

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.192/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2010-11)

Visakhapatnam Port Authority,
Administrative Office Building,
Port Area,
Visakhapatnam,
Andhra Pradesh-530001,
PAN: AAALV 0035 C

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

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

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Satyasai Rath, CIT-DR

09/01/2024

22/01/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No.

ITBA/NFAC/S/250/2023-24/1052850064(1), dated 15/05/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2010-11.

2. Briefly stated the facts of the case are that the assessee is a Port Trust which came into existence under the Major Port Trust Act, 1963 and has been carrying on commercial activities and services of a port and allied facilities relating to maritime trade and commerce since inception. The assessee being a Local Authority was exempted U/s. 10(20) of the Act up to the AY 2002-03. From AY 2003-04 to 2008-09, total income of the assessee was exempted U/s. 11 of the Act. Consequent to amendment to section 2(15) of the Act, the assessee filed its return of income for the AY 2009-10 onwards admitting its income under the head 'business income'. Further, the registration U/s. 12AA of the Act was cancelled w.e.f 1/4/2009 vide proceedings of the Ld. CIT-1, Visakhapatnam dated 11/09/2012. The assessee filed its return of income for the AY 2010-11 on 29/9/2010 admitting a total income of Rs. 81,20,30,260/-. The case was selected for scrutiny under CASS and accordingly notice U/s. 143(2) dated 5/9/2011 was issued and served on the assessee on 8/9/2011 by the DCIT, Circle-1(1),

Visakhapatnam. The assessee in response to the notice, filed a revised return of income on 29/03/2012 admitting the same income at Rs. 80,20,30,260/- however, by claiming a higher TDS credit. Thereafter, the case has been assigned to the Addl. CIT, Range-1, Visakhapatnam by the Ld. CIT-1, Visakhapatnam. After examining the books of accounts and discussing the facts of the case with the assessee's Authorized Representative, the Ld. AO passed an order U/s. 143(3) of the Act on 30/11/2012 by assessing the total income at Rs. 190,60,45,090/- and raised a demand of Rs. 37,02,13,030/-. Subsequently, the assessee filed rectification petition U/s. 154 of the Act and sought for rectification of the mistakes crept in the order passed U/s. 143(3) of the Act. Thereafter, the Ld. AO [ACIT, Circle-1(1), Visakhapatnam] passed order U/s. 154 of the Act on 31/01/2013 assessing the total income of Rs. 186,26,32,860/- by allowing the depreciation short computed at Rs. 4,34,12,229/- in the assessment order passed U/s. 143(3) of the Act and reduced the demand payable to Rs. 37,62,20,940/-. Aggrieved by the order of the Ld. AO passed U/s. 143(3), the assessee went on appeal before the Ld. CIT(A), Visakhapatnam. On appeal, the Ld. CIT (A) vide order dated 28/03/2014 granted relief to the assessee. The

Ld. AO, giving effect to the directions of the Ld. CIT(A), passed consequential order on 27/05/2014 wherein the revised income was determined at Rs.130,14,92,061/-.

3. In the meanwhile, The Ld. CIT-1, Visakhapatnam duly exercising his powers U/s. 263 of the Act noticed from the tax audit report annexed to the return of income that the assessee has claimed a sum of Rs. 10,15,39,759/- U/s. 43B of the Act on payment basis which included a sum of Rs. 5,09,64,466/- pertaining to the Asst. Years 2007-08, 2006-07 and earlier assessment years as per the table extracted below:

SI No.	Nature of liability	Amount (Rs.)	Liability pertaining to the FY	Relevant AY
1.	Seigniorage Charges	11,33,437	Upto 2007-08	Upto 2008-09
		4,21,233	2008-09	2009-10
2.	Productivity Linked Bonus	36,90,328	Upto 2006-07	Upto 2007-08
		12,27,664	2007-08	2008-09
3.	Leave Encashment	4,44,91,804	Upto 2007-08	Upto 2008-09
		5,09,64,466		

4. The Ld. CIT-1, Visakhapatnam observed that since the assessee has been granted registration U/s. 12A of the Act up to the AY 2007-08, the entire income of the assessee was exempted from income tax. Therefore, the Ld. CIT-1, Visakhapatnam observed that in the light of the provisions of section 14A of the

Act, the expenditure of Rs. 5,09,64,466/- pertaining to the AY 2007-08 and earlier assessment years, where exemption u/s 11 was claimed by the assessee, the expenditure pertaining to those assessment years clearly disqualified for being granted deduction on payment basis U/s. 43B of the Act on the reasoning that such disallowance made in the earlier years in the respective computation of income of the assessee did not materially affect the non-taxable status of the assessee which claimed and enjoyed the total exemption from taxation on account of its status as a Charitable Trust / institution. The Ld. CIT-1, Visakhapatnam observed that allowing the deduction of expenditure relating to the earlier assessment years during the AY 2010-11 amounted to grant of double benefit to the assessee and therefore the order of the Ld. AO is erroneous and also prejudicial to the interests of the Revenue. The Ld. CIT-1, Visakhapatnam further observed that once the income of the assessee is computed or deemed to have been computed as per the aforesaid method for the earlier years during which it obtained the benefit of exemption, the profit / loss computed under the head "profits and gains of business or profession" wherein the disallowance U/s. 43B has been made becomes irrelevant and as such no consequential

effect would be given to the disallowed amount on payment basis in the subsequent year. Therefore, the Ld. CIT-1, Visakhapatnam was of the opinion that such expenditure having no correlation with the income of the assessee earned during the relevant assessment year, the same is clearly disallowable U/s. 14A of the Act. Further, the Ld. CIT-1, Visakhapatnam also observed that the assessee has made excess claim of deduction for an amount of Rs. 4,21,233/- and considered that the assessee has willfully concealed its particulars to that extent. The Ld. CIT-1, Visakhapatnam therefore directed the Ld. AO to verify the disallowability of the expenditure relatable to the exempt income in terms of the provisions of section 14A of the Act thereby setting aside the order of the Ld. AO passed U/s. 143(3) of the Act, dated 30/11/2012 by providing a reasonable opportunity of being heard to the assessee. Aggrieved by the order of the Ld. CIT-1, Visakhapatnam dated 21/11/2013, the assessee filed an appeal before the Tribunal.

5. During the period, while the assessee's appeal against the order of the Ld. CIT-1, Visakhapatnam passed U/s. 263 of the Act is pending before the Hon'ble Tribunal, the Ld. AO passed consequential order U/s. 143(3) r.w.s 263 of the Act complying

the directions of the Ld. CIT-1, Visakhapatnam and disallowed an amount of Rs.5,09,64,466/- and determined the total income as under:

(Amount in Rs.)

	Total income as per consequential order dated 27/05/2014	130,14,92,061
Add:	Disallowance as per the discussion in paras 12 & 13 of the Asst. Order dated 29/01/2015 passed U/s.143(3) r.w.s 263 of the Act.	5,09,64,466
	Revised total income	135,24,56,527
	Rounded off to	135,24,56,530

6. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC partly allowed the appeal of the assessee by granting part relief to the extent of Rs. 4,21,233/- and sustained the addition of Rs. 5,05,43,233/-. Aggrieved by the order of the Ld. CIT(A), the assessee filed the present appeal before the Tribunal by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts.*
- 2. The Ld. CIT(A) is not justified in disallowing the Seigniorage Charges of Rs. 11,33,437/-.*
- 3. The Assessing Officer is not justified in disallowing the productivity lined bonus of Rs. 49,17,992/-.*
- 4. The Assessing Officer is not justified in disallowing the leave encashment amounting Rs. 4,44,91,804/-.*

5. *Any other ground that may be urged at the time of appeal hearing."*

7. At the outset, Ld. AR submitted that in the first round of proceedings, the assessee instead of contesting the consequential order of the Ld. AO passed U/s. 143(3) r.w.s 263 of the Act, the assessee filed an appeal against the order U/s. 263 of the Act, dated 21/11/2013 passed by the Ld. CIT-1, Visakhapatnam. The Ld. AR further submitted that on appeal of the assessee, the Hon'ble Tribunal quashed the order passed U/s. 263 of the Act, dated 21/11/2013 by the Ld. CIT-1, Visakhapatnam and allowed the appeal of the assessee in ITA No.25/Viz/2015, dated 27/09/2023. Therefore, the Ld. AR prayed that since order passed U/s. 263 of the Act, dated 21/11/2013 was quashed by the Hon'ble Tribunal vide its order dated 27/09/2023, the consequential order passed by the Ld. AO U/s. 143(3) r.w.s 263 of the Act, dated 29/01/2015 giving effect to the direction of the Ld. CIT-1, Visakhapatnam has no legs to stand and therefore the same deserves to be quashed.

8. On the other hand, the Ld. Departmental Representative did not raise any objection to the submission of the Ld. AR.

9. We have heard both the sides and perused material available on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the consolidated order of the Tribunal in the case of the assessee dated 27/09/2023. On careful perusal of the order of this Bench of the Tribunal in the case of the assessee, we observed that the assessee preferred an appeal against the order of the Ld. Commissioner of Income Tax-1, Visakhapatnam [Ld. CIT-1] passed U/s. 263 of the Income Tax Act, 1961 vide F.No. CIT-1/VSP/263/2013-14, dated 21/11/2013 for the AY 2010-11 before the Tribunal. On the appeal of the assessee, wherein the assessee has raised the core issue with respect to disallowance of Rs. 5,09,64,466/- U/s. 14A of the Act, the **Tribunal allowed the assessee's appeal vide its order in ITA No. 25/Viz/2014 (AY:2010-11), dated 27/09/2023 and quashed the order passed U/s. 263 of the Act, dated 21/11/2013 by the Ld. CIT-1, Visakhapatnam** by observing as under:

"10. We have heard both the sides and perused the material available on record as well the orders of the Ld. Revenue Authorities. In the instant case, we find that there was a complete scrutiny assessment with respect to the AY 2010-11 wherein various details were called for by the Ld. AO before concluding the assessment order U/s. 143(3) of the Act. The Ld. AO in his detailed order has made various disallowances U/s. 14A of the Act and further has also observed that certain expenses as described U/s. 43B are

allowed in the year of payment only. From this observation of the Ld. AO which was also relied on by the Ld. AR, we find that the Ld. AO has applied his mind on the claim made by the assessee U/s. 43B of the Act for allowance of expenditure on payment basis pertaining to the AY 2007-08 and earlier years. The reliance placed by the Ld. AR in the decision of the **Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd vs. CIT reported in [2000] 243 ITR 0083 (SC) wherein it was held that both the conditions ie., the order must be erroneous and also prejudicial to the interest of the Revenue should be present** while invoking the provisions of section 263 of the Act by the Ld. CIT-1, Visakhapatnam. In the instant case, the order of the Ld. AO is not erroneous as the Ld. AO has applied his mind while allowing the deduction claimed by the assessee U/s. 43B of the Act and therefore one of the conditions as laid down U/s. 263 of the Act is absent. Further, in the case of **CIT vs. Chettinad Logistics Pvt Ltd reported in [2017] 248 Taxman 0055 (Madras) the Hon'ble High Court of Madras held that if no exempt income forming part of the total income of the assessee was earned in the relevant assessment year, additions made by the Ld. AO by relying upon section 14A of the Act read with Rule 8D is beyond the scope and content of the main provisions.** Further, in the case of *Redington (India) Ltd vs. Addl. CIT [2017] 392 ITR 633 (Mad.)*, the same view was upheld by the Hon'ble Madras High Court. In view of these facts and circumstances of the instant case and relying on the judicial pronouncements as discussed above, we considered it deemed to be fit that exercise of powers U/s. 263 of the Act by the Ld. CIT-1, Visakhapatnam is not valid in law and deserves to be quashed.

11. Further, with respect to **Ground No.8**, wherein the assessee has submitted that an amount of Rs. 4,21,233/- pertaining to deduction U/s. 43B of the Act, we find from the written submissions made by the Ld. AR that the assessee has submitted before the Ld. CIT-1, Visakhapatnam that the expenditure of Rs. 4,21,233/- is in respect of *Seigniorage Charges*. Since the same was pertaining to the AY 2009-10 for which no exemption was claimed, the Ld. CIT-1, Visakhapatnam while passing the order U/s. 263 of the Act has erroneously considered the said amount of Rs. 4,21,233/- pertaining to **AY 2009-10** as an excess claim of deduction made by the assessee and had directed the Ld. AO to initiate concealment and penalty proceedings for excess claim of deduction U/s. 43B of the Act. We find merit in the submissions of the Ld. AR that this expenditure pertains to the AY 2009-10 whereas the Ld. CIT-1, Visakhapatnam has considered it as an expenditure pertaining to the AY 2007-08 and earlier years. Since the order of passed U/s. 263 by the Ld. CIT-1, Visakhapatnam is quashed as per the preceding paragraphs of this order, this ground raised by the

assessee needs no separate adjudication and hence this ground is dismissed as infructuous.

12. *In the result, **appeal of the assessee (ITA No. 25/Viz/2014) is allowed.***"

10. Therefore, we find merit in the Ld. AR's contention and we have no hesitation to come to a conclusion that since the Hon'ble Tribunal has quashed the **order passed U/s. 263 of the Act, dated 21/11/2013 by the Ld. CIT-1, Visakhapatnam vide its order in ITA No. 25/Viz/2014 (AY:2010-11), dated 27/09/2023**, the consequential order passed by the Ld. AO U/s. 143(3) r.w.s 263 of the Act giving effect to the order passed U/s. 263 of the Act has no legs to stand. Accordingly, we hereby quash the consequential order passed by the Ld. AO U/s. 143(3) r.w.s 263, dated 29/01/2015 and set-aside the order of the Ld. CIT(A)-NFAC, dated 15/05/2023. It is ordered accordingly.

11. Resultantly, Grounds No.2, 3 & 4 raised by the assessee are allowed in favour of the assessee. Grounds No.1 and 5 raised by the assessee are general in nature and therefore they need no adjudication.

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

Pronounced in the open Court on 22nd January, 2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :22/01/2024

OKK - SPS

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

- 1.निर्धारिती/ The Assessee– Visakhapatnam Port Authority, Administrative Office Building, Port Area, Visakhapatnam-530001, Andhra Pradesh.
2. राजस्व/The Revenue –The Asst. Commissioner of Income Tax, Circle-1(1), 4th Floor, Pratyakshakar Bhavan, MVP Road, Beside Post Office, Sector-8, MVP Colony, Visakhapatnam, Andhra Pradesh-530017.
3. The Principal Commissioner of Income Tax,
- 4.आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam