

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्त्रारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. Nos. 243 & 244/Viz/2020
(निर्धारणवर्ष/ Assessment Year : 2011-12 & 2012-13)

Assistant Commissioner of
Income Tax,
Central Circle-2,
Visakhapatnam.
(अपीलार्थी/ Appellant)

Vs. M/s. Sri Vijaya Visakha Milk
Producers Company Limited,
Visakhapatnam.
PAN: AAJCS 7398 P
(प्रत्यर्थी/ Respondent)

CO Nos. 18 & 19/Viz/2023
(In आयकरअपीलसं./ I.T.A. No.243 & 244/Viz/2020
(निर्धारणवर्ष/ Assessment Year : 2011-12 & 2012-13)

M/s. Sri Vijaya Visakha Milk
Producers Company Limited,
Visakhapatnam.
PAN: AAJCS 7398 P
(अपीलार्थी/ Appellant)

Vs. Assistant Commissioner of
Income Tax,
Central Circle-2,
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by
प्रत्यर्थीकीओरसे/ Revenue by

: Sri GVN Hari, AR
: Dr. Satyasai Rath, CIT-DR

सुनवाईकीतारीख/ Date of Hearing
घोषणाकीतारीख/Date of
Pronouncement

: 09/11/2023
: 30/11/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned two appeals are filed by the Revenue against the orders of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam in appeal No.1248/2013-14/CIT(A)-3/VSP/2020-21, dated 7/10/2020 [ITA No. 243/Viz/2020] and appeal No. 654/2014-15/CIT(A)-3/VSP/2020-21, dated 7/10/2020 [ITA No. 244/Viz/2020] arising out of the orders passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AYs 2011-12 and 2012-13. The assessee has raised Cross Objections for the AY 2011-12 and 2012-13. Since the issues involved in both the appeals of the Revenue are identical, these appeals are clubbed, heard together and disposed off in this consolidated order.

2. In both the appeals, the Revenue has raised the identical grounds of appeal and therefore, for the sake of convenience, we shall first take up the ITA No. 244/Viz/2020, AY 2012-13 as a lead appeal.

ITA No. 244/Viz/2020
(AY 2012-13)

3. This appeal is filed by the Revenue against the order of the Ld. CIT(A)-3, Visakhapatnam.

4. Briefly stated the facts of the case are that the assessee filed its return of income for the AY 2012-13 admitting a total income of Rs. 90,39,400/-. The assessee is a Producer Company as defined U/s. 581E of the Companies Act, 1956 and is in the business of procuring milk from farmers through Cooperative Societies which are situated in the villages of North Coastal Districts of Andhra Pradesh viz., Srikakulam, Vizianagaram, Visakhapatnam, East Godavari and West Godavari. The case was selected for scrutiny and statutory notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee along with the detailed questionnaire calling for various details in connection with the scrutiny proceedings. In response to the notices, the Authorized Representative of the assessee-company appeared from time to time and furnished the information called for during the course of scrutiny proceedings. The Ld. AO, on examination of the submissions made by the Ld. AR found that the assessee debited an expenditure of Rs. 1,65,72,145/- towards "limited

return on share capital" which is calculated at 1% of share capital of Rs. 165,72,14,500/-. The assessee has disclosed this expenditure under Finance Costs. The Ld. AO also observed that the said expenditure has not been claimed in earlier years and has been claimed during the impugned assessment year only. The Ld. AO then required the assessee to furnish the explanation regard the allowability of the said expenditure. The assessee in its letter dated 9/2/2015 has furnished the explanation citing the provisions of Companies Act, 1956 are applicable to the Producer Companies. The assessee further submitted that as per the provisions of section 581E of the Companies Act, 1956, and duly authorized by the Articles of Association the members may receive limited return on the share capital contributed by the Members. The Ld. AR further submitted that this is a charge to the P & L Account and the amounts have been paid by way of limited return to the Members of the company are to be from the profits of the company. Therefore, the said expenditure is considered as Finance Cost in the P & L Account and claimed as expenditure. The Ld. AO rejecting the explanation of the assessee disallowed and added back Rs. 1,65,72,145/- to the total income of the assessee. Further, on verification of the submissions, the Ld. AO also noticed that the assessee company

has debited an amount of Rs. 146,06,81,638/- to the P & L Account towards withheld price against the procurement of milk and kept the said amount as a liability in the balance sheet. It was explained to the AO that the withheld price is over and above the price paid to the suppliers of milk against milk procured from them. The Ld. AO required the assessee to furnish the details for allowability of the said expenditure. In response, the assessee's Representative in his written submissions dated 9/2/2015 submitted the reply to the Ld. AO stating that the milk producers were paid every fortnight as per the adhoc price decided by the Board of Management from time to time subject to the final price fixed by the General Body on the recommendation of final price made by the Board of Management. Therefore, the differential price of Rs. 146,06,81,638/- was paid on 31/3/2012 to the milk producers. It was also submitted before the Ld. AO that the Articles of Association as well as the Companies Act, 1956 empowers the assessee-company to pay additional price / withheld price to the suppliers of milk as per the following calculation:

The differential price / withheld price for the year	Rs. 146,06,81,638/-
Less: Amount transferred to MP & EEH & MW Trust as per the resolution passed in the general body meeting	Rs. <u>15,00,00,315/-</u>

Balance paid to Societies directly

Rs. 131,06,81,323/-

Further, it was also explained to the Ld. AO that donation was given to Employee's Educational Health and Medical Welfare Trust (MPEEH & MW) in which all the Members of the assessee-company are members and beneficiaries of the Trust. The Ld. AO observed that the Revenue is in appeal before the ITAT on similar issue for the earlier assessment year. The Ld. AO further observed that out of the withheld price of Rs. 146,06,81,638/-, the assessee has paid Rs. 15,00,00,315/- to the Trust and paid the balance amount of Rs. 131,06,81,323/- to the suppliers of the milk after the close of the financial year. Therefore, the Ld. AO disallowed a sum of Rs. 15,00,00,315/- which represents the part of the withheld price not paid to the suppliers but was paid as donation to the MPEEH & MW Trust thereby disallowed the same. Further, the Ld. AO also noted that the assessee has purchased Pedestal Fans for Rs. 12 lakhs and woolen shawls of Rs. 2,90,000/- aggregating to Rs. 14,90,000/- and included the same in the General Body Meeting expenses. The Ld. AO disallowed the said expenditure as it is not related to the business of the assessee. Aggrieved by the above additions, the assessee filed an appeal before the Ld. CIT(A).

5. On appeal, the Ld. CIT(A) considered the assessee's submissions and the provisions of the Companies Act, 1956 and 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 Ld. CIT(A) erred in deleting the addition towards limited return on share capital when the limited return on share capital needs to be given out of reserves and cannot be debited to P & L Account as expenditure.*
- 2. The Ld.CIT(A) erred in deleting the addition towards limited return on share capital stating that it is legitimate business expenditure when the same is not in the nature of expense / expenditure and is available to members only on the basis of available profits.*
- 3. The Ld. CIT(A) erred in deleting the disallowance made by the AO towards withheld price / additional price wherein the same is only application of income as the company makes payment towards additional price / withheld price of milk procured out of profit and therefore, the same cannot be debited to P & L Account as an expense and not an allowable deduction.*
- 4. The Ld.CIT(A) erred in deleting the disallowance made by the Ld. AO towards General Body expenses based on business expediency wherein distribution of gifts are not encouraged in AGM to curb cooperate misdoing and is against established practice of corporate governance.*
- 5. Any other ground of appeal that may arise at the time of hearing."*

6. At the outset, the Ld. DR submitted that the limited return on share capital at 1% on the share capital amount paid to the farmers is identical to the dividends and cannot be a charge to the P & L Account. The Ld. DR further submitted that it cannot

be construed as a Finance Cost as claimed by the assessee. The Ld. DR also further submitted that the limited return is an appropriation of the profit and it cannot be claimed as interest.

The Ld. DR relied on the following case laws:

- (i) Krishak Bharati Cooperative Ltd vs. CIT [2014] 45 taxmann.com 437 (Delhi);
- (ii) Commissioner of Income Tax-IV, Ahmedabad vs. Shree Rama Multi Tech Ltd [2018] 403 ITR 426 (SC);
- (iii) Commissioner of Income Tax, Bangalore vs. GMR Industries Ltd [2020] 122 taxmann.com 8 (Karnataka)

The Ld. DR therefore pleaded that the order of the Ld. AO be upheld.

7. On the contrary, the Ld. Authorized Representative [Ld. AR] submitted that the assessee-company is a special category company under the Companies Act and is covered by the Part-IXA of the Companies Act, 1956. The Ld. AR referred to the provisions of section 581E(3) of the Companies Act, 1956 and stated that as per these provisions, the limited return has been paid to the Members of the assessee-company. The Ld. AR further submitted that the above provision of the Companies Act, 1956 operate on cooperative principles. It was further submitted that this section of the Companies Act, 1956 refers to Members and not as shareholders. The Ld. AR vehemently argued that the

limited return on the share capital is a charge to the P & L account as per the provisions of the Companies Act, 1956. Countering the arguments of the Ld. AR, the Ld. DR referred to the provisions of the Companies Act, 1956 available U/s. 581A(c) wherein the term "limited return" is defined as follows:

"Limited return" means the maximum dividend as may be specified by the articles."

The Ld. DR therefore pleaded that since it is treated as dividend as per the definition of section 581A of the Companies Act, 1956, it cannot be termed as a charge to the P & L Account and claimed as an expenditure in the P & L Account.

8. We have heard the rival contentions and perused the submissions of the Ld. AR and the orders of the Ld. Revenue Authorities. Admittedly, the Board of Management of the Producer Company (assessee-company) has authorized payment of 1% limited return on the share capital to its Members which was as per the Articles of Association of the assessee-company. It is pertinent here to refer to section 581E of the Companies Act, 1956 which is extracted herein below for reference:

***"581E.** (1) Subject to provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of*

equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.

(2) Every Member shall, on the share capital contributed, receive only a limited return:

***Provided** that every such Member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.*

(3) The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting."

As per the above provisions, subsection-2 authorizes the Producer Company to make the provisions of limited return to every member on the share capital contributed. Further, it is also required to extract section 581A(c) of the Companies Act, 1956 for the sake of brevity wherein the term "limited return" has been defined.

*"581A(c) "limited return" means the **maximum dividend** as may be specified by the articles;"*

From the plain reading of the above definition, we are of the considered view that the limited return is nothing but a maximum dividend payable / paid to the Members of the Producer Company as authorized by the Articles of Association and hence it cannot be considered as an expenditure and claimed as expenditure. It is not a charge to the P & L Account but only an appropriation of the profit and hence the Ld. AO has

rightly disallowed the same. We therefore allow the Grounds No. 1 & 2 raised by the Revenue.

9. With respect to **Ground No.3**, the Ld. DR relied on the order of the Ld. AO. Per contra, the Ld. AR submitted that this is has already been covered in the assessee's own case for the AY 2010-11 by the Coordinate Bench decision in ITA No. 288/Viz/2014 (AY: 2010-11), dated 27/09/2017. He therefore pleaded that the order of the Ld. CIT(A) be upheld. Countering the arguments of the Ld. AR, the Ld. DR submitted that the Revenue has filed an appeal before the Hon'ble High Court of Andhra Pradesh against the order of the Coordinate Bench of the Tribunal referred by the Ld. AR and the case is pending before the Hon'ble High Court of Andhra Pradesh. The Ld. DR therefore pleaded that subject to the decision of the Hon'ble High Court of Andhra Pradesh, this issue may be decided.

10. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities on this issue. We find that the assessee-company has paid withheld price to the milk suppliers even in the earlier assessment years and the same was allowed by the Ld. AO. The Coordinate Bench of the Tribunal in the assessee's own case for the AY 2010-11 (supra) has allowed the appeal of the

assessee thereby directed the Ld. AO to delete the addition of payment of withheld price made to the milk producers. However, as pointed out by the Ld. DR, the Revenue is in appeal before the Hon'ble High Court of Andhra Pradesh contesting the order of the ITAT. In this connection, we hereby direct the Ld. AO to decide this issue based on the outcome of the decision of the Hon'ble High Court of Andhra Pradesh, in order to avoid multiplicity of litigation. Accordingly, this ground raised by the **Revenue is disposed off for statistical purposes.**

11. With regard to **Ground No.4** regarding the allowability of expenditure incurred during the General Body meeting by way of payment of gifts to the Members of the Producer Company, the Ld. DR relied on the of the Ld. AO.

Per contra, the Ld. AR submitted that due to heavy competition from other milk producers, the assessee-company in order to retain its milk producers / suppliers has paid certain gifts amounting to Rs. 14,90,000/- during the Annual General Meeting. It was further submitted that these expenditure was incurred only to the suppliers and it can be considered as a business promotion expenditure. It was also further submitted in order to retain the Members / milk producers, the assessee-company has incurred these expenditure which is purely in the

nature of business promotion. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

12. We have considered the rival contentions and perused the material available on record. Admittedly these amounts of gifts were distributed at the time of AGM which is being gifted to the milk producers who were also Members of the assessee-company. We also find that these gifts are made to the Members who were also suppliers of milk and are also shareholders of the assessee-company. Hence we are of the considered view that these expenditures are in the nature of business promotion expenditure which shall be allowed as deduction U/s. 37 of the Act. We therefore find no infirmity in the order of the Ld. CIT(A) on this ground and hence no interference is required. Thus, the **Ground No.4 raised by the Revenue is dismissed.**

13. **Ground No.5 is general in nature** and needs no adjudication.

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

ITA NO. 243/Viz/2020
(AY: 2011-12)

15. This appeal filed by the Revenue against the order of the Ld. CIT(A)-3, Visakhapatnam.

16. The Revenue has raised the following grounds in its appeal:

- "1. The Ld. CIT(A) erred in deleting the disallowance made by the Ld. AO towards general body expenses based on business expediency wherein distribution of gifts are not encouraged in AGM to curb corporate misdoing and is against established practice of corporate governance.*
- 2. The Ld. CIT(A) erred in deleting the disallowance made by the Ld. AO towards withheld price / additional price wherein the same is only application of income as the assessee company makes payment towards additional price / withheld price of milk procured out of profit and therefore the same cannot be debited to P & L Account as an expense and not an allowable deduction.*
- 3. Any other ground of appeal that may arise at the time of hearing."*

17. In the above grounds of appeal, Ground No.1 and 2 of this appeal are identical to that of the Grounds No. 4 and 3 of the ITA No. 244/Viz/2020, AY 2012-13 which is adjudicated herein above. Since the grounds are identical, our decision given while adjudicating the Grounds No.4 and 3 mutatis mutandis applies to the Grounds No.1 & 2 of the Revenue's Appeal in ITA No. 243/Viz/2020. Accordingly, **Ground No.1 raised by the Revenue is dismissed and Ground No.2 raised by the Revenue is disposed off for statistical purposes. Ground No.3 is general in nature and needs no adjudication.**

18. In the result, appeal of the Revenue is partly allowed statistical purposes.

CO Nos. 18 & 19/Viz/2023
(In I.T.A. No. 243 & 244/Viz/2020)
(Assessment Year : 2011-12 & 2012-13)

19. These Cross Objections are filed by the assessee. The assessee has raised the following grounds of Cross Objection for the AY 2011-12:

- "1. The Ld. CIT(A) is justified in deleting the addition of Rs. 11,12,844/- made by the Assessing Officer towards disallowance of expenditure incurred towards distribution of compliments at the Annual General Body Meeting.*
- 2. The Ld. CIT(A) is justified in deleting the addition of Rs. 37,47,23,250/- made by the AO towards disallowance of additional purchase price paid by way of allotment of equity shares to Members (Rs. 30,02,05,218) and by way of payment to Milk Producers and Employees Education, Health and Medical Welfare Trust (Rs. 7,45,18,020).*
- 3. Any other ground of Cross Objection that may be raised at the time of hearing."*

20. The assessee has raised the following grounds of Cross Objection for the AY 2012-13:

- "1. The Ld. CIT(A) is justified in deleting the addition of Rs. 14,90,000/- made by the Assessing Officer towards disallowance of expenditure incurred towards distribution of compliments at the Annual General Body Meeting.*
- 2. The Ld. CIT(A) is justified in deleting the addition of Rs. 15,00,00,315/- made by the Assessing Officer towards disallowance of additional purchase price paid by way of payment of Milk Producers and Employees Education, Health and Medical Welfare Trust.*
- 3. The Ld. CIT(A) is justified in deleting the addition of Rs. 1,65,72,145/- made by the Assessing Officer towards disallowance of interest paid @ 1% on share capital of the members.*

4. *Any other ground of cross objection that may be raised at the time of hearing."*

21. Since the grounds raised by the assessee in both the Cross Objections are supportive in nature to the decision of the Ld. CIT(A), the adjudication of the Cross Objections raised by the assessee becomes infructuous.

22. In the result, Cross Objections filed by the assessee are dismissed as infructuous.

Pronounced in the open Court on 30th November, 2023.

Sd/- (दुव्वूरु.एलरेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एसबालाकृष्णन) (S.BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER
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Dated : 30.11.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

- निर्धारिती/ The Assessee-M/s. Sri Vijaya Visakha Milk Producers Company Limited, Visakha Diary, BHPV Post, Nathayyapalem, Visakhapatnam, Andhra Pradesh – 530012. (ii) M/s. Sri Vijaya Visakha Milk Producers Company Ltd, Visakha Diary, BHPV Post, Akkireddypalem, Visakhapatnam.
- राजस्व/The Revenue –The Assistant Commissioner of Income Tax, Central Circle-2, Pratyakshakar Bhavan, Sector-8, MVP Double Road, Visakhapatnam, Andhra Pradesh – 530 017. (ii) Income Tax

- Officer, Pratyakshakar Bhavan, MVP Double Road,
Visakhapatnam, Andhra Pradesh – 530017.
3. The Principal Commissioner of Income Tax,
 4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT,
Visakhapatnam
 6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam