

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

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.2/VIZ/2024
(निर्धारण वर्ष/ **Assessment Year: 2011-12**)

Gupta Enterprises
Eastern St., Near Venkanna Cheruvu
Eluru – 534001, Andhra Pradesh

v. Asst. CIT – Circle – 1
Eluru-534002
Andhra Pradesh

[PAN :AACFG6508R]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से/ Respondent by

: Shri G.V.N. Hari, AR
: Dr. Aparna Villuri, Sr.AR

सुनवाई की तारीख/ Date of Conclusion of Hearing
घोषणा की तारीख/Date of Pronouncement

: 23.07.2024
: 08.08.2024

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals) [hereinafter in short "Ld.CIT(A)"], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1057784575(1) dated 08.11.2023

arising out of order passed under section 154 of the Income Tax Act, 1961 (in short 'Act') dated 28.05.2018.

2. Brief facts of the case are that, assessee is a partnership firm, engaged in the business of processing and export of human hair, sandalwood etc., and power generation through windmill, filed its return of income for the A.Y. 2011-12 admitting a total income at Rs.2,65,79,450/-. The return was summarily processed under section 143(1) of the Act on 16.01.2012. Subsequently, the case was selected for scrutiny and statutory notices under section 142(1) and 143(2) of the Act were issued and served on the assessee. Considering the submissions made during the assessment proceedings, the Ld. Assessing Officer made various additions to the returned income and determined the income at Rs. 3,68,27,652/-. Subsequently, the Tribunal in ITA No. 193/VIZ/2014 for the A.Y. 2010-11 passed an order dated 30.08.2017 upholding the addition made by the Assessing Officer for the A.Y.2010-11, an amount of Rs.1,36,80,000/- representing the sales made to M/s. Raj Impex as a liability in the books of accounts as non-existent, subject to confirmation by M/s. Raj Impex. Considering the order of the Tribunal, assessee filed a rectification petition under section 154 of the Act stating that since the amount of Rs.1,36,80,000/-has been added to the income during the A.Y.2010-11 it cannot be once again added to the income

during the A.Y.2011-12. However, Assessing Officer vide his order dated 28.05.2018 rejected the plea of the assessee and dismissed the petition filed under section 154 of the Act.

3. Aggrieved by the order of the Assessing Officer, assessee filed appeal before Ld. CIT(A), NFAC, Delhi. Considering the submissions made by the Ld. AR, the Ld.CIT(A) dismissed the appeal of the assessee upholding the addition made by the Assessing Officer.

4. Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before us by raising the following revised grounds: -

"1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) is not justified in upholding the action of the assessing officer in rejecting the petition for rectification of assessment order for A.Y.2011-12.

3. The learned Commissioner of Income Tax (Appeals) ought to have held that the addition of Rs.1,36,80,000 made in A.Y.2010-11 towards unaccounted closing stock in respect of goods sold to Raj Impex, deserves to be telescoped against sales income of Rs.1,36,80,000 assessed to tax in A.Y.2011-12.

4. The learned Commissioner of Income Tax (Appeals) ought to have held that not granting the telescoping benefit would amount to double taxation of sales amount of Rs.1,36,80,000 once in A.Y.2010-11 and again in A.Y.2011-12.

5. Any other ground that may be urged at the time of appeal hearing."

5. The only issue emanating from the grounds of appeal raised by the assessee is with respect to the telescopic benefit of the addition made as sales during the A.Y. 2010-11 by giving to the counter sales during the A.Y.2011-12.

6. In this regard, Ld. Authorised Representative {hereinafter in short "Ld.AR"} argued that, assessee has received an advance from M/s. Raj Impex amounting to Rs.1,36,80,000/- during the A.Y. 2010-11 and has raised a proforma invoice for the sales made amounting to Rs.1,36,80,000/-. Since the sales could not materialised during the A.Y.2010-11 assessee has shown the advance received in the books of account of the assessee. However, Ld. Assessing Officer based on the confirmation received by M/s. Raj Impex which has accounted as purchases during the A.Y. 2010-11, has concluded that there is no existing liability, whereby considering that the assessee has suppressed sales to the extent of Rs.1,36,80,000/- during the A.Y. 2010-11. Ld.AR further pleaded that, assessee has accounted for the sales in the A.Y.2011-12 subject to certain export clearances. However, in the interim, the Ld. Tribunal has passed an order upholding the addition made by the Assessing Officer during the A.Y. 2010-11 considering it as suppression of sales / stock in the books of accounts of the assessee. He therefore, pleaded that since the sales has been accounted by the assessee in the A.Y. 2011-12, the telescopic benefit of Rs.1,36,80,000/- being the addition made consequent to the order of this Tribunal, shall be given to the assessee during the impugned assessment year. He

further, pleaded that the same amount cannot be taxed twice for two different assessment years.

7. Per contra, the Ld. Departmental Representative {hereinafter in short Ld. DR"} heavily relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

8. We have heard both the sides, and perused the material available on record, order of the Tribunal and orders of the lower authorities. It is an undisputed fact that the Tribunal in its order dated 30.08.2017 has upheld the addition of Rs.1,36,80,000/- as unaccounted sales / stocks in the books of accounts of the assessee, for the AY 2010-11. It is also found that the assessee has accounted for the advance during the A.Y.2010-11 whereas sales relating the advances was accounted during the A.Y. 2011-12 in the books of account of the assessee. However, we find that the Assessing Officer has rejected the petition under section 154 of the Act filed by the assessee stating that the petition cannot be entertained as mere addition of Rs.1,36,80,000/- in the opening stock should also be added to the closing stock and hence there is no impact on the profits declared by the assessee. The point of contention of the Ld.AR is that since the amount of Rs.1,36,80,000/- has already been added to the total income of the assessee during the A.Y.2010-11 by

virtue of the order of the Tribunal dated 30.08.2017 and the Ld.Assessing Officer has also passed consequential order dated 12.06.2018 by adding Rs.1,36,80,000/- to the total income of the assessee. The issue available based on the facts is with respect to the accounting of sales by the assessee in the year A.Y. 2011-12 whereas the Revenue has stated that the income in the A.Y. 2010-11 is based on the confirmation by the vendor M/s. Raj Impex. It is trite law that the same income cannot be taxed twice in the hands of the assessee in two different assessment years. Since the income has already been taxed in the hands of the assessee consequent to the order of the Tribunal it cannot be once again taxed in the hands of the assessee during the A.Y.2011-12 where the sales have been accounted by the assessee in the books of accounts. We therefore find no merit in the argument of the Ld.DR thereby setting aside the orders of the Revenue Authorities and accordingly the grounds raised by the assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 08th August, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :. 08.08.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/The Assessee : Gupta Enterprises
Eastern St., Near Venkanna Cheruvu
Eluru – 534001, Andhra Pradesh
2. राजस्व/The Revenue : Asst. CIT – Circle – 1
Eluru-534002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam