2014-15. In

response, Sri Polisetty Somasundaram deposed before the Ld. AO and submitted that his brother Mr. Polisetty Amarnath has withdrawn the amount of Rs. 14.47 Crs from the bank account of M/s. Polisetty Somasundaram Pvt Ltd [M/s. PSSPL]. Mr. Polisetty Somasundaram further submitted that the fixed assets of the company i.e., M/s. PSSPL were partitioned between himself and his brother Sri Polisetty Amarnath as per the MoU dated 22/7/2008 wherein Sri Polisetty Amarnath received factory premises of M/s. PSSPL including plant and machinery as part of his share. Subsequently, Mr. Polisetty Amarnath sold his share of property for a consideration of Rs. 30 Crs to M/s. Jyothirmaye Properties Pvt Ltd. Sri Polisetty Somasundaram further submitted that Sri Polisetty Amarnath withdrew Rs. 14.47 Crs from the sale proceeds deposited into the State Bank of Hyderabad account of the company. Subsequently, a sworn statement U/s. 132(4) of the Act was recorded from Sri Polisetty Abhinava Sundaram, a Director of the assessee company and S/o. Sri Polisetty Somasundaram. Sri Polisetty Abhinava Sundaram further stated that the bank account was operated by his uncle Sri Polisetty Amarnath and deposed that he was unaware of the cash transactions made by Sri Polisetty Amarnath. Sri Polisetty Abhinava Sundaram further deposed

that as per the information provided by Sri Polisetty Amarnath, the amount was withdrawn for the purpose of purchasing of tobacco for the company. The Ld. AO observed that Sri Polisetty Abhinava Sundaram failed to produce the purchase details / invoices in support of his claim. Further, the Ld. AO also requested Sri Polisetty Abhinava Sundaram to explain the huge increase in the closing stock of the assessee company from Rs. 3,39,27,117/- in the AY 2014-15 to Rs. 17,71,40,617/- in the AY 2015-16. Sri Polisetty Abhinava Sundaram stated that he was not involved in the purchase of tobacco and therefore failed to produce the evidence for his claim. The Ld. AO, based on the deposition of Sri Polisetty Somasundaram and Sri Polisetty Abhinava Sundaram observed that no evidence was furnished to prove that the cash withdrawals were used for the purchase of tobacco and therefore made an addition of Rs. 17,71,40,620/- as bogus purchases. Further, the Search Team also could not find the stock worth Rs. 17,71,40,617/- during the course of search. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), Visakhapatnam. During the first appellate proceedings, the Ld. Counsel for the assessee submitted that the assessee did not claim any expenditure in the impugned assessment year for the purchase of tobacco. Further, the Ld.

Counsel for the assessee also submitted that the stock which was written off during the AY 2019-20 was also not claimed as an expenditure by the assessee during the impugned assessment year. Considering these submissions, the Ld. CIT(A) allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is erroneous in law and the facts and circumstances of the case.*
- 2. The Ld. CIT(A) erred in law and facts in deleting the addition of Rs. 17,71,40,617/-.*
- 3. The Ld. CIT (A) erred in accepting that the assessment was without reference to the incriminating material found during the course of search thought the assessment was completed based on the material evidence gathered during the course of search that the entire stock shown in the books is bogus.*
- 4. The Ld. CIT (A) has erred in law and facts in not giving any credence to the MoU between the management regarding the partition of the assets of the company.*
- 5. The Ld. CIT(A) erred in law in questioning the evidentiary value of the statement recorded U/s. 132(4). It was clearly stated by the management that they could not vouch for the genuineness of the purchases or stock mentioned in the books of account.*
- 6. The Ld. CIT (A) has erred in relying on the books of account submitted by the assessee for AY 2019-20 though these were prepared after conclusion of search, in response to the findings of the search.*

7. *The Ld. CIT(A) has erred in not considering the contentions of the AO that no detail was provided by the assessee regarding the purchases or stock.*
8. *Any other ground that may be urged at the time of hearing."*

4. Further, we also find that the assessee has raised the following grounds of cross objections:

- "1. *The Ld. CIT(A) is justified in holding that the addition of Rs. 17,71,40,620/- made by the Assessing Officer towards bogus purchase is outside the scope of additions that could be made in the assessment U/s. 143(3) r.w.s 153A of the Act.*
2. *The Ld. CIT(A) is justified in deleting the addition made by the Assessing Officer by treating the opening stock of Rs. 3,39,29,117/- and purchases of Rs. 14,32,13,500/- aggregating to an amount of Rs. 17,71,40,620/- as bogus purchases.*
3. *The Ld. CIT (A) is justified in deleting the addition of Rs. 5,86,00,000/- made under the head 'long term capital gains'.*
4. *Any other ground of cross objection that may be raised at the time of hearing."*

5. At the outset, the Ld. Departmental Representative [DR] referred to the sworn deposition U/s. 132(4) of the Act by Sri Polisetty Abhinava Sundaram which was recorded on 13/2/2020 and stated that in response to Question No. 10, Sri Polisetty Abhinava Sundaram has admitted the purchase of tobacco and has also stated that some invoices and hand written pages with

details of farmers from whom the tobacco was purchased and seized as per the Annexure-A/PSS/RES/05. The Ld. DR therefore submitted that these purchases are claimed by the assessee during the FY 2014-15. He therefore pleaded that since the purchase details / invoices could not be produced by the assessee they should be considered as bogus purchases and therefore pleaded to uphold the order of the Ld. AO.

Per contra, the Ld. Authorized Representative [AR] submitted that these purchases were claimed as stock-in-trade in the books of account as on 31/3/2015 which is revenue neutral for the FY 2014-15. Further, the Ld. AR also submitted that when the stock was damaged due to wetness it was written off in the AY 2019-20 where the assessee has not claimed any expenditure in the P & L Account during the AY 2019-20. Further, the Ld. AR also submitted that the Search Team could not provide any evidence with respect to the purchases or could find the stock on the date of search. Therefore, the Ld. AR pleaded that since the write-off of stock-in-trade was not claimed as an expenditure in the P & L Account, no disallowance could be made by the Ld. AO. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

6. We have considered the rival submissions and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee in his own deposition has stated that purchases of tobacco was made out of the withdrawals from the bank account of the assessee company to the extent of Rs. 14.47 Crs. We also find that the assessee has admitted the sale proceeds of Rs. 30 Crs towards the sale of property and has offered the capital gains tax while filing the return of income. The Ld. AO has not disputed the source for the withdrawals however, has considered the purchases as bogus. From the submissions of the Ld. AR and from the materials placed before us, we find that the assessee has not claimed any expenditure with respect to purchases during the FY 2014-15 and has shown the entire purchases as stock-in-trade from AY 2015-16 to 2019-20. Further, during the Assessment Year 2019-20, the assessee has written off the stock worth Rs. 17,71,40,617/- as it was damaged due to wetness. The Ld. AR also demonstrated that these written off of stock-in-trade of Rs. 17,71,40,617/- has not been included in the expenditure claimed during the AY 2019-20. Further, we also find that the Search Team also could not find any stock of Tobacco worth Rs.

17,71,40,617/- during the course of search. As the purchases of Tobacco and write-off of stock of Tobacco was not claimed as expenditure in the respective assessment years, the Ld. CIT(A) in para 5.1 of his order has held as follows:

"5.1. The submissions of the appellant that it did not claim any expenditure in respect of either purchases made during the year or the opening stock has been mentioned by the AO himself in para 3.4 of the assessment order. When neither the opening stock of Rs. 3,39,27,117/- nor the purchases of Rs. 14,32,13,500/- was claimed as expenditure by the appellant company there is no basis for making the addition of Rs. 17.71 Crs. It was explained on behalf of the appellant that the entire stock of Rs. 17,71,40,617/- was written off in the FY 2018-19 and no claim was made for such write off in the return of income filed for the AY 2019-20 relevant to the FY 2018-19. From the copies of accounts submitted during the assessment it was explained that the purchase of Rs. 14,32,13,500/- was incurred from the cash balance available out of the sale proceeds of property amounting to Rs. 30 Crs. The capital gains arising from the sale of impugned property was admitted as income and was assessed in the assessment U/s. 143(3) of the Act on 30/11/2017. In view of the above facts on record the sources for the purchases cannot be considered as unexplained nor disallowed as no expenses have been claimed under the head purchases by the appellant for the purpose of computation of income under the Act....."

7. Further, we find that the Ld. AO has not brought on record any material to corroborate the seized material warranting addition of bogus purchases to the extent of Rs. 14.47 Crs. In these circumstances, we find that the Ld. CIT(A) has rightly considered these facts and has deleted the addition made by the Ld. AO to the extent of Rs. 17.71 Crs. We therefore find no

infirmary in the order of the Ld. CIT(A) and thereby dismiss the grounds raised by the Revenue.

8. With respect to the Cross Objection raised by the assessee, since the grounds of cross objections raised by the assessee are supportive in nature, considering the outcome of the Revenue's appeal wherein we have upheld the order of the Ld. CIT(A) in the foregoing paragraphs of this order, the adjudication of the grounds of Cross Objection becomes infructuous.

9. In the result, appeal of the Revenue is dismissed and the Cross Objection raised by the assessee is disposed off as mentioned herein above.

Pronounced in the open Court on 31st October, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :31.10.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. Polisetty Somasundaram Pvt Ltd.,
D.No. 3-30-17, Sundaram Colony, Ring Road, Gujjanagundla,
Guntur, Andhra Pradesh – 522006.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Central
Circle-1, 3rd Floor, Rajkamal Complex, Lakshmpuram Main Road,
Guntur, Andhra Pradesh – 522006.
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