

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

M.A. No. 67/Viz/2023

(In आयकरअपीलसं./ I.T.A. No.324/Viz/2017)

(निर्धारणवर्ष/ Assessment Year :2012-13)

Visakhapatnam Port Authority, Vs. The Joint Commissioner of
(Formerly known as M/s. Income Tax, Range-1,
Visakhapatnam Port Trust), Visakhapatnam.

PAN: AAALV0035C

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

Sri GVN Hari, AR

प्रत्यर्थीकीओरसे/ Revenue by

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

22/12/2023

घोषणाकीतारीख/Date of

10/01/2024

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This Miscellaneous Application is filed by the assessee U/s. 254(2) of the Income Tax Act, 1961 seeking rectification of the order of the Tribunal passed in ITA No. 324/Viz/2017 (AY: 2012-13), dated 27/09/2023.

2. At the outset, the Ld. Authorized Representative submitted that the Tribunal vide its order dated 27/09/2023 (supra) has disposed off various appeals filed by the assessee and the Revenue which includes assessee's appeal for the AY 2012-13 in ITA No. 324/Viz/2017. The Ld. AR further mentioned that in the said appeal ITA No. 324/Viz/2017, the assessee has raised 07 grounds in its original grounds of appeal. However, while adjudicating the Grounds of appeal raised by the assessee, the Tribunal inadvertently did not adjudicate the Ground No.6 raised by the assessee which reads as under:

"6. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 78,60,27,634/- made by the Assessing Officer towards alleged excess contribution to pension fund."

3. Therefore, the Ld. AR pleaded that since there is a mistake apparent on record in the order of the Tribunal, dated 27/09/2023 (supra) the same may be rectified and pass the order as the Tribunal deems fit.

4. On the other hand, Ld. DR did not raise any objection to the submission of the Ld. AR.

5. We have heard both the sides and perused the order of the Tribunal dated 27/09/2023 (supra) as well as the material available on record. On careful perusal of the Tribunal's order dated 27/09/2023 (supra), we find that while passing the consolidated order inadvertently the Tribunal did not adjudicate the Ground No.6 raised by the assessee in its appeal ITA No. 324/Viz/2017 (AY 2012-13). Therefore, we find merit in the submission of the Ld. AR and accordingly the Miscellaneous Application filed by the assessee is allowed, to the limited purpose of adjudicating the **Ground No.6 raised by the assessee** in its appeal ITA No. 324/Viz/2017 (AY 2012-13).

6. Now we shall proceed to adjudicate the **Ground No.6 raised by the assessee** in its appeal ITA No. 324/Viz/2017 (AY 2012-13) as under.

7. **Ground No.6 of the assessee's appeal** is with respect to the **contribution to pension fund** in excess of the annual limit of 27% of the salaries and wages. Before us, the Ld. AR heavily relied on the decision of this Bench of the Tribunal in the assessee's own case in ITA No. 397/Viz/2014 (2011-12), dated 27th September, 2023. The Ld. AR therefore pleaded that since the issue under consideration is identical to

that of the issue decided by the Tribunal vide Ground No.5 of ITA No. 397/Viz/2014 (supra), the said Tribunal's decision may kindly be applied to the issue raised by the assessee vide **Ground No.6** of its appeal ITA No. 324/Viz/2017 (AY 2012-13). On the other hand, Ld. DR relied on the decision of the Ld. Revenue Authorities.

8. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. On perusal of the Tribunal's decision on the identical ground in the assessee's own case in ITA No. 397/Viz/2014 (AY 2011-12), dated 27/09/2023 (supra), we find that this Bench of the Tribunal has allowed the issue in favour of the assessee by holding as under:

"49. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. During the appellant proceedings, it was submitted by the Ld. AR that the contribution to the Pension Fund was made with respect to salaries and wages and also for the pension payments. It is found that the Ld. AO has computed the 27% on the total salaries and wages paid during the year to compute the disallowance of Rs. 14,72,27,627/-. In submissions made by the Ld. AR we find that similar contributions have also made with respect to pension payments made during the year. Further, we also accept the contention of the Ld. AR that the actuarial valuation as on 31/3/2011 works out to Rs. 1,896.07 Crs and the assessee due to the cash flow issues is providing the contribution to Pension Fund over a number of years subject to availability of funds. The case law relied by the Ld. AR in GlaxoSmithkline Pharmaceuticals (supra), the Hon'ble High Court of Bombay Held as follows:

"3. Similar issue had been raised by the Revenue in the matter of Commissioner of Income Tax vs. Suashish Diamonds Limited being Income Tax Appeal No. 568 of 2012. By an order dated 1stMarch, 2013 in the matter of Suashish Diamonds Limited (supra), this Court has held that even if the expenditure as claimed is not allowable U/s. 36(1)(iv) of the Act, the same is allowable U/s. 37 of the Act. The

Tribunal in the above case had followed the decision of this Court in the matter of Commissioner of Income Tax vs. Western India Paper and Paperboard Private Limited reported in 189 ITR 309.

4. *In view of the above, we see no reason to entertain the question of law as proposed as the assessee in any view of the matter is entitled to the deduction U/s. 37 of the Act. Therefore, the question as raised is academic."*

50. *From the judicial pronouncements as relied on by the Ld. AR as extracted above, we find that the Hon'ble High Court of Bombay has held that even if the expenditure is not allowable U/s. 36(1)(iv) of the Act, but the same is allowable U/s. 37 of the Act. Respectfully following the above decision, we are inclined to allow the contribution to Pension Fund in excess of 27% on account of salaries, wages and pension U/s. 37 of the Act and hence this ground raised by the assessee is allowed. Since, the expenditure is allowed on contribution basis, we are of the opinion that the provisions of section 43B of the Act are not applicable. It is ordered accordingly."*

Respectfully following the above decision of this Tribunal in the assessee's own case for the AY 2011-12 (ITA No. 397/Viz/2014) as well as strictly following the principles of consistency, we are of the considered view that our decision given on identical issue vide Ground No.5 of ITA No. 397/Viz/2014 (supra) *mutatis mutandis* applies to the Ground No.6 of ITA No.324/Viz/2017 (AY 2012-13) also. Accordingly, we hereby allow the Ground No.6 raised by the assessee. It is ordered accordingly.

9. In the result, Miscellaneous Application filed by the assessee is allowed as well as the Ground No.6 of the assessee's appeal is allowed.

Pronounced in the open Court on 10th January, 2024.

Sd/-

(दुव्वूरु.एलरेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :10/01/2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-The Chairman, Visakhapatnam Port Authority, Port Area, Visakhapatnam-530001. (ii) M/s. Visakhapatnam Port Authority (Formerly known as M/s. Visakhapatnam Port Trust), Administrative Office Building, Port Area, Visakhapatnam, Andhra Pradesh – 530035. (iii) M/s.
2. राजस्व/The Revenue – Addl. CIT, Range-1, Visakhapatnam.(ii) Asst. Commissioner of Income Tax, Circle-1(1), Direct Tax Building, MVP Colony, Visakhapatnam, Andhra Pradesh – 530017. (iii) Asst. Commissioner of Income Tax, Range-1, 4th Floor, Direct Taxes Building, MVP Colony, Visakhapatnam-530017.(iv) Asst. Commissioner of Income Tax, Circle-1, Visakhapatnam. (v) Asst. Commissioner of Income Tax, Circle-1(1), 4th Floor, Direct Taxes Building, MVP Double Road, Visakhapatnam – 530017.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam