

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.245/Viz/2022

(निर्धारणवर्ष/ Assessment Year :2018-19)

M/s. Vizag Company's Steel,
Plot No. 185, D-Block, Autonagar,
Gajuwaka, Visakhapatnam,
Andhra Pradesh-530026.
PAN: AAGFV 6746 E

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. ACIT,
Circle-3(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Satyasai Rath, CIT-DR

30/11/2023

22/12/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)-NFAC] vide DIN and Order No. ITBA/NFAC/S/250/2022-23/1046044902(1), dated 28/09/2022

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act], dated 11/8/2021.

2. At the outset, the Ld. AR submitted that there is a delay of 24 days filing the appeal. The Ld. AR drew our attention to the petition, along with an affidavit, filed by the assessee seeking condonation of delay wherein the assessee explained the reasons for belated filing of the appeal before the Tribunal. The relevant portion of the affidavit is extracted herein below for reference:

"1

2. *The Managing Partner Sri M. Ashok Chowdary a senior citizen was stuck with dengue fever from the last week of November 2022. He was advised to take rest for 3 weeks and again he was stuck with Flu and hence there was a delay of above 23 days. In fact the work was entrusted to L Vaitheswaran & Co., Chennai and they could not filed the appeal due to various other reasons.*

3"

3. On perusal of the reasons advanced by the assessee for filing the appeal before the Tribunal beyond the prescribed time limit with a delay of 24 days, we find that due to ill health of the assessee the assessee was prevented to file the appeal within the stipulated time. In our considered opinion, the explanation given by the assessee constitutes 'reasonable and sufficient cause' and

therefore we hereby condone the delay of 24 days in filing the appeal and proceed to adjudicate the appeal on merits.

4. Briefly stated the facts of the case are that the assessee is a partnership firm filed its return of income admitting a total income of Rs. NIL with a current year loss of Rs. 4,32,89,009/-. The case was summarily processed U/s. 143(1) of the Act. Subsequently, the case was selected for the limited scrutiny assessment for the issue of "business loss". Thereafter, notice U/s. 143(2) of the Act was issued and served through ITBA on 28/09/2019. Subsequently, notice U/s. 142(1) of the Act was issued through ITBA portal and served on 4/2/2020. Since the assessee did not respond to the notice, another notice U/s. 142(1) was issued and served on 21/7/2020. Considering the partial response to the notice, another notice U/s. 142(1) was issued and served on 23/9/2020. Again the assessee furnished a partial reply and therefore another notice U/s. 142(1) of the Act was issued and served on 4/11/2020. Since the assessee sought adjournment to this notice, the Ld. AO issued another notice U/s. 142(1) and served on 5/1/2021. The Ld. AO further issued another notice U/s. 142(1) of the Act on 25/1/2021 and 19/2/2021. The assessee once again sought adjournment and

the Ld. AO thereafter issued a show cause notice dated 5/3/2021 requesting the assessee to furnish its submission through e-portal by 10/3/2021. In response, the assessee furnished replies on 24/3/2021. Another show cause notice was again issued by the Ld. AO on 25/5/2021. Since the assessee did not furnish any information, the Ld. AO concluded that the assessee has nothing to submit in support of its contention. From the details filed by the assessee, the Ld.AO observed that the assessee has claimed interest expenditure amounting to Rs. 5,81,66,267/-. The Ld. AO observed that the interest payment was not made by the assessee and thereby disallowed the same U/s. 43B of the Act. Further, the Ld.AO also observed that the assessee has deposited cash of Rs. 1,11,00,000/- in Bank of Baroda and treated the said amount as unexplained and taxed U/s. 69A of the Act. However, the Ld. AO gave credit to an amount of Rs. 24,23,842/- being the opening balance thereby subjecting Rs. 86,76,158/- to tax U/s. 69A of the Act. Aggrieved by the above additions, the assessee filed an appeal before the Ld. CIT(A).

5. During the first appellate proceedings, the assessee submitted bank statements substantiating the payment of interest. The Ld. CIT(A) on examining the bank statements,

allowed a sum of Rs. 1,07,92,909/- being the interest made to Axis Bank which is reflecting in the bank statements. However, the Ld. CIT(A) disallowed a sum of Rs. 4,52,58,180/- being claimed as paid to Bank of Baroda, by the assessee, U/s. 43B of the Act and sustained the order of the Ld. AO to this extent. Similarly, the Ld. CIT(A) rejected the submissions made by the Ld. AR with respect to cash deposits of Rs. 1,11,00,000/- and sustained the addition made by the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A)-NFAC is arbitrary and unjust.*
- 2. The Ld. CIT(A)-NFAC is not justified in confirming the addition of interest paid to Bank of Baroda amounting to Rs. 4,52,58,180/-.*
- 3. The Ld. CIT(A) on one hand accepted the interest paid to Axis Bank amounting to Rs. 1,07,92,909.27 and disallowing interest paid to Bank of Baroda.*
- 4. The Ld. CIT(A) did not give any reason for disallowance of the interest payment amounting to Rs. 4,52,58,180/-.*
- 5. The Ld. CIT(A) is not justified in confirming the addition of Rs. 86,76,158/- U/s. 69A of the Act.*
- 6. The Ld. CIT(A) ought to have seen the draft assessment order passed by the Ld. AO where no such addition was made.*
- 7. The Ld. CIT(A) ought to have verified that no notice U/s. 69A was placed before the appellant."*

6. Additionally, the assessee has also filed a petition for admission of **additional legal ground** as follows:

"On the facts and in the circumstances of the case, the addition of Rs. 86,76,158/- made by the AO U/s. 69A towards alleged unexplained cash deposits in bank account is outside scope of limited scrutiny and hence this addition is liable to be deleted."

7. From the above original grounds of appeal raised by the assessee, **two issues** emanate as follows:

1. Addition towards Interest paid to Bank of Baroda of Rs. 4,52,58,180/- and
2. Addition of Rs. 86,76,158/- U/s. 69A of the Act.

8. The legal ground pertains to the second addition of Rs. 86,76,158/- made U/s. 69A of the Act.

9. At the outset, the Ld. AR argued that the bank statements were produced before the Ld. Revenue Authorities substantiating the payment of interest. Further, the Ld.AR also referred to page 30 of the paper book submitted before us wherein the statement of Bank of Baroda is enclosed. It was submitted that the account is a cash credit account and operate in the nature of current account. The Ld. AR further submitted that the interest amount of Rs. 4,52,58,180/- has been serviced and is evident from the fact by comparing the opening balance and closing balance of the bank statement. Further, the Ld. AR also referred to page 63 of

the paper book wherein the Bank of Baroda issued a Certificate on the receipt of interest from the CC Account of the assessee. He therefore pleaded that since the interest has been serviced by the assessee, no deduction can be made U/s. 43B of the Act and pleaded that it should be deleted.

10. With respect to the addition U/s. 69A of the Act, the Ld. AR referred to the legal ground and argued that since it is a limited scrutiny case for the issue of "business loss", no additions can be made U/s. 69A of the Act which is beyond the jurisdiction of the Ld.AO. The Ld. AR further submitted that section 69 does not fall within the scope of 'profits and gains of business or profession' and hence it cannot be considered as a business loss and no addition can be made. In support of his argument, the Ld. AR relied on the decision of this Bench in the case of Vishnu Srinivasa Rao Kakarla vs. ITO, ITA No.93/Viz/2023 (AY: 2018-19), dated 15/06/2023. He therefore pleaded that the additions made may please be deleted.

Per contra, the Ld. DR heavily relied on the orders of the Ld. Revenue Authorities and argued that the business loss includes both the debit and credit sides of the books of accounts and hence cash deposits are also covered for the purpose of scrutiny

assessment. The Ld. DR vehemently argued that the issues are indirectly connected and hence pleaded that the orders of the Ld. Revenue Authorities be upheld.

11. We have heard the rival contentions and perused the material available on record and the orders of the Ld. Revenue Authorities. It is a fact that the assessee maintains a cash credit account with Bank of Baroda which is in the nature of current account. From the bank statement we observe that the opening balance as on 1/4/2017 is Rs. 9,67,51,144.25 and the closing balance as on 31/3/2018 is Rs. 8,28,19,048.25. It is also noticed that the amount debited for Rs. 4,52,58,180/- on 29/12/2017 and even after such debit, the balance is within the limits which indicates that the assessee has serviced the interest portion. Further, it is also seen from the paper book submissions of the Ld. AR that the bank has issued a Certificate dated 27/5/2022 regarding the receipt of interest from the CC Account. In view of the above facts of the case, we have no hesitation to delete the addition made by the Ld. Revenue Authorities for Rs. 4,52,58,180/- U/s. 43B of the Act. We therefore **allow this ground raised by the assessee.**

12. **With respect to legal ground**, we find from the record that it is a limited scrutiny proceedings for examining "business loss". In case, if the Ld. AO wants to take up the case for complete scrutiny, first the Ld. AO has to convert the limited scrutiny into complete scrutiny case and then he may take up the case for complete scrutiny with the prior approval of the Ld. Pr. CIT / CIT concerned after being satisfied about the issue of converting it into a complete scrutiny. In the instant case, we find that no such approval has been granted to the Ld. AO. We therefore find that the Ld. AO has travelled beyond his jurisdiction in treating the cash deposits U/s. 69A of the Act which is not valid in law and therefore **we are inclined to delete the addition** made by the Ld. Revenue Authorities for Rs. 86,76,158/- and **allow the ground raised by the assessee.**

13. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 22nd December, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 22.12.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s. Vizag Company's Steel, Plot No. 185, D-Block, Autonagar, Gajuwaka, Visakhapatnam, Andhra Pradesh – 5300026.
2. राजस्व/The Revenue –ACIT, Circle-3(1), Inifnity Towers, Dwaraka Nagar, Visakhapatnam, Andhra Pradesh.
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