

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**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.79, 118 & 284/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2016-17, 2018-19 & 2016-17)**

ACE URBAN DEVELOPERS PRIVATE LIMITED Module No. A1, A2,A3 Quadrant No. 4, 4 th Floor Cyber Tower, Hitech City Madhapur B.O. Sheikpet, Hyderabad-500081, Telangana [PAN: AANCA4001H]	v.	THE ASST. CIT- CIRCLE-2(1) Vijayawada – 520002 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri SK Gupta,AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr. Satyasai Rath, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	05.09.2024
घोषणा की तारीख/Date of Pronouncement	:	13.09.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by same assessee and the issues raised are interconnected, therefore, for the sake of convenience, these appeals are clubbed, heard and are disposed off by this common order. First, we take up the appeals relating to A.Y. 2016-17 for adjudication.

ASSESSMENT YEAR 2016-17

ITA No. 79/VIZ/2024 (A.Y. 2016-17)

2. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”]in DIN & Order No. ITBA/NFAC/S/250/2023-24/1058469817(1)dated 05.12.2023 for the A.Y.2016-17 arising out of order passed under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short ‘Act’).

3. Brief facts of the case are that, assessee is a domestic company engaged in the business of development of smart cities. The assessee filed its Return of Income for the impugned Assessment Year on 17.10.2016 admitting total loss at Rs.1,48,76,020/-. The case was selected for complete scrutiny. Assessing Officer completed the assessment under section 143(3) of the Act on 26.12.2018after making following additions: -

- a. Unsecured loan amounting Rs. 3 Crores treated as unexplained sum under section 68 of the Act;
- b. Interest thereon of Rs. 47,26,853/-;
- c. Unsecured loan amounting Rs. 4 Crore treated as unexplained sum under section 68 of the Act;
- d. Interest thereon of Rs. 3.79,315/-; and
- e. Share Capital of Rs. 27 Crore treated as unexplained sum under section 68 of the Act.

4. Thereafter, Pr. CIT, Vijayawada exercising his powers under section 263 of the Act set-aside the assessment and directed the Assessing Officer to make a denovo assessment with specific directions. Assessing Officer during the fresh assessment proceedings noticed that Shri Ch. Anil Kumar had given an unsecured loan of Rs. 4,02,37,000/- to the assessee Company out of which assessee repaid an amount of Rs. 2,96,10,000/-. Therefore, Assessing Officer held the balance amount of Rs. 1,06,27,000/- outstanding in the books of accounts at the end of the year as unexplained sum under section 68 of the Act while passing the order under section 143(3)r.w.s. 263 of the Act.

5. Being aggrieved by the said assessment order, assessee filed an appeal before the Ld.CIT(A). Before the Ld. CIT(A), assessee made written submissions contesting the addition of unsecured loans of Rs. 1,06,27,000/-. After examining the written submissions made by the assessee, Ld. CIT(A) by relying on various decisions dismissed the appeal of the assessee and upheld the addition of Rs. 1,06,27,000/-.

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

- “1. The order of the Learned CIT(A) is not correct either in law or in fact.*
- 2. The learned CIT(A) erred in disallowing the outstanding loan amount payable by the appellant.*
- 3. The learned CIT(A) ought to have considered the fact that the company has submitted complete information with regard to the identity*

and credit worthiness of the lender along with supporting documents provided by the lender to prove the credit worthiness.

4. *The learned CIT(A) erred in holding that the amounts received under unsecured loans as bogus loans based on certain assumptions though the transactions are through proper banking channels and are well supported by explanations and documentary evidence.*

5. *The learned CIT(A) erred in concluding that the appellant has not given sufficient explanation when he has himself acknowledged that all the information is filed.*

6. *The Appellant prays before the Honourable ITAT, that they may be permitted to add, to alter or to amend any grounds at the time of hearing.”*

7. Ground Nos. 1 and 6 are general in nature and needs no adjudication.

8. Ground Nos. 2, 3, 4 &5 relates to addition of Rs.1,06,27,000/- by the Assessing Officer without considering the written submissions and evidences provided by the assessee. The Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that assessee has filed various documents before the Assessing Officer and the Ld. CIT(A) substantiating the loan given by Shri Ch. Anil Kumar amounting to Rs.4,02,37,000/-. He also further submitted that these evidences were not considered by the Ld. CIT(A) while dismissing the appeal of the assessee. He therefore pleaded that the addition may be deleted.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supporting the orders of the revenue authorities and referring to paragraph No. 5.7 of the Ld. CIT(A) order submitted that the Ld. CIT(A) has considered the submissions made by the assessee but whereas assessee has not provided any details of evidences supporting his written submissions and hence

Ld. CIT(A) has rightly upheld the order of the addition made by the Assessing Officer. He therefore pleaded that the order of the Ld. CIT(A) may be upheld.

10. We have heard both the sides and perused the material available on record. The case of the Ld. Assessing Officer is that, the Shri Ch. Anil Kumar assessee has provided huge amounts by way of share capital and unsecured loans to the assessee Company. However, the assessee has not challenged the addition of share capital made by the Assessing Officer but has challenged only the addition of unsecured loans provided by Shri Ch. Anil Kumar amounting to Rs. 1,06,27,000/-. On this issue, Ld. CIT(A) in paragraph No. 5.7 observed as follows: -

“5.7 On a careful perusal of the given facts, I find that the appellant has not been able to adduce any plausible explanation as to source of the funds introduced in the books of accounts in the guise of unsecured loans purportedly received from Shri Ch. Anil Kumar. The source of loan funds in the hands of the lender, i.e. Shri Ch. Anil Kumar has been stated to be his past savings, loans taken by him, and repayment of advances received from other companies. The appellant has, however, not provided any details or evidence in support of this explanation, viz. fund flow statement or Balance Sheet showing the availability of funds, data of past year incomes, details of repayments received with account confirmations, details of other loans taken by the lender with the account confirmations etc. In absence of any detail or supporting evidence, the explanation as to source of the unsecured loan in the hands of the lender is a bald assertion; and the same does not lend any credence to the genuineness of the impugned loan transactions.”

11. From the findings of the Ld. CIT(A), we noticed that assessee has stated that unsecured loans has been funded by way of past savings, loans taken by him, and repayment of advances received from other companies. Even before

us the Ld.AR stated same arguments. However, Ld.AR has not substantiated by providing evidences even before us. Further, it is observed by the Ld. CIT(A) that the assessee has provided only confirmations but has not provided the bank statements substantiating the creditworthiness of Shri Ch. Anil Kumar. We are therefore of the considered view that the Ld. CIT(A) has rightly adjudicated on this issue and therefore find no infirmity in the order of Ld.CIT(A). The grounds raised by the assessee are therefore dismissed.

12. In the result, appeal of the assessee is dismissed.

ITA NO. 284/VIZ/2024 (A.Y. 2016-17)

13. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”]in DIN & Order No. ITBA/NFAC/S/250/2023-24/1059287729(1) dated 02.01.2024 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short ‘Act’) dated 26.12.2018 for the A.Y. 2016-17.

14. Facts are same as stated above in ITA No. 79/VIZ/2024 (A.Y. 2016-17).

15. During the first Appellate Proceedings the assessee has submitted a petition seeking admission of additional evidences under Rule 46A of I.T.Rules, while submitting the following evidences: -

1. *Bank Statements of the Shareholders for funds contributed.*
2. *Return of Income filed by the subscribers.*
3. *Confirmation letter from M/s Multiplier Enterprises Pvt. Ltd.*
4. *Copy of financials of M/s Multiplier Enterprises Pvt. Ltd. and ledger copy in their books of account.*
5. *Copy of confirmation letter from M/s Yashwardhan Marketing Pvt. Ltd., confirming the source for advancing such loan.*

16. Ld. CIT(A) while dismissing the appeal of the assessee by relying on various decisions, has not sought for any Remand Report from the Assessing Officer which is observed in Paragraph No. 4.2 of the Ld. CIT(A) order.

17. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

- “1. *The order passed by Ld. CIT(A) is erroneous both on facts and in law.*
2. *The CIT(A) was judicious enough to admit additional evidence under rule 46A, however, he erred in disposing the appeal without waiting for remand report.*
3. *The Ld. CIT(A) erred in not considering the additional evidence filed before him.*
4. *The Ld. CIT(A) failed to appreciate the evidences filed in support of unsecured loans received from M/s. Multiplier Enterprises Private Limited and Yash Vardan Marketing Private Limited, thus erred in confirming the addition.*
5. *The Ld. CIT(A) failed to appreciate the amounts invested by Mr. Anil Kumar and Mr. Mahesh Kolli were already offered to tax for AY 2017-18.*
6. *As regards the investments made by Mr. Anil Kumar and Mr. Mahesh Kolli, The Ld. CIT(A) erred in concluding that date wise fund flow statement was not furnished when the bank statement through which the transactions have taken place were placed on record.*
7. *Any other ground that may be urged at the time of hearing.”*

18. Ground Nos. 1 to 7 are general in nature and needs no adjudication.

19. Ground Nos. 2 & 3 is with respect to the additional evidences filed under Rule 46A of I.T. Rules. On this issue, Ld.AR submitted that assessee has submitted following documents before Ld. CIT(A) which was not submitted before Assessing Officer: -

- 1. Bank Statements of the Shareholders for funds contributed.*
- 2. Return of Income filed by the subscribers.*
- 3. Confirmation letter from M/s Multiplier Enterprises Pvt. Ltd.*
- 4. Copy of financials of M/s Multiplier Enterprises Pvt. Ltd. and ledger copy in their books of account.*
- 5. Copy of confirmation letter from M/s Yashwardhan Marketing Pvt. Ltd., confirming the source for advancing such loan.*

20. The contention of the Ld.AR is that the Ld. CIT(A) while admitting the additional evidences has not called for any Remand Report from the Assessing Officer. He therefore pleaded that appropriate directions may be given to the Ld.CIT(A) to examine the evidences submitted under Rule 46A of IT Rules by calling for Remand Report from the Assessing Officer.

21. Per contra, Ld. DR relied on the orders of the Revenue Authorities.

22. We have heard both the sides and perused the material available on record. It is an admitted fact that during the First Appellate Proceedings the assessee has submitted above documents seeking admission of additional

evidences under Rule 46A of I.T. Rules. The assessee accepted that these documents were not submitted before Assessing Officer. However, the Ld.CIT(A) has not waited till the receipt of the Remand Report from the Assessing Officer. Ld. CIT(A) in paragraph No. 4.2 observed as follows: -

*4.2 The said additional evidence was forwarded by the then CIT(Appeals), Vijaywada to the ACIT, Circle-2(1), Vijaywada vide his office letter ITA No. 10251/CIT(A)/VJA/2018-19 dated 23.08.2019, calling for comments on admissibility of additional evidence, and merits thereof. The matter was also followed up by way of subsequent reminders, issued on various dates. **However, no remand report has been received till date.** On the other hand, the appellant in its petition under Rule 46A has made following averments, explaining the reasons for not furnishing the said evidence before the AO, -*

"....Further, the bank statements and details of income offered in other years could not be produced only due to lack of time, non-availability of the Directors since they were pre occupied with their professional commitments and other technical difficulties faced by the management of the company while arranging and uploading/submitted the documents before the completion of the scrutiny proceedings.

2. With regard to the notice issued to M/s Multiplier Enterprises Pvt. Ltd. being returned unserved we would like to submit that the purported enquiry letter u/s 133(6) which was issued was not marked copy of the Company and there was no opportunity for the Company to produce the confirmation or information whatsoever. Thus, we could not produce the necessary confirmations and information during the scrutiny proceedings. We are herewith producing additional evidence in the form of Confirmation letter, Copy of their Financials and ledger copy in their books of account."

23. The Ld.CIT(A) admitted the additional evidences submitted by the assessee. The Ld. CIT(A) while admitting the additional evidences, adjudicated the appeal without waiting / calling for Remand Report from the Assessing Officer on the merits of the evidences submitted by the assessee. We therefore

find it deem to be fit case to be remitted back to the file of the Ld. CIT(A) with a direction to call for the Remand Report from the Assessing Officer on the additional evidences furnished under Rule 46A of I.T. Rules and which was admitted by the Ld. CIT(A). The assessee shall be provided opportunity to furnish rejoinder for the Remand Report. Based on the remand report and rejoinder, the Ld.CIT(A) is directed to decide the case on merits in accordance with material on record. Since the case is remitted back to the file of the Ld.CIT(A), the other grounds raised by the assessee on merits are not being adjudicated at this stage.

24. In the result, appeal of the assessee is allowed for statistical purposes.

A.Y. 2018-19

ITA No. 118/VIZ/2024 (A.Y. 2018-19)

25. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1059554677(1) dated 10.01.2024 arising out of order passed under section 143(3) r.w.s. 144B of the Act dated 23.09.2021 for the A.Y. 2018-19.

26. Brief facts of the case are that, assessee is a domestic company engaged in the business of development of smart cities filed its return of income for the A.Y.2018-19 on 28.11.2018 admitting loss of Rs. 11,32,51,419/-. The case was selected for complete scrutiny and Statutory notices under section 143(2) and 142(1) of the Act were issued on various dates. In response, assessee filed various details as called for by the Assessing Officer. Assessing Officer completed the assessment under section 143(3) of the Act by determining loss at Rs.8,23,83,236/- after making following disallowances: -

- a. Disallowance under section 14A on account of expenditure incurred in relation to exempted income amounting to Rs.2,02,37,996/-; and
- b. Disallowance on account of rental expenses amounting to Rs.1,06,30,187/-.

27. Being aggrieved by the order of the Assessing Officer, assessee filed an appeal before Ld. CIT(A) contesting the above disallowances. Ld. CIT(A) considering the submissions made by the assessee dismissed the appeal of the assessee.

28. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

- “1. The order passed by Ld. CIT(A) is erroneous both on facts and in law.*
- 2. The CIT(A) erred in confirming the addition made u/s14A without appreciating the facts of the case.*

3. *The Ld. CIT(A) erred in not considering the fact that the appellant had no exempt income during the year.*
4. *The Ld. CIT(A) failed to appreciate that the appellant had not claimed any expenditure with regards to the exempt income.*
5. *The Ld. CIT(A) erred in disallowing the rent to the tune of Rs.1,06,30, 187/-.*
6. *The Ld. CIT(A) failed to appreciate that part of the building taken on lease was kept for office use of the appellant.*
7. *Any other ground that may be urged at the time of hearing.”*

29. Ground Nos. 1 &7 are general in nature and needs no adjudication.

30. Ground Nos. 2, 3 & 4 relates to addition made under section 14A of the Act. On this issue, Ld.AR submitted that, it is a settled law that when there is no exempt income no addition can be made by invoking provisions of section 14A of the Act. He further submitted that assessee has not earned any exempt income during the impugned assessment year and therefore the disallowance under section 14A shall be deleted. Ld. AR placed heavy reliance on the judgment of the Hon'ble Supreme Court in the case of CIT v. Chettinad LogisticsP. Ltd., [2018] 95 taxmann.com 250 (SC).

31. Per contra, the Ld. DR supported the order of the Revenue Authorities.

32. We have heard both the sides and perused the materialsavailable on record and the orders of the Authorities below. We find from the records submitted by the Ld. AR that the assessee has not earned any exempt income during the relevant assessment year mandating the invoking of provisions of

section 14A of the Act. The Hon'ble Supreme Court in CIT v. Chettinad Logistics (P.) Ltd (supra) has dismissed the SLP of the Revenue and held that section 14A can only be triggered if assessee claims any expenditure against an income which does not form part of the total income under the Act. The Hon'ble Supreme Court further observed that Rule 8D only provides for a method to determine the amount of expenditure incurred in relation to income which does not form part of the total income of the assessee. Respectfully following the ratio laid down by the Hon'ble Supreme Court, we allow the appeal of the assessee on this ground.

33. Ground Nos. 5 & 6 relates to disallowance on rental income. Ld.AR submitted that the assessee has taken on lease, office space of 94,700 Square Feet in Cyber Towers, Hitech City, Hyderabad and out of which the office space comprising 77,589 Square Feet was sub-leased to various parties. Ld.AR further submitted that rental income from sub-leased portion is also disclosed in the Profit & Loss Account of the assessee. The Ld.AR submitted that the remaining space of 17,112 square feet was actually put to office use by the assessee itself, and therefore it is an allowable expenditure u/s 37 of the Act. He therefore pleaded that the disallowance made by the Assessing Officer on lease rental expenses incurred by the assessee for own use by the assessee is an allowable expenditure and hence prayed for deletion of the disallowance made by the Assessing Officer.

34. Per contra, Ld. DR while supporting the order of the Revenue Authorities stated that assessee has not provided any documentary evidences to substantiate that the remaining space of 17,112 Square Feet was actually used by the assessee for its own use. The Ld. DR further submitted that assessee has incurred rental expenditure which is disproportionate when compared to the earlier assessment years. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

35. We have heard both the sides and perused the material available on record. It is an undisputed fact that the assessee has paid total lease rent of Rs.5,59,51,545/- which includes lease rent of Rs.4,20,46,800/- towards payments taken on lease for subletting. The contention of the Ld.AR is that the assessee has taken two properties measuring 12,806 square feet and 4,308 Square feet at Cyber Towers, Hitech City, Hyderabad for its own use and was not meant to be leased out. It is the submission of the Ld. AR that the assessee has incurred these lease expenses for the area occupied by the assessee for office purpose of the assessee. Further we also noticed that assessee has offered the rental income for the sub-lease portion. There is merit in the argument of the Ld.AR that since tax has been deducted at source on the rental payments and hence it is an allowable deduction under section 37 of the Act. However, it was observed by the Ld. CIT(A) that assessee has not able to provide any documentary evidences like lease agreement, to substantiate that remaining

space of 17,112 square feet was actually put to office use by the assessee itself. We therefore are of the considered view that this issue shall be remitted back to the file of the Ld. CIT(A) directing the assessee to produce the lease agreement and other documentary evidences to substantiate the office space used by the assessee itself. We also direct the Ld. CIT(A) after examining the evidences to decide on the allowability of the rental expenditure.

36. In the result, appeal of the assessee is partly allowed for statistical purposes.

37. To sum-up, appeals are adjudicated as follows: -

Sl.No.	ITA No.& A.Y.	Result
1.	ITA No. 79/VIZ/2024(A.Y. 2016-17)	Dismissed
2.	ITA No. 284/VIZ/2024 (A.Y. 2016-17)	Allowed for Statistical Purposes
3.	ITA No. 118/VIZ/2024 (A.Y. 2018-19)	Partly Allowed for Statistical Purposes.

Order pronounced in the open court on 13th September, 2024.

Sd/-
(दुव्वूरु आरएल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated :.13.09.2024
Giridhar, Sr.PS

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

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

1. निर्धारिती/ The Assessee : **ACE URBAN DEVELOPERS PRIVATE LIMITED**
Module No. A1, A2, A3
Quadrant No. 4, 4th Floor
Cyber Tower, Hitech City Madhapur B.O.
Sheikpet, Hyderabad-500081
Telangana
2. राजस्व/ The Revenue : **THE ASST. CIT- CIRCLE-2(1)**
Vijayawada – 520002
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

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam