

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुखारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.158/Viz/2023

(निर्धारणवर्ष/ Assessment Year :2018-29)

Ashlar Building Solutions India Pvt Ltd., Vizianagaram. PAN: AANCA 7592 H (अपीलार्थी/ Appellant)	Vs.	Pr. Commissioner of Income Tax-1, Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थीकीओरसे/ Assessee by	:	Sri GVN Hari, AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Dr. Satyasai Rath, CIT-DR
सुनवाईकीतारीख/ Date of Hearing	:	23/01/2024
घोषणाकीतारीख/Date of Pronouncement	:	28/02/2024

ORDER

PERS. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Principal Commissioner of Income Tax-1, Visakhapatnam [Pr. CIT] passed U/s. 263 of the Income Tax Act, 1961 [the Act] vide DIN & Order No. ITBA/COM/F/17/2022-23/1051599270(1), dated 29/03/2023 for the AY 2018-19.

2. Briefly stated the facts of the case are that the assessee-company is engaged in the business of trading of steel and iron products like TMT bars, Billets etc., filed its return of income admitting a total income of Rs. 78,72,000/- for the AY 2018-19. The case was selected for scrutiny under CASS to verify the issue "Business Expenses". The Ld. AO considering the submissions made by the assessee completed the assessment U/s. 143(3) r.w.s.143(3A) and 143(3B) of the Act on 19/03/2021 by accepting the income returned. The Ld. Pr. CIT under the powers vested as per the provisions of section 263 of the Act, considered the order of the Ld. AO as erroneous and prejudicial to the interests of the Revenue. The main contention of the Ld. Pr. CIT is that the assessee has claimed an expenditure of Rs. 7.61 Crs as commission paid to M/s. Savitri Steel and Rerollings Pvt Ltd, Hyderabad. The Ld. Pr. CIT also observed that the assessee is based in Vizianagaram and it was using services as a commission agent from Hyderabad for promoting its products. Based on the suspicion, the Ld. Pr. CIT issued show cause notice on 31/1/2023 through ITBA and was served on the assessee. In response, the assessee furnished the written submissions stating that the assessee company is very new to the market and the Steel Industry and therefore has appointed M/s. Savitri Steel and

Rolling Private Limited as its agent to promote the sales of the assessee company. It was also submitted before the Ld. Pr. CIT that subsequent to appointment of agent, the assessee company has achieved the sales of Rs. 250.76 Crs which is approximately six times to the turnover of the earlier year. The assessee also stated that it has entered into commission agreement for payment of commission at Rs. 1250/- per Metric Ton to achieve / penetrate into the market. The assessee also submitted that the payment of commission was made through banking channels and Tax Deducted at Source on such commission payments. Considering the submission of the assessee, the Ld. Pr. CIT opined that the transaction is abnormal in nature which is approximately 3.03% on the total turnover of the assessee company. The Ld. Pr. CIT therefore directed the Ld. AO to verify the entire transaction with reference to the genuineness of the payment of commission and remitted the matter back to the file of the Ld. AO. Further, the Ld. Pr. CIT also observed that there are discrepancies in the GST shown in the commission bills and GST reported in the Audit Report. The Ld. Pr. CIT also directed the Ld. AO to verify the transaction with regard to immovable properties between M/s. Maa Mahamaya Power Limited and the assessee-company. The Ld. Pr. CIT directed the Ld. AO to

provide the sufficient opportunities of being heard to the assessee thereby setting aside the decision of the Ld. AO to pass suitable orders in accordance with law. Aggrieved by the order of the Ld. Pr. CIT, the assessee is in appeal before us by raising the following grounds of appeal:

1. *That on the facts and in the circumstances of the case and in law, the order dated 29/03/2023 passed U/s. 263 of the Act by Pr. CIT-1, Visakhapatnam is illegal and void-ab-initio.*
2. *That on the facts and in the circumstances of the case, the Ld. Pr. CIT-1, Visakhapatnam erred in setting aside the assessment order passed U/s. 143(3) of the Act to the Assessing Officer for making fresh assessment.*
3. *That on the facts and in the circumstances of the case and in law, the Pr. CIT-1 erred in applying the provisions of section 263 r.w.s explanation 2(a) even though the Assessing Officer enquired on the issue.*
4. *The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings."*

3. The only contention of the assessee emanating from the above grounds is that the order of the Ld. Pr. CIT passed U/s. 263 of the Act is illegal and void-ab-initio. On this issue, the Ld. AR submitted that even though the assessee-company commenced its business in the FY 2015-16, it could not penetrate into the market. Therefore, the assessee engaged an agent in the AY 2018-19 to market its products for agreed

commission of Rs. 1250/- per Metric Ton. The Ld. AO also submitted that this business decision of the assessee has increased the turnover by six times during the impugned assessment year. Further, the Ld. AR submitted that the assessee has paid commission through banking channels and has deducted the tax at source in accordance with law. He also submitted that net profit for the impugned assessment year was also increased by 5.5 times. The Ld. AR vehemently submitted that the Revenue cannot question the business decisions of the assessee and the payment of commission is in accordance with the normal business practice. Countering the arguments of the Ld. AR, the Ld. DR submitted that huge commission of Rs. 7.61 Crs cannot be justified. The Ld. DR also submitted that net profit remained the same. The Ld. DR also submitted that the commission was credited in its books of accounts only in the end of the year and hence should not be considered. The Ld. DR fully supported the order of the Ld. Pr. CIT. In response, the Ld. AR once again reiterated that the net profit of the assessee during the impugned assessment year also increased by 5.5 times as compared to the earlier assessment years. He once reiterated that the business decision of the assessee cannot be questioned

by the Revenue which was also confirmed by various judicial pronouncements.

4. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We find from the submissions made by the Ld. AR that the assessee has entered into a commission agreement with M/s. Savitri Steel and Rerolling Private Limited to market its products for an agreed commission of Rs. 1250/- per Metric Ton. The agreement is placed in paper book page-19. Further, we find that the assessee has deducted tax at source on the commission payment made to the agent viz., M/s. Savitri Steel and Rolling Private Limited. This fact is also evidenced in the Tax Audit Report filed by the assessee. Further, we find that various judicial pronouncements have held that the business decision of the assessee cannot be questioned by the Revenue. However, only the genuineness of the transaction needs to be verified. In the instant case, there is an agreement between the parties and the payments have been made through banking channels after deduction of tax at source. Merely because, the commission payments were huge in nature, it cannot be a ground for questioning the genuineness of the transactions in the absence of any adverse material on record. Further, the argument of the Ld.

DR that the commission have been credited only at the year-end could not be accepted because the payment of commission has been made by the assessee on regular intervals during the year, while calculation of the commission based on supplies was credited in the books of accounts on 31/3/2018. The copy of the ledger account was also produced before us by the Ld. AR. Further, with respect to the capital gains as observed in the order of the Ld. Pr. CIT passed U/s. 263, we find from the submissions of the Ld. AR that the assets form part of the books of account. Further, the Ld. AR also submitted the copy of Form 26QB and the Sale Deed before us. Further, the assessee has also provided sample confirmation letters for the sales made through the agent from the ultimate buyer. The difference in GST calculation and reported does not have any relevance in the instant case. We therefore find no merit in the arguments of the Ld. DR thereby considering the order passed by the Ld. Pr. CIT U/s. 263 of the Act deserves to be quashed. Accordingly, we allow the grounds raised by the assessee.

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

Pronounced in the open Court on 28th February, 2024.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :28.02.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Ashlar Building Solutions India Private Limited, 2-98, Shop No.1, Jammandipeta Village-1, Kota, Vizianagaram, Andhra Pradesh-535161.
2. राजस्व/The Revenue –Principal Commissioner of Income Tax-1, Aayakar Bhavan, Dabagardens, Visakhapatnam, Andhra Pradesh-535161.
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