

**आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.279/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2012-13)

Swarnandhra Jute Mills Pvt Ltd,  
Survey No.40, Varisam Village,  
Ranastalam Mandal,  
Pydhibheemavaram,  
Srikakulam-532409,  
Andhra Pradesh.

PAN: AAICS 7788 J

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs.

Asst. Commissioner of  
Income Tax,  
Circle-4(1),  
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Aparna Villuri, Sr. AR

13/03/2023

14/03/2024

**ORDER**

**PER DUVVURU RL REDDY, Judicial Member :**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1056074074(1), dated 14/09/2023

arising out of the order passed U/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 [the Act] for the AY 2012-13.

2. Briefly stated the facts of the case are that the assessee is a private limited company engaged in the business of manufacturing of Jute Twine. The assessee filed its return of income for the AY 2012-13 admitting NIL income after set-off of brought forward losses of Rs. 6,67,170/-. Subsequently, the case was selected for scrutiny under CASS and the assessment was completed U/s. 143(3) of the Act vide order dated 20/03/2015 wherein the Ld. AO made a disallowance of Rs.95,480/- U/s. 40A(3) of the Act. Thereafter, as per the information received from the ITO (Inv.), Unit-IV, Kolkata on 26/03/2019 the Ld. AO observed that the assessee is one of the beneficiaries from accommodation entries provided by M/s. Dhanrashi Vincom Pvt Ltd in the form of bogus share capital / share premium, unsecured loans etc., during the FY 2011-12 relevant to the AY 2012-13. The Ld. AO further observed that during the assessment proceedings, the assessee did not furnish any such details as mentioned above. Therefore, the Ld. AO considered it as a failure on the part of the assessee to disclose fully and truly all the material facts that are necessary for completion of the assessment and issued a notice U/s. 148 of the

Act on 30/03/2019 with the prior approval of the Ld. Pr. CIT-2, Visakhapatnam and the notice was duly served on the assessee. In response to the notice U/s. 148 of the Act, the assessee filed its return of income on 22/04/2019 admitting NIL income. Accordingly, the Ld. AO issued notices U/s. 143(2) and 142(1) of the Act through ITBA module. On receiving the information called for, the Ld. AO asked the assessee to explain genuineness of the transactions with M/s. Mascon Fin Private Limited and M/s. Bluechip Financial Consultants Private Limited and the bonafide of the parties involved therein. In reply, the assessee furnished certain information pertaining to M/s. Bluechip Financial Consultants Private Limited and M/s. Mascon Fin Private Limited in the its books of accounts reflecting the transactions. After considering the submissions made by the assessee and on perusal of the material available before the Ld. AO, the Ld.AO came to a conclusion that the assessee company is a beneficiary to the extent of Rs. 40 lakhs received through M/s. Bluechip Financial Consultants Private Limited and M/s. Mascon Fin Private Limited. Accordingly, the Ld. AO made an addition of Rs. 40 lakhs as unexplained cash credits U/s. 68 of the Act by determining the total income at Rs. 40,00,000/- and passed the order U/s. 143(3) r.w.s 147 of the Act dated 30/12/2019. Aggrieved by the order of

the Ld. AO, the assessee is in appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld.CIT(A)-NFAC passed the *ex-parte* order and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *That under the facts and circumstances of the case the orders passed U/s. 143(3) of the Act r.w.s 147 is bad in law and liable to be quashed.*
2. *The Ld. CIT(A) ought to have held that issue of notice U/s. 148 of the Act is unwarranted since under the facts and circumstances of the case the impugned addition does not fit into the category of income escaping assessment as contemplated U/s. 147 of the Act.*
3. *This is a case where the assessment was completed U/s. 143(3) of the Act when such is the case, the assessee company’s case is covered under the first proviso to section 147 of the Act. Therefore, no action can be taken under this section after the expiry of four years from the end of the relevant assessment year since there was no failure on the part of the assessee to disclose all material facts in the original assessment proceedings.*
4. *The Ld. CIT(A) ought to have known that when the assessee company has established the nature of the source, the identity and the creditworthiness of the parties who have contributed share capital and the share premium, in such circumstances making impugned addition U/s. 68 of the Act is uncalled for.*
5. *The enquiry conducted by the Assessing officer to determine the genuineness of the creditor is one sided and such of those enquiries conducted were not put to the assessee company for its rebuttal. To this extent assessee company has grievance as the Ld. CIT(A) ought to have examined this issue and given a finding, this way the Ld. CIT(A) failed to address the principles of natural justice.*
6. *For these and other reasons that are to be urged at the time of hearing it is the prayer of the assessee company that*

*impugned orders passed U/s 143(3) r.w.s 147 of the Act is liable to be quashed in the interest of justice.”*

3. At the outset, the Ld. AR submitted before the Bench that the Ld. CIT(A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard and with a direction to decide the case on merits.

4. On the other hand, the Ld. DR vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee made any written submissions nor filed any adjournment letter before the Ld. CIT (A)-NFAC. It was further submitted that the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A)-NFAC does not call for any interference.

5. I have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, I find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, no submissions were made before the CIT(A)-NFAC on the dates of hearing

whatsoever the reasons. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte. In this situation, after considering facts and circumstances of the case and also considering the prayer of the Ld. AR, and in the interest of justice, I hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the appeal on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

6. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 14<sup>th</sup> March, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 14/03/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee– Swarnandhra Jute Mills Pvt Ltd, Survey No.40, Varisam Village, Ranastalam Mandal, Pydhibheemavaram, Srikakulam-532409, Andhra Pradesh.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-4(1), Visakhapatnam.
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