

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.515/Viz/2017

(निर्धारण वर्ष / Assessment Year : 2011-12)

Blue Park Sea Foods Private
Limited,
Bhimavaram, W.G. Dist,
Andhra Pradesh.
PAN: AACCB 0689 H

(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. Dy. Commissioner of Income
Tax,
Central Circle,
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Satyasai Rath, CIT-DR

08/02/2024

29/02/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in ITA No. 46/2015-16/CIT(A)-3/VSP/2017-18, dated 31/7/2017 arising out of the order passed U/s. 143(3) r.w.s 153A of the Income Tax Act, 1961 [the Act] for the AY 2011-12.

2. Briefly stated the facts of the case are that the assessee is a company engaged in the business of export of Shrimp, filed its original return of income on 24/9/2011 admitting Rs. 98,76,755/- as business income and Rs. 9,54,200/- as agricultural income. Subsequently, a search and seizure operation was conducted in the premises of the assessee on 6/2/2014 and on subsequent dates. Thereafter, the case was taken up for scrutiny and a detailed questionnaire was given to the assessee calling for the certain information. The assessee in response to the above questionnaire submitted the details before the Ld. AO. During the assessment proceedings, the Ld. AO doubted the genuineness of the Share Application Money received by the assessee and the creditworthiness of the individual investors. Since no satisfactory explanation was provided by the assessee, the Ld. AO considered Rs. 1,69,99,980/- as unexplained investment based on the declaration given by the Managing Director of the company in the statement recorded U/s. 132(4) of the Act. In addition to the above disallowance, the Ld. AO also disallowed a sum of Rs. 3,14,910/- U/s. 40(a)(ia) of the Act; Rs. 6,40,515/- from sale of wastage; disallowance of agricultural income of Rs. 2,59,700/-; disallowance of ROC fees

of Rs. 80,570/- and again disallowance U/s. 40(a)(ia) of the Act amounting to Rs.58,333/-. After going through the material available on record and the submissions made by the assessee, the Ld. AO completed the assessment by determining the total income at Rs. 2,82,30,763/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee contested the issuance of notice U/s. 153A of the Act and also the additions made by the Ld. AO. The Ld. AR also submitted additional evidence in the form of confirmation letters from the share holders, sources of funds, balance sheet and proof of income for filing the return of income of the shareholders for the relevant assessment year. The Ld. CIT(A) admitted the additional evidence and referred the matter to the Ld. AO for remand report. The Ld. AO in his remand report observed that the assessee has not produced any concrete evidence regarding the sources and genuineness of share application money and the signature on the confirmation letters are not matching with the signature with the balance sheet filed with respect to the shareholders. Further, the Ld. AO also observed in his remand report that the assessee has not proved that the investors obtained loans and utilized the same for investment in shares of the assessee company. Further, the Ld.

AO also observed in his remand report that the returns of income of the shareholders were filed on 3/2/2014 belatedly. The Ld. AO also observed that the investors have shown meager income ranging Rs. 2 to 2.5 lakhs and has paid a nominal amount of tax of Rs. 5,000/- approximately. The remand report was given to the assessee for rejoinder. In response, the assessee denied the allegations made by the Ld. AO stating that the Ld. AO has not given any specific observation. The Ld. CIT(A) after examining the remand report and the rejoinder of the assessee, rejected the submissions of the assessee and confirmed the additions made by the Ld. AO to the extent of Rs. 1,69,99,980/- both on legal as well as on merits. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- "1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in law and facts in upholding the addition of Rs. 1,69,99,980/- towards unexplained share application money under section 68 of the Act.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in law in confirming the addition under section 68 of the Act on mere admission during search operations, despite evidence having been filed in the first appellate proceedings, to disprove the admissions.*
3. *The Ld. CIT(A) in refusing to follow the judgments cited before him to show that in case of share application money not satisfactorily proved has to result in reopening of the assessments of the share applicants and the issue shall not result in addition in the receiving company's hands,*

has not followed the binding judgments of the Hon'ble Supreme Court and Hon'ble Bombay High Court.

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in law in stating that the submission of the appellant before him that the impugned addition was not based on any incriminating material and thus becomes unsustainable as per section 153A was made for the first time before him and hence liable for rejection as being an afterthought by the appellant.*
5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in law in stating that the admission U/s. 132(4) during search was a best place of evidence and results in addition based on the same, despite your appellant having proved with material evidences before the Ld. CIT(A) the admission as erroneous even the judgments relied on by the Ld. CIT(A) support the proposition that the maker of an affidavit can lead evidence to disprove the incorrectness of the contents of an affidavit made by him.*
6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the addition though he himself observed in his order that the evidences filed by your appellant before the Ld. CIT(A) to prove the sources for share application money, were endorsed as acceptable and reliable.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in law and on facts in upholding the addition based on certain doubts and surmises, though the identities of the share applicants, their financial capacity for investment and genuineness of the investments by them by reference to their returns of income filed before the search, wherein the investments were duly reflected were filed in the proceedings before him, were subjected to remand report and the satisfaction of the evidence was expressed by the Ld. CIT(A).*
8. *Your appellant craves leave to add or amend any of the above grounds of appeal."*

3. The assessee also filed a petition for **additional ground** which is legal in nature as follows:

"The issue of notice and consequential assessment completed U/s. 143(3) r.w.s 153A of the Act is contrary to the provisions of law as no search and seizure operations were conducted in the case of the assessee U/s. 132 of the Act. Such assessment being nullity in the eyes of law is liable to be quashed."

4. **Grounds No.1 & 2 are general in nature** and need no adjudication.

5. The **Additional Ground** raised by the assessee and **Ground No.4** of the original grounds of appeal have **not been pressed** by the assessee and hence dismissed.

6. The **other grounds** raised by the assessee relate to the addition made by the Ld. AO to an extent of Rs. 1.69 Crs which is adjudicated below.

7. At the outset, the Ld. AR submitted that the assessee has obtained share capital to the extent of Rs. 8.36 Crs and has issued 69,68,739 shares. It was further submitted that there were 37 shareholders who invested in the assessee-company. The Ld.AR further submitted that an amount of Rs. 6.32 Crs from 27 shareholders has been accepted by the Revenue. However, the Revenue has rejected the confirmations provided by the 10 shareholders amounting to Rs. 2.03 Crs. The Ld. AR pleaded that the Ld. AO has partly allowed Rs. 34 lakhs and thereby

rejecting Rs. 1.69 Crs from seven investors. The Ld. AO also pleaded that the evidences for the sources of funds invested by the shareholders have been provided before the Ld. AO who has rejected the same. The Ld. AR further pleaded that the Ld. AO has merely relied on the statement recorded U/s. 132(4) of the Act given by the Managing Director of the company stating that there is no objection to add Rs. 1.69 Crs voluntarily. The Ld. AR also pleaded that the Ld. AO has not given any specific observations on the additional evidences in his remand report. He therefore relied on the decision of the Hon'ble High Court of Rajasthan in the case of Hukum Chand Jain vs. ITO reported in [2011] 334 ITR 197 (Rajasthan) wherein it was held that the confession is not a conclusive evidence. Therefore, the Ld. AR pleaded that the addition made by the Ld. AO be deleted.

8. Per contra, the Ld. Departmental Representative [DR] placed heavy reliance on the orders of the Ld. Revenue Authorities and argued that the assessee has not proved the identity and genuineness of the investors / investments. Further, the Ld. DR also submitted that the signatures of the shareholders in the confirmation letters are not matching with the signatures in the balance sheet which is also available in the paper book. The Ld.

DR further submitted that from the summary submitted by the assessee it is seen that the assessee has withdrawn from the loan account and had invested in the assessee company wherein the duration between the withdrawal and the investment is significant. The Ld. DR further submitted that in some cases, the date of withdrawal is subsequent to the date of investment. The Ld. DR therefore pleaded that there is no genuinity in the evidences produced by the assessee and hence the Ld. AO has rightly disallowed the same. The Ld. DR therefore pleaded that the orders of the Ld. Revenue Authorities be upheld.

9. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is the case of the Ld. AO that the assessee has not proved the genuineness / creditworthiness of the investors beyond any reasonable doubt before the Ld. Revenue Authorities. Further, it is also an undisputed fact that the Managing Director of the company in his statement U/s. 132(4) of the Act has expressed his no objection to the addition of Rs. 1.69 Crs. It is also seen from the records that the assessee has taken an alternative plea subsequently that the investment should be taxed in the hands of the individual shareholders. In support of

his arguments, the assessee filed the bank statements, loan statements, Income Tax returns of the seven shareholders. It is also noticed that these shareholders filed belated returns for the impugned assessment year and have declared a meager income of Rs. 2 to 2.5 lakhs by paying a nominal tax approximately Rs. 5,000/-. On perusal of the loan statements provided by the assessee in the paper book, it is noticed that the assessee has taken loans for the purpose of his business and there is no trail showing the investment made in the assessee company. Further, it is also not clarified by the Ld. AR that why the assessee has invested in the share capital of the assessee company by way of cash when the funds are very much available in the bank accounts of the assessee. We also observed from the loan statements that it is a Kisan Credit Card [KCC] account wherein the investors have availed loan for the purpose of their business. Even the savings bank account submitted by the Ld. AR of the shareholders does not indicate the investments made by the shareholders in the assessee company. Further, there is also merit in the observations of the Ld. AO that on verification of the confirmation letters and the balance sheet, the signatures are not matching. The primary onus is on the assessee to establish beyond doubt that investments made by the shareholders are

genuine in nature which in the instant case the Ld. AR has failed to do so. We also find that the evidences provided by the assessee could not be relied upon as it contained discrepancies as observed by the Ld. Revenue Authorities. We therefore are of the considered opinion that in the facts and circumstances of the case as discussed above, there is no merit in the arguments of the Ld. AR. We therefore do not want to interfere in the order of the Ld. CIT (A) as we find no infirmity in the decision of the Ld. CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

10. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open Court on 29th February, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :29.02.2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Blue Park Sea Foods Pvt Ltd., Flat No. 401, SVR Towers, 2-1-50, JP Road, Bhimavaram-534202, WG Dist.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Central Circle, Stalin Corporate, A-Block, 4th Floor, Road No.2, Auto Nagar, Vijayawada-520007.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam