आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.638/Viz/2019

(निर्धारणवर्ष/ Assessment Year : 2011-12)

Deputy Commissioner of Income Tax, Circle-3(1), Visakhapatnam.	Vs.	M/s. Prathyusha Global Trade Pvt Ltd., Visakhapatnam. PAN: AAECP 0800 C
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
अपीलार्थीकीओरसे/ Assessee by	:	Sri P. Murali Mohana Rao, AR
प्रत्यार्थीकीओरसे/ Revenue by	:	Dr. Aparna Villuri, Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	01/05/2024
घोषणाकीतारीख/Date of Pronouncement	:	28/05/2024

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Visakhapatnam in ITA No. 534/2014-15/DCIT, C-3(1), Vsp/2017-18, dated

03/09/2019 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2011-12.

2. This is the second round of proceedings before the Tribunal. In the first round of proceedings before the Tribunal, the appeal was allowed in favour of the Revenue since there was no representation from the assessee for prosecution. Later on, the assessee filed a Miscellaneous Application seeking recall of the ex-parte order dated 08/03/2023. Following the principles of natural justice and in order to provide one more opportunity to the asessee, the order dated 8/3/2023 was recalled by the Tribunal.

3. Briefly stated the facts of the case are that the assessee-company is engaged in the business of growing prawns and selling them. The assessee filed its return of income on 29/02/2011 admitting a total income of Rs. 68,34,020/-. The return was summarily processed. Later, the case was selected for scrutiny under CASS for examination of claim of additional depreciation. Subsequently, notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response to the notices, the assessee submitted the required information and books of accounts from time to time. The Ld. AO after examining

the submissions, completed the assessment by making the following additions viz., (i) disallowance U/s. 40A(3) of Rs. 1,00,000/-; (ii)Disallowance U/s. 40A(3) of Rs. 48,984/-; (iii) Disallowance of electricity charges Rs.3,52,753/-; (iv) Disallowance of additional depreciation Rs.2,87,92,897/-; (v) Disallowance U/s. 14A Rs. 1,25,000/-. Aggrieved by the above order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) allowed the appeal of the assessee by deleting the additions made by the Ld. AO viz., (i) disallowance U/s. 14A of the Act of Rs.1,25,000/-; (ii) disallowance of electricity charges of Rs. 3,52,753/- and (iii) disallowance of excess depreciation of Rs. 2,87,92,897/-. The Ld. CIT(A) while adjudicating the disallowance of depreciation considered the alternative plea of the assessee that it is an allowable expenditure U/s. 37(1)of the Act. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

> *"1. The order of the Ld.CIT(A)-1, Visakhapatnam is erroneous both on facts and in law.*
>
> *2. The Ld. CIT(A) has erred in directing the AO to allow electricity charges incurred for aqua ponds, when the assessee has not furnished any substantial proof for the expenditure incurred for business purpose.*

3. *The Ld. CIT(A) erred in not upholding the stand taken by the AO ie., restricting the claim of depreciation on the ponds @ 15% which is in consonance with the decision of the Hon'ble Supreme Court in the case of CIT vs. Victory Aqua Farms Ltd (2015) 379/355 (SC).*

4. *The Ld. CIT(A) has erred in allowing the alternative plea of the assessee that expenditure of Rs. 3,38,73,997/- incurred to be treated as revenue expenditure, more particularly when the assessee is claiming the same as capital expenditure and claiming depreciation on ponds over different Asst. Years including the present Asst. Year.*

5. *The Ld. CIT(A) has erred in not considering the assessee's own submissions vide para-8 of page-4 of letter dated 11/3/2014 and para 5 of page-2 of the letter dated 25/2/2015 and claiming ponds as capital assets vide depreciation statement submitted vide submission dated 29/01/2014 that the Acqua PANs / Reservoirs (ponds) are of the nature of plant & machinery.*

6. *The Ld. CIT(A) has erred in directing the Ld.AO to delete the addition made U/s. 14A of the Act, when the CBDT in its circular No. 5/2014 dated 11/2/2014 has clarified that Rule-8D r.w.s 14A of the IT Act provides disallowance of expenditure even where taxpayers in a particular year has not earned any exempt income.*

7. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal."*

4. **Grounds No.1 & 7 are general in nature** and therefore they need no adjudication.

5. **Ground No.2** is with respect to deletion of addition by the Ld. CIT(A) on the payment of electricity charges amounting to Rs. 3,52,753/-. The Ld. AR argued that the disallowance on account of electricity charges is due to the fact that the electricity

connection is in the name of the Director of the Company. He therefore pleaded that even though the connection is in the name of the individual, the expenditure was incurred for the purpose of business and hence it should be allowed as business expenditure.

Per contra, the Ld. Departmental Representative [DR] relied on the order of the Ld. AO.

6. 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 an admitted fact that the electricity connection is in the name of the Director of the company whereas the assessee claims expenditure with respect to electricity charges paid in the name of business of the assessee claiming that it is for the purpose of business of the assessee. On a query from the Bench asking that why the electricity charges are very meagre as compared to 70 ponds wherein the electricity charges should have been substantially more, the Ld. AR replied that part of the electricity was used by way of generator hence the consumption of electricity through the electricity connection in the name of the Director is minimal. However, no such evidence was produced before us to state that this expenditure was incurred purely for

the purpose of business and not for the personal use of the Director since the meter is in the name of the Director. In the absence of any cogent evidence, we have no hesitation to uphold the order of the Ld. AO thereby setting aside the order of the Ld. CIT(A) on this issue. The case laws relied on the by the Ld. AR on the decision of the Hon'ble Supreme Court in the case of S.A Builders v. CIT (Appeals), [2007] 288 ITR 1 (SC) is of no help to the assessee. **Thus, Ground No.2 raised by the Revenue is allowed.**

7. **Grounds No. 3, 4 & 5** are with respect to disallowance of depreciation. At the outset, the Ld. DR submitted that the assessee has claimed the expenditure incurred for the ponds as capital expenditure and has claimed depreciation @ 100% on the same. The Ld. AO has considered the capital asset as plant and machinery and by relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Victory Aqua Farm Ltd [2015] 379 ITR 335 (SC) has denied the depreciation of 85% additionally claimed by the assessee. The Ld. DR further submitted that the Ld. CIT (A) has considered the alternative plea of the assessee that this is a revenue expenditure and allowed the deduction U/s. 37(1) of the Act by not providing any opportunity to examine the payments by the Ld. AO. The Ld. DR further submitted that it is a fact that the

assessee has incurred various expenditure which are capital in nature and later on claimed it as a revenue expenditure before the Ld. CIT(A) is not valid in law. He therefore pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. AR relied on the order of the Ld. CIT(A).

8. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities on the issue. Admittedly, the assessee has incurred expenditure for the construction of 70 ponds and has claimed it as capital expenditure in the books of accounts of the assessee and has also claimed depreciation @ 100% on the same. Later on, the assessee claimed it as a revenue expenditure stating that the assessee has incurred this expenditure for the purpose of clearing, excavation, drilling and levelling of the agricultural land. In the case relied on by the Ld. DR on the ratio laid down by the Hon'ble Supreme Court in the case of ACIT vs. Victory Acqua Farm Ltd [2015] 61 taxmann.com 166 (SC) the Hon'ble Apex Court in para 6 of their order has clearly held that *based on the 'functional test' the ponds which were designed for rearing / breeding of the prawns, they have to be treated as tools of the business of the assessee and the depreciation was admissible on these ponds.* In the instant case, the assessee has incurred various expenditure for the construction of the ponds which are considered as

capital in nature by the assessee itself and has claimed 100% depreciation on the same. However, the Ld. CIT(A) subsequently allowed the alternative plea of the assessee that it is a revenue expenditure and allowed it U/s. 37(1) of the Act. From the submissions of the Ld. AR, we find that this expenditure was incurred for excavation, levelling, clearing and earth work for about 70 ponds which in our opinion are capital in nature and was used as a tool for the business of the assessee. We therefore are of the considered view that this expenditure constitutes plant and machinery of the assessee and hence the Ld. AO has is correct in allowing the depreciation @ 15% of expenditure incurred by the assessee thereby disallowing the 85% excess claim of the assessee. To conclude, we do not find any infirmity in the order of the Ld. AO and accordingly, we hereby set-aside the order of the Ld. CIT (A) on this issue. Accordingly, **Grounds No. 3, 4 & 5 raised by the Revenue are allowed.**

9. With respect to **Ground No.6** of the Grounds of Appeal deleting the addition U/s. 14A of the Act, the Ld. DR submitted that the assessee has received exempt income of 12.59 lakhs as dividend from the investment of Rs. 2.50 Crs in the equity share of M/s. Prathyusha Associates Shipping Pvt Ltd. The Ld. AO has rightly invoked the provisions of section 14A r.w.r 8D(1)(b) of the Act and has made a disallowance of Rs.

1,25,000/- being 0.5% of the investment made by the assessee. However, the Revenue could not accept the receipt dividend income by the assessee.

Per contra the Ld AR submitted that the Ld. CIT(A) has examined the computation of income as well as the P & L Account and has found that no dividend income was received by the assessee. The assessee has also relied on the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. Chettinad Logistics (P.) Ltd [2018] 95 taxmann.com 250 (SC) and the decision of the Hon'ble Madras High Court in the case of Redington (India) Ltd vs. Addl. CIT [2017] 392 ITR 633 (Madras).

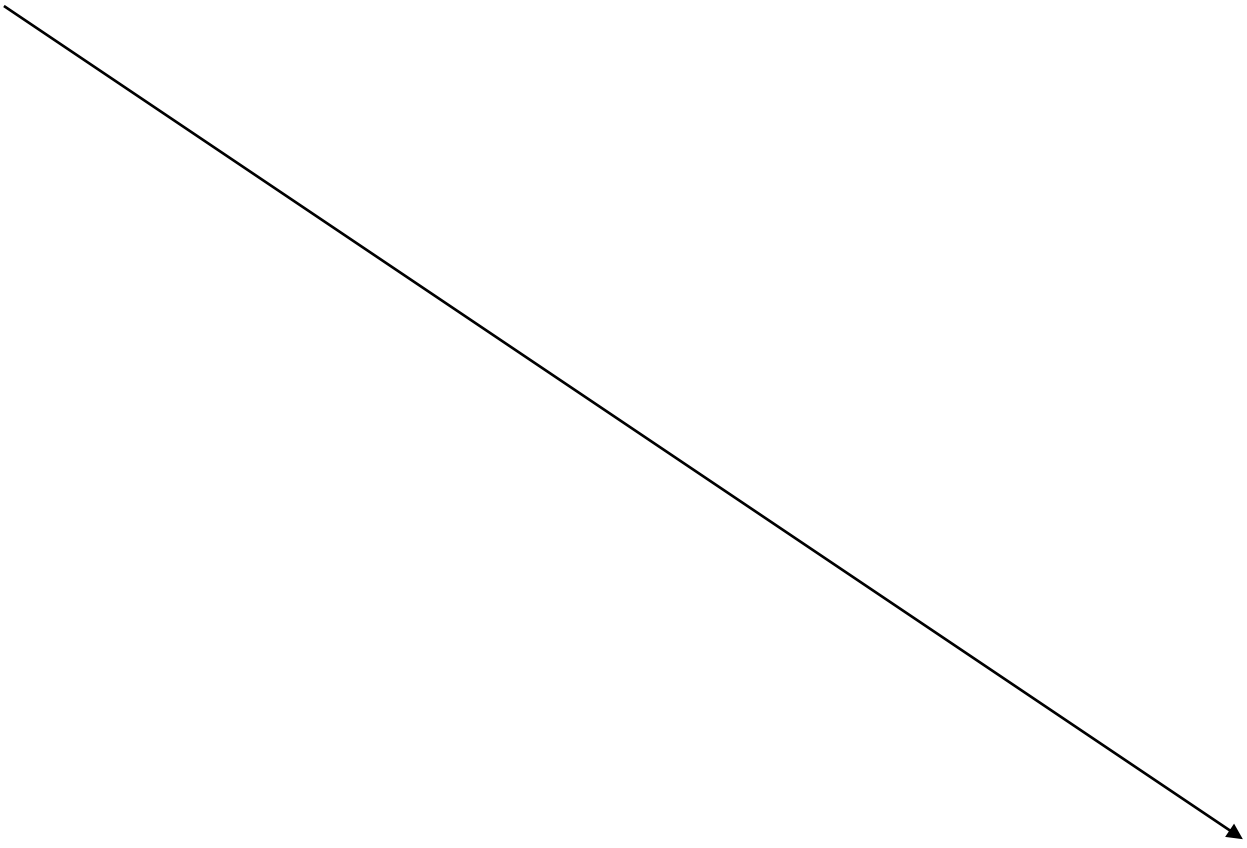
It is a settled principle that when there is no exempt income, no disallowance can be made U/s. 14A of the Act for the relevant assessment year. The Revenue has also not demonstrated that assessee received dividend income (exempt) during the impugned AY. Therefore by relying on the various judicial pronouncements, as aforesaid, we hereby found no infirmity in the order of the Ld. CIT(A) while deleting the addition made U/s. 14A of the Act and thereby dismiss the ground raised by the Revenue.

10. Further, we find from the written submissions made by the assessee that the assessee has invoked Rule 27 of the ITAT Rules wherein the assessee has contested the order of the Ld. CIT(A) stating

that he has failed to adjudicate the legal ground. The contention of the Ld. AR is that the case was selected for limited scrutiny for the purpose of examining the additional depreciation whereas the Ld. AO has travelled beyond his jurisdiction without following the Central Board of Direct Taxes ["CBDT"] Circular dated 8/9/2010.

Per contra, the Ld. DR relied on the order of the Ld. AO.

11. We have heard both the sides and perused the material available on record as well as the written submissions of the assessee. For the sake brevity, we may extract below the CBDT Circular relied on by the Ld. AR:



F.No.225/26/2006-ITA.II (Pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the 8th September, 2010

To

All Chief Commissioners of Income Tax
All Directors General of Income Tax

Sir/Madam,

Subject: - Selection of cases for scrutiny on the basis of data in AIR returns and subsequent assessment proceedings- regarding.

*****

Reference is invited to Board's letter of even number dated 23rd May, 2007 regarding scope of enquiry in the scrutiny cases selected only on the basis of information received through the AIR returns.

2. The above mentioned guidelines have been reconsidered by the Board and it has been decided that the scrutiny of such cases would be limited only to the aspects of information received through AIR. However, a case may be taken up for wider scrutiny with the approval of the administrative Commissioner, where it is felt that apart from the AIR information there is a potential escapement of income more than ₹ 10 Lacs.

3. It has also been decided that in all the cases which are picked up for scrutiny only on the basis of AIR information, the notice u/s 143(2) of Income Tax Act should clearly be stamped with "AIR Case"

This should be immediately brought to the notice of all the officers working in your region.

कार्यालय मुख्य आयकर आयुक्त दिल्ली-I आयकर निदेशक जाँच दिल्ली
10 SEP 2010 10249
प्राप्ति एवं निर्गमन विभाग
डायरी सं. .....

Yours faithfully,

08/09/10

(Ajay Goyal)
Director (ITA.II)
Telefax: 23092151

Copy to:

1. Chairman and all Members of CBDT.
2. Director General of Income Tax (Systems)
3. All Officers and Technical Sections of CBDT.
4. Director of Income tax (Inv.)/IT & Audit/Vigilance/Inv./RSP&PR/Recovery
5. Dy.Director of Inspection(P&PI), New Delhi
6. C&AG of India (40 copies)
7. Asst.Director of Inspection(Bulletin), New Delhi
8. JS & Legal Adviser, Ministry of Law & Justice, New Delhi
9. Director of Income tax(O&MS), New Delhi
10. Director General, NADT
11. Commissioner (AAR).
12. Guard File.

कार्यालय मुख्य आयकर आयुक्त समन्वय शाखा कमरा नं. 319
13 SEP 2010
3463
केन्द्रीय राजस्व भवन, नई दिल्ली
डायरी नं० .....

The above Circular clearly states that the scrutiny of the case would be only to the aspects of information received through AIR. In the instant case, we find that the case was selected for scrutiny under CASS is not based on the information received through AIR but based on the return filed submitted by the assessee. We therefore are of the considered view that the CBDT Circular (supra) relied on by the Ld. AR is of no assistance to him. Further, we find that the Ld. AO has rightly exercised his powers while doing the scrutiny assessment. Reliance placed by the Ld. AR on the decision of the Coordinate Bench of Pune in the case of Surendra Bhimsen Agarwal in ITA No. 637/PUN/2013 (AY 2009-10), dated 4/9/2019 is distinguishable on the fact that the said case was selected for scrutiny based on the AIR returns and hence the CBDT Circular (supra) applies to that case. However, in the instant case, the case was not selected for scrutiny based on the AIR returns and hence the said Circular cannot be applied. We therefore reject the petition filed by the assessee by invoking the provisions of Rule 27 of the ITAT Rules.

12. In the result, appeal filed by the Revenue is partly allowed and the petition filed by assessee under Rule 27 of the ITAT Rules is dismissed.

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

Sd/-	Sd/-
(दुव्वूरु आर. एल रेड्डी)	**(एस बालाकृष्णन)**
(DUVVURU RL REDDY)	(S.BALAKRISHNAN)
न्यायिकसदस्य/JUDICIAL MEMBER	**लेखासदस्य**/ACCOUNTANT MEMBER

Dated :28.05.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s. Prathyusha Gloabal Trade Private Limited, Prathyusha House, D.No. 25-40-12, Near Lakshmi Talkies, Visakhapatnam-530001, Andhra Pradesh.
2. राजस्व/The Revenue –DCIT, Circle-3(1), Income Tax Office, Infinity Towers, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.
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