

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.212/Hyd/2018

(निर्धारण वर्ष / Assessment Year : 2012-13)

Dy. Commissioner of Income Tax,
Central Circle-2(4),
Hyderabad.

Vs.

Budha Palita Timber Estates
Private Limited,
Vijayawada.

PAN: AADCB 3447 N

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

:

None

प्रत्यर्थी की ओर से / Revenue by

:

Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

:

20/03/2024

घोषणा की तारीख/Date of

:

26/03/2024

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals)-12, Hyderabad in Appeal No. 10079/2017-18, dated 20/11/2017 arising out of the order passed U/s. 143(3) 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-company is engaged in the business of Real Estate, filed its return of income for the AY 2012-13 on 27/12/2012 admitting a loss of Rs. 7,00,598/- under the regular provisions of the Act and Rs. 2,41,55,847/- under the provisions of section 115JB of the Act. The case was selected for scrutiny under CASS. Accordingly, notices U/s. 143(2) and 142(1) of the Act were issued and duly served on the assessee. In response to the notices, the assessee's Authorized Representative appeared from time to time and furnished certain information. Thereafter, the Ld. AO issued show cause notices dated 5/3/2015 and 9/3/2015 and called for the assessee's objection on the proposal of estimation of assessee's business income at 8% on gross receipts, net of all related expenses and allowable deductions. The Ld. AO also proposed that the interest income of Rs. 5,25,02,399/- received on deposits held in various banks would be reduced from the gross receipts for the purpose of estimation of business income and the same would be treated as income from other sources without allowing any allowances / deductions therefrom. In response, the assessee made various submissions before the Ld.AO. After considering the submissions of the assessee and the material available on record, the Ld. AO made two additions viz., (i) Business income estimated

at 5% of gross receipts - Rs.1,63,96,135/- (ii) Interest income of Rs. 4,59,66,944/- received on FDs treating it as income from other sources. Thus, the total income was determined at Rs. 6,23,63,079/- and passed the assessment order on 12/3/2015 U/s. 143(3) of the Act. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A) partly allowed the appeal of the assessee. Aggrieved by the of the Ld. CIT(A), the Revenue is appeal before the Tribunal by raising the following grounds of appeal:

- “1. *Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) failed in treating the interest income as business income without appreciating the fact that it has not been brought on record by the assessee that the surplus funds were put in FDRs on account of commercial expediency. Since the funds were not required at the relevant point of time in construction activities, the same were parked with bank to earn interest. Therefore, the interest earned on surplus funds parked with bank is not inextricably linked with the business activity of the assessee. Therefore, the interest earned by assessee cannot be treated as business income and same has been rightly treated as income from other sources by the Ld. AO.*
2. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”*

3. At the outset, the Ld. DR argued that since the assessee has invested surplus funds for earning interest income, it cannot be considered as business income and should be considered as

income from other sources. The Ld. DR pleaded that the order of the Ld. AO be upheld.

4. Before us, at the time of hearing, there was no representation on behalf of the assessee to represent the case. However, we proceed to adjudicate the case on merits based on the material available on record.

5. We have heard the Ld. DR and perused the material available on record and the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee has earned interest of Rs. 4,59,66,944/- on the Fixed Deposits by depositing surplus funds in order to earn income out of the surplus funds. We find that the Ld. AO by following the ratio laid down by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd reported in 227 ITR 172 (SC) has held that the interest income shall be treated as income from other sources. Since there is no representation from the assessee to substantiate the treatment of interest income as business of the assessee, we are of the considered opinion that the assessee is not having any valid explanation to present the case before us. We therefore uphold the order of the Ld. AO and thereby set-aside the order of the

Ld.CIT(A). Accordingly, we allow the grounds raised by the Revenue.

6. In the result, appeal of the Revenue is allowed.

Pronounced in the open Court on 26th March, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 26.03.2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Budha Palita Timber Estates Private Limited, D.No.40-1-21/3, 1st Floor, Surya Towers, MG Road, Labbipet, Vijayawada-520010.
2. राजस्व/The Revenue – Dy. Commissioner of Income Tax, Central Circle-2(4), 6th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad-4.
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