

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, 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

आयकरअपीलसं./ I.T.A. No.190/Viz/2020
(निर्धारणवर्ष/ Assessment Year: 2004-05)

Andhra Pradesh Tanneries Limited, Vizianagaram. PAN: AABCA 4797 L (अपीलार्थी/ Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle-3(1), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थीकीओरसे/ Assessee by	:	Sri Y.A. Rao, AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Dr. Aparna Villuri, Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	27/03/2024
घोषणाकीतारीख/Date of Pronouncement	:	08/05/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Visakhapatnam [Ld. CIT(A)] in ITA No.0255/2022-12/CIT(A)-1/VSP/2020-21, dated 16/07/2020 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 2004-05.

2. Briefly stated the facts of the case are that the assessee is a manufacturer of finished leather products filed its return of income for the AY 2004-05 on 29/10/2004 admitting the total loss of Rs. 74,76,769/-. The case was selected for scrutiny and the assessment U/s. 143(3) was completed on 11/12/2006 accepting the income returned by the assessee. Thereafter, the case was reopened and a notice U/s. 148 of the Act was issued on 22/03/2011. Subsequently, notice U/s. 143(2) of the Act was issued and served on the assessee. In response, the assessee's Authorized Representative furnished the relevant information from time to time. Considering the information furnished and on examination of the record, the Ld. AO made addition of Rs. 10,39,674/- being the prior period expenses claimed by the assessee which is related to payment of Sales Tax for the AY 1996-97. Further, the Ld. AO also made addition of Rs.1,66,870/- being the interest claimed by the assessee on the "Interest Free Sales Tax Loan" (IFSTL). Further, the Ld. AO also made an addition U/s. 37(1) of the Act for Rs. 1,30,509/-. Aggrieved by the above additions, the assessee filed an appeal before the Ld. CIT(A).

3. On appeal, before the Ld. CIT(A), the assessee contested the reopening of the assessment which was dismissed by the Ld. CIT(A). Further, on merits, the Ld. CIT(A) dismissed the appeal of the assessee thereby confirming the order of the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The Ld. CIT(A) erred in upholding the reopening of the assessment by the ITO invoking provisions of IT Act since the disputed additions considered in the order were originally examined by the AO during the course of proceedings U/s. 143(3).*
2. *The Ld. CIT(A) failed to consider paper book submitted before the Appellate Authority containing submissions originally made during the course of proceedings U/s. 143(3).*
3. *The appellant claims that the Ld. CIT(A) is not justified in dismissing the appeal when the Assessing Officer failed to supply reasons for reopening of assessment U/s. 147 before passing an order.*
4. *The Ld. CIT(A) is not justified in sustaining disallowance of prior period expenditure of Rs. 10,39,674/- which actually represents demands raised by the Sales Tax Authorities during the FY 2003-04 for the first time for which evidence was brought on record during original assessment proceedings itself.*
5. *The Ld. CIT(A) is not justified in sustaining disallowance of interest claimed on different loan by Government particularly when similar claims were always allowed by the Department while completing scrutiny assessment proceedings relating to earlier years. The Commissioner failed to note that it is contractual payment required to be made.*
6. *The authorities below are not justified in disallowing normal expenditures incurred and allowed in original assessment proceedings without bringing any new facts*

and such disallowance now were considered based on audit objections raised.

7. *The Ld. CIT(A) is not justified in observing that the AO has not considered the issues earlier merely because the issues were not discussed in the order passed U/s. 143(3).*
8. *For these and other grounds that may be urged at the time of hearing the appellant prays for cancellation of reopened assessment proceedings made in contravention of the provisions of IT Act.”*

4. Grounds No.1, 2 and 8 are general in nature. Grounds No. 6 & 7 raised by the assessee are argumentative in nature.

Therefore, Grounds No.1, 2, 6, 7 & 8 need no adjudication.

5. With respect to **Ground No.3** wherein the assessee has challenged the reopening of the assessment U/s. 147 of the Act, the Ld. Authorized Representative [AR] submitted that the assessee has not been provided the reasons for reopening of the assessment inspite of the request made by the assessee on 6/4/2011. The Ld. AR therefore pleaded that since the reasons were not properly communicated to the assessee, the assessment order passed by the Ld. AO is void-ab-initio.

Per contra, the Ld. Departmental Representative [DR] referred to the order of the Ld. CIT(A) wherein vide para 4.1.2, the Ld. CIT(A) has extracted the reasons recorded by the Ld. AO

and has reproduced the same. Further, the Ld. DR also submitted that it is now not practicable to trace the record for the AY 2004-05 regarding the communication of reasons for reopening made to the assessee.

6. 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 order of the Ld. CIT(A) that the Ld. CIT(A) has extracted in para 4.1.2 of his order the reasons recorded for reopening of the assessment by the Ld. AO. The assessee also could not categorically produce any evidence regarding the non-communication of the reasons recorded. Further, we also find that the letter referred to by the assessee dated 6/4/2011 does not have a valid acknowledgement. In the facts and circumstances as described in the aforesaid paragraphs, we are of the considered view that the reasons recorded by the Ld. AO are made available to the assessee and hence challenging of reopening of the assessment by the assessee is not in accordance with law and hence this ground raised by the assessee is **dismissed**.

7. With respect to **Ground No.4**, the Ld. AR argued that the Ld. AO is not justified in disallowing the prior period expenditure of

Rs. 10,39,674/- as the assessee is in receipt of Demand Notice from the Sales Tax Authorities during the FY 2003-04. He therefore pleaded that since the liability was crystalized during the year 2003-04, it should be allowed as an expenditure in the year of payment.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

8. We have heard both the sides and gone through the written submissions made by the assessee. It is a fact that the Sales Tax Authorities have raised a demand of Rs. 2,39,674/- and Rs. 17,02,707/- pertaining to earlier Assessment Years which was under dispute by the assessee. It is also found that the assessee has not created any provision in the books of accounts for the payment of the disputed tax. Finally, when the Sales Tax Department issued a notice of demand in Form-4 (Demand prior to attachment of land), dated 28/01/2004, the assessee made a part payment of Rs. 10,39,674/- and claimed it as an expenditure in the impugned assessment year. In this regard, we are of the considered view that since the demand has been crystalized in the earlier assessment years, the assessee has failed to make any provision in the books of account and thereby

the assessee could not claim it as an expenditure even U/s. 43B of the Act. Therefore, in our considered opinion the Ld. AO has rightly disallowed the prior period expenditure in the absence of any provision made in the books of account and hence we do not find any infirmity in the order of the Ld. CIT(A) on this issue. Accordingly, this ground raised by the assessee is **dismissed**.

9. With respect to **Ground No.5**, regarding the disallowance of interest on the deferred loan, the Ld. AR argued that the assessee has availed Interest Free Sales Tax Loan from the Government of Andhra Pradesh. As per the scheme, the beneficiary is allowed for a period of Ten Years to defer the Sales Tax payment to the Government of Andhra Pradesh. However, the interest is payable from the Eleventh Year onwards if the assessee failed to pay the deferral Sales Tax amount to the Government of Andhra Pradesh. Accordingly, the assessee has claimed the amount of Rs. 1,66,870/- as interest payable on the Interest Free Sales Tax Loan availed by the assessee which is outstanding beyond the period of Ten Years. In this connection, the Ld. CIT(A) vide para 4.3.2 has held as follows:

“4.3.2.I have carefully considered the issue. From the facts, it is understood the appellant had availed “interest free loan” from Government as an incentive in the

entrepreneurs. The said loan to be paid in 10 years. If the entrepreneur fails to pay the loan amount after 10 years, the recipient will have to pay interest. The appellant is required to pay interest of Rs. 1,66,870/- on the balance amount of Rs. 7,76,138/- @ 21.5%. The Assessing Officer has disallowed interest amount on the premise that the incentive is an interest free loan. Hence claiming interest does not arise. Besides, the appellant had not paid the interest. It is the interest payable which is not allowable even U/s. 43B of the Act. In these circumstances, I find no reason to interfere with the decision of Assessing Officer. Accordingly, the addition is confirmed. The grounds raised are dismissed.”

10. Further, even before us the assessee has not produced the payment receipt for the interest payment. Under these circumstances, we concur with the views of the Ld. CIT(A) and therefore we find no infirmity in the order of the Ld. CIT(A) and hence this Ground raised by the assessee is **dismissed**.

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

Pronounced in the open Court on 08th May, 2024.

Sd/-

(दुव्वूरुआर.एल.रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस.बालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 08.05.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Andhra Pradesh Tanneries Limited, IDA, Leather Complex Area, Nellimarlla, Vizianagaram – 535127, Andhra Pradesh.
2. राजस्व/The Revenue –Assistant Commissioner of Income Tax, Circle-3(1), Infinity Towers, Shankaramatam Road, Visakhapatnam-530016, Andhra Pradesh.
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