

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.285/Viz/2023

(निर्धारणवर्ष/ Assessment Year : 2020-21)

Sri Lakshmi Constructions,
D.No. 26-3-560, SLN Towers,
IV Floor, BV Nagar, Mini Bypass
Road, Nellore – 524004.
PAN: ABOFS2978J

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. The Deputy Commissioner of
Income Tax,
Central Circle-1,
Guntur.

(प्रत्यर्थी/ Respondent)

Sri M.V. Prasad, AR

Dr. Aparna Villuri, Sr. AR

11/06/2024

24/07/2024

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam [“Ld. CIT(A)”] vide DIN & Order No. ITBA/APL/S/250/2023-24/1055268990(1), dated 21/08/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [“the Act”] for the AY 2020-21.

2. At the outset, it is noticed from the appeal record that there is a delay of 15 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the affidavit which is as under:

“

- A. *The appellant is unaware about the receipt of order since no SMS message has been received to his mobile stating that the appellate order has been uploaded.*
- B. *Later on, our Authorized Representative has obtained the appeal order in the month of September and advised us about necessity of filing of further appeal.*
- C. *As the October month is the last date for filing the returns of income for companies, firm etc., in this process we inadvertently missed the due date for filing the appeal before Hon'ble ITAT. Later upon enquiry of our auditor, we realized the mistake and immediately preferred the appeal with delay of 15 days.*
- D. *Since this being an inadvertent mistake for which we profusely request your honors to excuse the appellant for filing the appeal with delay and admit such appeal.*
- E. *Therefore, it is earnestly submitted that the delay occurred is neither intentional nor deliberate.”*

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 15 days. Therefore, we hereby condone the delay of 15 days in

filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Briefly stated the facts of the case are that the assessee being a partnership firm is engaged in the business of electrical fabrication contracts. A survey operation U/s. 133A of the Act was conducted at the business premises of the assessee on 19/02/2020. During the survey operation, certain incriminating material viz., daily cash payment vouchers, personal diaries of the Managing Partner, promissory notes, loose sheets and a pen-drive are impounded by the Survey Team. It was observed from the impounded material that the Managing Partner Sri Donkala Chenchu Narasimha Rao was availing huge cash loans for the purpose of business of the firm. It was noticed by the Ld. AO in the deposition made by the Managing Partner on 25/02/2020 that he expressed his inability to explain the loans amounting to Rs. 3,49,73,000/-. Thereafter, the assessee filed its return of income for the AY 2020-21 on 21/1/2021 admitting a total income of Rs. 274,93,620/-. Thereafter, notices U/s. 143(2) and 142(1) of the Act were issued to the assessee. In response to the notices, the assessee's Representative furnished information from

time to time. Considering the replies furnished by the assessee's Representative, the Ld. AO made the following additions:

- (i) Addition U/s. 68 of the Act of Rs. 7,00,000/-
- (ii) Addition U/s. 68 r.w.s 115BBE of the Act of Rs.138,23,320/-
- (iii) Difference between the physical stock and book value of the stock of Rs. 44,22,799/-.

Being aggrieved by the additions made by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-3, Visakhapatnam. The Ld. CIT(A), considering the submissions made by the assessee's Representative deleted the addition made u/s 68 of the Act, however confirmed the addition made on account of difference in stock by the Ld. AO resulting partly allowing the appeal of the assessee. Being 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) has erred in facts and law while passing the order.*
- 2. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in confirming the addition of Rs. 44,22,799/- without considering the submissions made during the course of appellate proceedings.*
- 3. On the facts and circumstances of the case, the addition of Rs. 44,22,799/- towards alleged excess stock is unwarranted as the basis for calculating the excess stock is wrong as the appellant is not maintaining any stock register and the accounts were not updated on the date of survey U/s. 133A of the Act.*

4. *Without prejudice to the above grounds, on the facts and circumstances of the case, the Assessing Officer is erred in taxing such excess stock at 60% by invoking section 115BBE of the Act as such alleged excess stock is part of business income.*
5. *The appellant may add, alter, modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.”*

5. The only issue emanating from the grounds raised by the assessee is with respect to the addition of Rs. 44,22,799/- being difference in stock by the Ld. AO and confirmed by the Ld. CIT(A). On this issue, the Learned Authorized Representative [“Ld. AR”] submitted that on the date of survey ie., 19/02/2020, the books of accounts were not updated and hence the difference in stock should not be computed based on the non-updated books of accounts. The Ld. AR referred to the seized material in Annexure No. SLC/A/15 which is available in page No.94 of the paper book and stated that the books of accounts were not updated which is evident from the Profit & Loss Account that there are no sales accounted for and the opening and closing stock both remained at Rs. 23,65,000/-. The Ld. AR further submitted that the updated books of accounts were submitted before the Ld. AO who has not considered the same. The Ld. AR also submitted that the P & L Account as on 13/02/2020 updated as on the date of

survey ie., 19/02/2020, is given in Page No.88 of the Paper Book. Further, he also submitted in paper book page No. 90 the updated Profit & Loss Account till the date of survey. He further submitted that it can be observed from the Profit & Loss Account that the Opening Stock and Closing Stock remain at Rs. 30.63 lakhs. The Ld. AR therefore pleaded that one more opportunity may be provided to the assessee to submit the audited financials before the Ld. AO to substantiate that there is no difference in Closing Stock.

Per contra, the Ld. Departmental Representative ["Ld. DR"] heavily relied upon the orders of the Ld. Revenue Authorities and argued in support of the same.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly, we find from the page No.94 of the paper book submitted by the assessee, the Profit & Loss Account remains unupdated as on the date of survey ie., 19/02/2020. Considering the submissions made by the Ld. AR, following the principles of natural justice, we find it deem fit to remit the matter back to the file of the Ld. AO to verify the stock details based on the updated audited books of accounts and the return

of income filed by the assessee for the AY 2020-21. We also direct the assessee to produce the records regarding the stock as well as sales & purchases before the Ld. AO for verification. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 24th July, 2024.

Sd/-
(दुव्वुरु.आर.एल.रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER
Dated : 24 .07.2024
OKK - SPS

Sd/-
(एस.बालाकृष्णन)
(S.BALAKRISHNAN)
लेखासदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee–Sri Lakshmi Constructions C/o. CA M.V. Prasad, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh – 520010.
2. राजस्व/The Revenue –The Deputy Commissioner of Income Tax, Central Circle-1, Lakshmipuram Main Road, Guntur – 522007, 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