

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

श्री दुव्वूरु आरएल 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.169/VIZ/2023
(निर्धारण वर्ष/ **Assessment Year: 2014-15**)

Asst. Commissioner of Income Tax 3 rd Floor, Standard House, Beside SBI Nagarampalem, Guntur – 522004 Andhra Pradesh	v.	M/s. Tulasi Seeds Private Limited Door No. 6-4-6, Tulasi House 4/5 Arundelpet, Guntur Andhra Pradesh [PAN : AA ACT8054C]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri G.V.N. Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	22.07.2024
घोषणा की तारीख/Date of Pronouncement	:	08.08.2024

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the revenue 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/250/2022-23/1051794703(1) dated 31.03.2023 for the A.Y.2014-15 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 30.12.2016.

2. At the outset, it is noticed from the appeal record that there is a delay of 3 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. DR drew our attention to the affidavit filed by the revenue along with a petition seeking for condonation of delay and read out the contents of the petition which is as under: -

"3.

The Joint Commissioner of Income tax, Vijayawada is currently holding four charges and due to this, the correspondence with the Range Office has resulted in a delay. Further, this office was also in the process of completing formalities related to the handing and taking over of charge. The above reasons have resulted in an unavoidable delay. Thereafter the appeal papers prepared and without any further delay, the appeal filed on 02-06-2023.

4. It is submitted that the delay in filing appeal is neither wanton nor willful, but only because of the above reasons.

5. In view of the above, it is humbly prayed that Hon'ble ITAT may condone the delay of three (3) days in filing the appeal and thus render justice."

3. On perusal of the contents of the affidavit filed by the revenue and as well as the submission of the Ld. DR, we find that the revenue is prevented by a reasonable and sufficient cause in filing the appeal

beyond the prescribed time limit with a delay of 3 days. Therefore, we hereby condone the delay of 3 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Brief facts of the case are that, assessee being Private Limited Company engaged in the business of production and marketing of hybrid sowing seeds, filed its return of income for the A.Y. 2014-15 on 28.11.2014 admitting a total income of Rs. 4,95,95,510/-. The return was summarily processed under section 143(1) of the Act. Thereafter, the case was selected for scrutiny under CASS and statutory notices under section 142(1) and 143(2) of the Act were issued and duly served on the assessee. In response to the notice's, assessee furnished various information called for from time to time. After examining the submissions, the Ld. Assessing Officer framed the assessment by making the following additions: -

- i. Rs. 31,17,823/- was added u/s. 36(1)(va) of I.T. Act for delay in payment of Provident Fund.*
- ii. Rs.2,04,375/- was added u/s. 43B, r.w.s. 36(1)(ii) of I.T. Act towards delay in payment of bonus to employees.*
- iii. Rs. 5,11,21,540/- was disallowed out of the interest claimed in the Profit & Loss A/c. This disallowance came on account of non- charging of interest from the sister concerns/related companies.*
- iv. Rs.93,06,321/- was disallowed u/s 35(2AB)*

5. Aggrieved by the additions made by the Assessing Officer, assessee filed an appeal before Ld. CIT(A), NFAC, Delhi. Considering the submissions made by the assessee, Ld. CIT(A) partly allowed the appeal of the assessee.

6. Being aggrieved by the order of the Ld. CIT(A), NFAC, Delhi, revenue is in appeal before us by raising following grounds in its appeal:-

"1. The order of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi is erroneous both in law and on facts of the case.

2. Whether Ld. CIT(A) is correct in law and facts of the case, in disallowing the addition made by the assessing officer, on interest-free loans advanced by the assessee company to sister concerns/related parties.

3. Whether the Ld. CIT(A) is correct in law and facts of the case, in allowing the expenditure, when the assessee has failed to prove that the funds were completely utilized by the sister concerns/related companies for business purposes alone.

4. Any other grounds that may be urged at the time of hearing."

7. The only issue contested by the revenue is with respect to deletion of the addition of interest made by the Assessing Officer with respect to the interest free loans advanced by the assessee Company to its sister concerns / related parties.

8. The Ld. Departmental Representative [hereinafter in short "Ld.DR"] fully supporting the order of the Assessing Officer submitted that the assessee Company has diverted interest bearing funds to its sister concerns as interest free advances. He further submitted these interest free advances were considered as advances towards business exigences to the related parties. However, Ld. DR further submitted that the advances made are disproportionate to the business dealings with the related parties. He therefore pleaded that order of the Assessing Officer be upheld on this issue.

9. Per contra, Ld. Authorized Representative [hereinafter in short "Ld.AR"] submitted that there were no fresh advances to sister concerns during the impugned Assessment year. Ld.AR further submitted that Ld.CIT(A) has fully relied on the decision of the Hon'ble Supreme Court in the case of S.A. Builders Ltd., v. CIT and considered that the amount advanced is in the nature of "Commercial Expediency" and thereby deleted the additions made by the Assessing Officer. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

10. We have heard both the sides and perused the material available on record. It is an undisputed fact that the assessee has advanced an amount of Rs. 25,97,37,842/- to M/s. Coastal Packagings and an

amount of Rs.37,92,81,359/- to M/s. Diehard Dies Pvt., Limited. The contention of the Ld. DR is that Mr. Tulasi Ramachandra Prabhu is a proprietor of M/s. Coastal Packagings and also hold substantial interest to the extent of 64% in M/s. Diehard Dies Pvt., Limited. It is the case of the Assessing Officer that assessee has made a purchase of packing material for the entire year for Rs. 1.73 Crores from M/s. Coastal Packagings, however, an amount of Rs.25.95 crores has been claimed as advance to M/s. Coastal Packagings for the purpose of business exigency. Further, a similar amount of Rs. 37.92 crores has been advanced as interest free loan to M/s.Diehard Dies Pvt., Limited wherein the gross sale of the Company stood at Rs.13.31 crores for the year. The Assessing Officer therefore considered the advances as disproportionate to the business dealings / exigency of the related parties. Further, we also find that Mr. Tulasi Ramachandra Prabhu has made an investment of Rs.23.97 crores in the assessee Company, wherein he has admitted loans from assessee company for the purposes of computing disallowance u/s 14A in his individual tax computation. The relevant observation of the Ld. Assessing Officer in Para Nos. 4.6 & 4.7, is reproduced as under: -

"4.6 Before finalizing the discussion on this issue, it is in place to bring out the submissions made by the Whole-time Director in response to invocation of provisions of section 14A in his individual

assessment proceedings. While working out the amount of investments made in his individual capacity (including in the capacity of proprietor of various concerns) for the purpose of calculation u/s.14A, the Director reduced the unsecured loans from various investee companies / concerns, including the assessee-company, wherein an amount of Rs.25.97 crores was shown and reduced being unsecured loan from M/S Tulasi Seeds Pvt Ltd against the investment of Rs.23.96 crores made. The obvious conclusion that can be drawn from the above working / netting of investments against the unsecured loans is that the persons managing the affairs of the assessee-company are fully aware of the implications of 14A visa-vis the provisions of section 37 and has consciously reduced the unsecured loans from investments, for the purpose of calculation of 14A in individual status and tacitly admit that the interest-bearing funds of the assessee company are being utilized for the purposes of investments in various concerns of the substantial stake holder / Whole-time Director.

4.7 Therefore, as the assessee company has been paying interest on the loans borrowed by it and had diverted them as unsecured loans to the concerns where the Whole-time Director has substantial interest, proportionate interest on these interest-free loans, aggregating to Rs.63,90,19,201/- is considered for disallowance. The assessee-company obtained loans from various financial institutions which charged interest ranging from 11 to as much as 17.95% (SBI CA-Gen-Pub_oth). Considering the meek business-exigency provided in one case and other criteria put forth by the assessee and after examining the accounts of the assessee, a conservative rate of interest of 9% is adopted on these interest-free advances of Rs.63,90,19,201/-, and interest disallowable works out to Rs.5,11,21,540/-. The same is considered for disallowance under section 37 against the total claim of interest on borrowings of Rs.7,31,70,264/- as corresponding borrowed funds were not utilized for the purposes of business of the assessee."

11. Further, we also find that assessee has not produced any valid evidences regarding the advances made to M/s. Diehard Dies Pvt., Limited, even before us. The Ld. CIT(A) has observed that the onus is on the Ld. Assessing Officer to prove that there exist an undue personal benefit to the Individual Director involved in the sister concerns of the

assessee Company. We do not agree with this view as onus is on the assessee to prove that there is "commercial expediency" for the advances taken as interest free from the related parties. From the financials of the M/s. Coastal Packagings, we find that the assessee is an individual and proprietor of M/s. Coastal Packagings and also has accepted the interest free advances of Rs. 25.97 crores outstanding as on 31.03.2014 from the assessee company where he also the Wholetime Director and further has made investment in assessee Company itself for Rs.23.96 crores. We consider this as benefit derived by the Individual Director's in his proprietary concern where he holds 100% ownership as proprietor of M/s. Coastal Packagings. Therefore, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of S.A. Builders (supra) relied on by the Ld.CIT(A) cannot be applied to the instant case.

12. Further, with respect to the interest free advance to M/s. Diehard Dies Pvt., Limited, no documentary evidences have been provided before us to substantiate that it arose due to commercial expediency of the related parties. We therefore are of the considered view that the Ld. CIT(A) has erred in considering the transaction has arisen out of business / commercial expediency and therefore we have no hesitation

to set-aside the order of the Ld. CIT(A) thereby restoring the order of the Assessing Officer on this issue.

13. In the result, appeal of the revenue is allowed.

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

Sd/-
(दुव्वूरु आर.एलरेड्डी)
(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 : M/s. Tulasi Seeds Private Limited
Door No. 6-4-6, Tulasi House
4/5 Arundelpet, Guntur
Andhra Pradesh
2. राजस्व / The Revenue : Asst. Commissioner of Income Tax
3rd Floor, Standard House, Beside SBI
Nagarampalem, Guntur – 522004
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, 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