

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.Nos.137, 138 & 139/VIZ/2023  
(निर्धारण वर्ष/ **Assessment Years: 2005-06, 2006-07 & 2007-08**)

<b>Visakhapatnam Industrial Water Supply Company Limited</b> C/o. GVMC, Room No. 204 Teneti Bhavan, Asilmetta Junction Visakhapatnam – 530002 Andhra Pradesh  <b>[PAN:AABCV2240H]</b>	v.	<b>Asst. Commissioner of Income-tax Circle – 4(1)</b> Income Tax Office Pratyakshakar Bhavan MVP Double Road Visakhapatnam – 530017 Andhra Pradesh
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

आयकर अपील सं./I.T.A.No. 229/VIZ/2023  
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

<b>Visakhapatnam Industrial Water Supply Company Limited</b> C/o. GVMC, Room No. 204 Teneti Bhavan, Asilmetta Junction Visakhapatnam – 530002 Andhra Pradesh  <b>[PAN:AABCV2240H]</b>	v.	<b>Dy. Commissioner of Income-tax Circle – 5(1)</b> Income Tax Office Pratyakshakar Bhavan MVP Double Road Visakhapatnam – 530017 Andhra Pradesh
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.08.2024
घोषणा की तारीख/Date of Pronouncement	:	14.08.2024

## **आदेश / O R D E R**

### **PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. These appeals filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), [Ld.CIT(A)], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order Nos. ITBA / NFAC / A / 250 / 2022-23 / 1050331496 (1), ITBA / NFAC / S / 250 / 2022-23 / 1050329864(1), ITBA/NFAC/S/250/2022-23/1050328414(1) dated 02.03.2023 for the A.Ys. 2005-06, 2006-07 & 2007-08 respectively and DIN & Order No ITBA/NFAC/S/250/2023-24/1053960802(1) dated 26.06.2023 for the A.Y. 2012-13, arising out of order passed under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short 'Act') dated 25.06.2014 and 30.03.2015.

2. Since the issue involved in all the appeals are common and identical, we take ITA No. 137/VIZ/2023 for the A.Y. 2005-06 as lead appeal and proceed to adjudicate as per the following paragraphs.

**3.** Briefly stated the facts of the case are, assessee being a Government Company filed its return of income for the A.Y. 2005-06 on 30.10.2005 declaring a loss of Rs. 1,99,03,54,234/-. The original assessment order under section 143(3) r.w.s. 147 of the Act was passed on 26.12.2008 reducing the loss to Rs. (-) 1,97,78,66,494/-. The order under section 143(3) r.w.s. 147 of the Act was set-aside by the Ld.CIT-2, Visakhapatnam to verify the correctness of 100% depreciation on certain items, TDS compliance for certain expenses and scope of disallowance under section 43B for interest payments. Assessing Officer passed another assessment order allowing the same loss as in the earlier assessment order. Once again Ld. CIT – 2, Visakhapatnam on 28.03.2014 holding the order of the Assessing Officer as erroneous and prejudicial to the interest of the revenue passed an order under section 263 of the Act on the issue of allowance of interest payable to Andhra Pradesh Industrial Infrastructure Corporation Limited (APIICL). Assessing Officer subsequently, passed an order under section 143(3) r.w.s. 263 of the Act on 25.06.2014 disallowing the interest under section 43B of the Act for Rs. 9,30,11,611/-.

**4.** Aggrieved by the order of the Ld. Assessing Officer, assessee filed appeal before Ld.CIT(A), NFAC, Delhi. Considering the submissions

made by the Ld. Authorised Representative, Ld. CIT(A) dismissed the appeal of the assessee thereby upholding the order of the Assessing Officer.

**5.** Aggrieved by the order of the Ld. CIT(A), NFAC, Delhi, assessee is in appeal before us by raising following grounds of appeal: -

*"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 sustaining the addition of Rs.9,30,11,611 made by the assessing officer towards disallowance of interest payable to APIIC Limited u/s 43B of the Act.*

*3. The learned Commissioner of Income Tax Appeals) ought to have appreciated that multiplicity of proceeding on repetitive basis for the same issue is not maintainable as per law.*

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

**6.** The main issue contested by the Ld. Authorised Representative [hereinafter "Ld.AR"] is with respect to sustaining of the addition of Rs.9,30,11,611/- by the Ld. CIT(A) relating to the disallowance of interest payable to APIIC Limited under section 43B of the Act.

**7.** In this connection Ld.AR argued that APIIC Limited is not a public financial institution as defined under section 43B of the Act. Therefore, the provisions of section 43B of the Act shall not be applicable on the

interest payments and the interest payable to APIIC Limited. Further, Ld.AR also argued that the assessment order has been passed multiple times which is also not valid in law. He also further submitted that APIIC Limited is a State Government Company acting as a nodal agency between the assessee and the borrower. Ld. AR further submitted that APIIC Limited borrowed all funds from (i) RINL (Steel Plant), Visakhapatnam, (ii) N.T.P.C. Visakhapatnam (iii) Visakhapatnam Municipal corporation, Visakhapatnam. Ld.AR further submitted that APIIC Limited functions as a nodal agency and the finances provided by the three entities are being given to various borrowers. Ld.AR also referred to the annual report of the assessee wherein the activities of the assessee Company have been clearly mentioned. Ld.AR also referred to the Memorandum of Association of the assessee Company wherein the main objects to be pursued by the assessee Company has clearly mentioned thereon. He therefore stated that the assessee Company is akin to a local authority and cannot be considered as a public financial institution. Ld.AR also referred to the loan agreement between RINL, NTPC and VMC wherein funds have been extended by the respective companies to APIIC Limited which in turn agreed to grant loan to the assessee Company. He therefore pleaded that the interest payable to APIIC Limited does not attract the provisions of section 43B

of the Act nor Explanation 4(c) of section 43B of the Act and hence pleaded that the addition may be deleted.

**8.** Per contra, Ld. Departmental Representative [hereinafter in short "Ld. DR"] referred to the loan agreement dated 11<sup>th</sup> July, 2003 between the assessee Company and APIIC Limited wherein it is clearly established that the lender is APIIC Limited and not the other three companies as mention by the Ld.AR. Further Ld. DR also referred to Clause (7) regarding the "Repayment, Prepayment and Cancellation" of the loan agreement wherein the assessee is required to repay the amount outstanding in seven equal annual instalments. He reiterated that the APIIC Limited is performing the function of providing long term financing which is evidence by the clause (7) of the loan agreement. Ld.DR further referring to Explanation 4(c) of section 43B of the Act wherein the "State Industrial Investment Corporation" defines including the Government Company within the meaning of section 617 of the companies Act, 1956 engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of section 36. Ld. DR submitted that APIIC Limited is a Government Company and is also engaged in the business of long-term finance for industrial projects and hence covered within the

Explanation 4(c) of section 43B of the Act. He therefore pleaded that the order of the Revenue Authorities be upheld.

9. We have heard both the sides and perused the orders of the Lower Authorities and the written submissions and agreements submitted before us. The Government of Andhra Pradesh Vide G.O No. 118 dated 16.08.1995 stipulated that a detailed arrangement to convey water to user industries will be worked out by Andhra Pradesh Industrial Infrastructure Corporation which will act as an Nodal agency of the Government out of the funds for the execution of the scheme which shall be mobilized by obtaining advance contribution from industrial users at Visakhapatnam. In this connection in another G.O. No. 61 dated 03.04.2003 the Government of Andhra Pradesh agreed to stand as guarantee for repayment of the loan with interest to the industrial users and permitted APIIC Limited to enter into agreement with fund providers. From the perusal of the Memorandum of Association of APIIC Limited it is found that the main object to be pursued on incorporation are as follows:-

*"(A) Main objects to be pursued on incorporation are ;:*

*1 To formulate, promote, finance, aid, assist, establish, manage and control schemes, projects or programmes, to provide and develop infrastructure facilities, including factory sites, factory sheds, godowns, marketing facilities, warehouses, facilities of*

*communications, power, water drainage, housing, hospitals and other medical and health and educational institutions and other services of any description in order to promote and assist the rapid and orderly establishment, growth and development of industries and commerce in the State of Andhra Pradesh."*

**10.** Accordingly, APIIC Limited entered into an agreement between fund providers and industrial users, for the purpose of long-term financing to various industrial users. Further the assessee has entered into a loan agreement with APIIC Limited on 11<sup>th</sup> July, 2003 wherein in Clause (2) it is stated that the assessee availed a term loan facility aggregating to Rs. 3634.87 million. Clause (7) of the agreement also states that the amount outstanding shall be repaid in seven equal annual instalments. On perusal of the above documents we find that the APIIC Limited is engaged in providing industrial infrastructure facilities by providing long-term financing to various industrial users. In this connection, we extract full Explanation 4(c) of section 43B of the Act for reference: -

*"Explanation 4.—For the purposes of this section,—*

*.....*

*(c) "State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of section 36."*

**11.** From the plain reading of the above, it is clear that APIIC Limited satisfies the following parameters as specified in Explanation 4(c) of section 43B of the Act: -

- i. Government Company within the meaning of section 617 of the Companies Act, 1956;
- ii. engaged in the business of providing long-term finance for industrial projects.

**12.** Section 36(1)(viii) of the Act makes eligible an assessee to claim deduction under the section. However, no documentary evidences have been produced before us that the APIIC Limited has not claimed any deduction under section 36(1)(viii) of the Act. Section 36(1)(viii) of the Act provides the specified entity an opportunity of deduction of profit from the eligible business which is carried to a reserve account. However, it is not mandatory to claim such deduction and it cannot be considered as a pre-requisite for disallowing the expenditure under section 43B of the Act. Therefore, we find that APIIC Limited squarely fits into the definition of "State Industrial Investment Corporation" as defined in Explanation 4(c) of section 43B of the Act prescribed. Section 43B of the Act prescribes that certain deduction can be allowed only on the basis of actual payments. Even though APIIC Limited is not a public financial institution but covered under Explanation 4(c) to section 43B of

the Act classified to be a "State Industrial Investment Corporation", therefore, in our view the provisions of section 43B shall squarely apply in the case of the assessee. Accordingly, we find that the Assessing Officer has rightly disallowed the unpaid interest to APIIC Limited for the respective assessment years and we do not see any infirmity in the order of the Ld.CIT(A) on this issue. We therefore are inclined to uphold the order of the Ld. CIT(A) thereby dismiss the appeal of the assessee.

**ITA Nos. 138, 139& 229/VIZ/2023**  
**(A.Y. 2006-07, 2007-08 & 2012-13)**

**13.** Coming to the appeals relating to A.Ys.2006-07, 2007-08& 2012-13, since facts in these cases are mutatis mutandis, therefore the decision taken in ITA No. 137/VIZ/2023 for the A.Y.2005-06is applicable to these assessment years also. Accordingly, appeals filed by the assessee are dismissed.

**14.** In the result, appeals of the assessee are dismissed.

Order pronounced in the open court on 14<sup>th</sup> August, 2024.

Sd/-

(दुव्वूरु आर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :. 14.08.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Visakhapatnam Industrial Water Supply Company Limited**  
C/o. GVMC, Room No. 204  
Teneti Bhavan, Asilmetta Junction  
Visakhapatnam – 530002  
Andhra Pradesh
2. राजस्व / The Revenue : **Asst. Commissioner of Income-tax Circle – 4(1)**  
Income Tax Office  
Pratyakshakar Bhavan  
MVP Double Road  
Visakhapatnam – 530017  
Andhra Pradesh
3. : **Dy. Commissioner of Income-tax Circle – 5(1)**  
Income Tax Office  
Pratyakshakar Bhavan  
MVP Double Road  
Visakhapatnam – 530017  
Andhra Pradesh
4. The Principal Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
6. The Commissioner of Income Tax
7. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam