

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**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.117/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2020-21)**

Andhra Pradesh State Beverages
Corporation Ltd.
Prohibition and Excise Complex,
RsNo.88/2b, Saivihar Apartments
Poultry Farm Road
Prasadampadu, Vijayawada
[PAN : AANCA8537G]
(अपीलार्थी/ Appellant)

Vs. Dy.Commissioner of
Income Tax
Circle-1(1)
Guntur

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri B.Satyanarayana Murthy
& Ors

प्रत्यर्थी की ओर से / Respondent by

: Dr.Satyasai Rath, CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 05.02.2024

घोषणा की तारीख/Date of Pronouncement

: 20.02.2024

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1049780617(1) dated 15.02.2023, arising

out of order passed u/s 144 of the Income Tax Act, 1961 (in short 'Act') dated 29.09.2022 for the Assessment Year (A.Y.) 2020-21.

2. Brief facts of the case are that the assessee, a corporation fully owned by the State Government of Andhra Pradesh, carrying on the business of rendering service to the Government of Andhra Pradesh in the wholesale trade and retail trade, filed its return of income for the A.Y.2020-21, declaring an income of Rs.23,88,23,830/- on the basis of provisional accounts. Later, the assessee filed a revised return of income, declaring an income of Rs.9,05,07,580/- along with audit report. The retail trade was entrusted to the assessee from 01.10.2009 and for the purpose of running the retail depots, the assessee appointed staff for carrying out the work in the retail depots. The expenditure incurred in the depots by way of salaries and wages was debited under the head "outsourcing and security services", as the work in the retail depots was outsourced. In response to the query from the Assessing Officer (AO) regarding tax deduction from the payments made under the head "outsourcing and security services", the assessee furnished details for an amount of Rs.101,41,25,821/- and furnished the details of tax deducted at source. Out of the balance of Rs.62,99,58,562/-, the assessee explained

before the AO that the assessee paid salaries and wages directly for an amount of Rs.58,22,06,250/- as follows :

Wages paid in cash	-	Rs.2,61,03,944
Payment of wages by way of bank payments	-	Rs.45,34,733
Salaries paid	-	Rs.55,15,67,573
Total	-	Rs.58,22,06,2540

The assessee explained that these payments consist of payments made to various people, where the income of each person is less than the minimum taxable limit. Therefore, no tax deduction was made. The assessee further explained before the AO that these expenses were also grouped under the head “outsourcing and security services”. Holding that these details regarding amount of salaries of Rs.55,15,67,573/- were submitted at the far end of the time barring period and that these details could not be verified as to their genuineness, the AO added an amount of Rs.27,57,83,787/- on an estimate of 50% of the expenses of Rs.55,15,67,573/- to the total returned income and passed the assessment order u/s 144 r.w.s.144B of the Act dated 29.09.2022, assessing the total taxable income at Rs.51,46,07,617/-.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Id.CIT(A) upheld the order of the AO and

dismissed the appeal of the assessee in the absence of documentary evidences to prove the genuineness of expenses.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. The order of the learned Commissioner of Income Tax is contrary to the facts of the case and the provisions of law.

2. The learned Commissioner of Income Tax is not justified in passing an ex-parte order on 15.02.2023 and uploading the order by 15 hours 34 minutes, whereas the appellant sought time upto 15.02.2023 and was in the process of uploading the written submissions with details of the relevant expenditure.

3. The learned Commissioner of Income Tax is not justified in passing an order dismissing the appeal without going into the merits of the expenditure in respect of which details were furnished before the Assessing Officer.

4. The learned Commissioner of Income Tax should have appreciated that the Appellant Corporation incurred an expenditure of Rs.55,15,67,573/- on salaries in running 3500 retail depots in the State of Andhra Pradesh for conducting the retail trade in liquor.

5. The learned Commissioner of Income Tax erred in sustaining the addition of Rs.27,57,83,787 made by the Assessing Officer on an estimate determined at 50% of the expenditure of Rs.55,15,67,573 on salaries in the retail outlets on the ground that no TDS was effected on these amounts.

6. The learned Commissioner of Income Tax should have appreciated that the Appellant had uploaded on 29.03.2022 the Assessment Proceedings, the Annual Report subjected to statutory audit, a tax audit report with annexures, a copy of the computation of total income and an ITR Form 6 duly filled up. The learned Commissioner of Income Tax (Appeals) should have appreciated that the Appellant Corporation could not have filed a revised return in the

income tax portal as the time for filing the return has run out by 31st March, 2021 and therefore the Appellant Corporation filed a revised return duly filing in the e-proceedings.

7. The learned Commissioner of Income Tax (Appeals) should have appreciated that the Assessing Officer had disallowed the expenditure as he could not verify the details for want of time. Therefore, the learned Commissioner of Income Tax (Appeals) should have set aside the order of the Assessing Officer.

8. Alternatively, it is submitted that the Commissioner of Income Tax should have appreciated that the disallowance made is highly excessive and arbitrary.

For these and other grounds that may be urged at the time of hearing, it is submitted that the assessment made be set aside or modified as deemed fit.

5. The assessee filed a petition before the Tribunal for revision of ground No.6 filed in the original grounds of appeal with the following ground , which reads as under :

(6) The learned Commissioner of Income Tax should have appreciated that the Appellant had uploaded on 29.03.2022 during the assessment proceedings, the annual report subjected to statutory audit, a tax audit report with annexures, a copy of the computation of total income and an ITR Form 6 duly filled up. The learned Commissioner of Income Tax (Appeals) should have appreciated that the Appellant Corporation could not have filed a revised return in the Income Tax Portal as the time of filing the return has run out by 31st March, 2021 and therefore the Appellant Corporation filed a revised return duly filing it in the eProceedings. The learned Commissioner of Income Tax(A) should have considered the revised return filed in the eProceedings and the expenditure by way of debit to Profit and Loss Account of GST input credit of Rs.17,94,23,547/- as the Corporation liable to GST. The learned Commissioner of Income Tax should have considered the claim for the deduction of expenditure by way of GST input credit as it is already on the record of the Assessing Officer.

6. Further, the assessee filed a petition before the Tribunal for admitting additional evidence and afford an opportunity of being heard before the Ld.CIT(A) to substantiate its case, keeping in view the principles of natural justice for which the Ld.DR has not raised any objection.

7. We have heard both the parties and perused the material available on record. The only contention of the Ld.AR is that the Ld.CIT(A) is not justified in dismissing the appeal of the assessee *ex-parte* without giving sufficient opportunity of being heard. The Ld.AR pleaded before the Tribunal to afford an opportunity before the Ld.CIT(A) to substantiate its case with documentary evidence. Apart from this, the assessee has also filed a petition to admit the additional evidence. Considering the facts and circumstances of the case and in order to meet principles of natural justice, we set aside the order passed by the Ld.CIT(A) and remit the matter back to the file of the Ld.CIT(A) to provide one more opportunity of being heard. The Ld.CIT(A) is directed to examine the additional evidence filed by the assessee and if necessary, obtain remand report from the AO and pass speaking order on merits. The assessee is also directed to place the additional evidence before the Ld.CIT(A) and cooperate with the proceedings of the Ld.CIT(A).

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20th February, 2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 20.02.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 20.02.2024

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- M/s Andhra Pradesh State Beverages Corporation Ltd., Prohibition and Excise Complex, Rs No.88/2b, Saivihar Apartments, Poultry Farm Road, Prasadampadu, Vijayawada
2. राजस्व/The Revenue - The Deputy Commissioner of Income Tax, Circle-1(1), Guntur
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam