

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 अपीलसं./I.T.A.Nos.195 & 196/VIZ/2023
(निर्धारण वर्ष/ Assessment Years: 2010-11 & 2012-13))**

Sri Luxmi Tulasi Agro Papers (P.) Ltd., D.No. 25-2-20, Jayakrishnapuram Rajamundry – 533105 Andhra Pradesh [PAN: AAECs2798A]	v.	Joint Commissioner of Income Tax Rajahmundry Range Aayakar Bhavan Annexe Veerabhadrapuram Kambala Cheruvu Rajamahendravaram
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	08.10.2024
घोषणा की तारीख / Date of Pronouncement	:	24.10.2024

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

- Both these appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short "Ld.CIT(A)"] for the A.Y.2010-11

& 2012-13. Since the grounds raised by the assessee for both these appeals are identical in nature, these appeals are being clubbed and a consolidated order being passed. We now take up the appeal in ITA No. 195/VIZ/2024 for the A.Y.2010-11 as a lead appeal.

ITA No. 195/VIZ/2023 (A.Y. 2010-11)

2. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1052801702(1) dated 12.05.2023 for the A.Y.2010-11 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short ‘Act’) dated 28.03.2013.

3. Brief facts of the case are that, assessee is a Company engaged in the manufacture of paper besides running a captive power plant and filed its return of income for the A.Y. 2010-11 on 29.09.2010, admitting a total income of Rs.2,36,06,210/- besides agricultural income of Rs. 11,41,647/-. The return of income was summarily processed under section 143(1) of the Act accepting the returned income. Subsequently, the case was selected for scrutiny under CASS and statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. In response, assessee filed information as called for from time to time. After considering the submissions made by the assessee,

Assessing Officer by relying on the Directors Report annexed to the financial statements of the impugned assessment year disallowed the claim made by the assessee under section 80IA of the Act for an amount of Rs. 61,19,772/-.

Further Assessing Officer also disallowed the remuneration debited to Profit & Loss Account for an amount of Rs. 22,00,000/- and Rs. 3,34,242/- under section 40A(7) of the Act. Further Assessing Officer also disallowed a sum of Rs.16,83,960/- being the expenditure in the nature of capital. Further, Assessing Officer also disallowed a sum of Rs. 10,38,237/- being 10% of the expenditure booked by the assessee under the head News Paper consumption.

4. Being aggrieved by the above disallowances, assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), authorized representative of the assessee made similar submissions which was made before Assessing Officer. Considering the submissions made by the assessee, Ld. CIT(A) partly allowed the appeal.

5. Aggrieved by the order of the Ld. CIT(A), 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.61,19,772 made by the assessing officer by partly disallowing the deduction claimed u/s 80IA of the Act.

3. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.3,34,242 made by the assessing officer u/s.40A(7) of the Act towards disallowance of outstanding gratuity.*

4. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.16,83,960 made by the assessing officer towards disallowance of expenditure incurred for repairs of plant and machinery.*

5. *Any other grounds may be urged at the time of hearing.”*

6. Ground Nos. 1 & 5 are general in nature and needs no adjudication.

7. Ground Nos. 3 & 4 relate to section 40A(7) of the Act and disallowances of expenditure for repairs of plant and machinery were not pressed by the assessee and hence the same are dismissed as not pressed.

8. The only issue common to both the appeals are with respect to disallowances of the deduction claimed under section 80IA of the Act. In this connection, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has two units one for manufacturing of paper and another for generation of power. Ld.AR further explained that steam is essentially required in the paper unit to dry the paper and therefore the turbine were installed and steam required for paper plant is taken from the same turbine. He further submitted that the value of the steam as calculated was explained as the basis of the average cost of the raw materials for generating one unit of steam. Ld.AR further explained that the paper manufacturing activity requires medium and

low-pressure steam for manufacture of paper and therefore assessee installed boilers wherein high-pressure steam is converted into the boiler and sent to the turbine for generation of electricity and in this process high pressure steam is converted into low pressure steam which is being sent to the paper unit for drying of the paper. He further explained that therefore the cost of steam is being valued on the basis of average cost of fuel for the generation of such steam and accordingly arrived at Rs. 3,19,33,875/-. The Assessing Officer required the assessee to submit the cost of husk, chipper dust, fire wood, saw dust and coal which was used as the raw material for the generation of steam which was produced before the Assessing Officer. Ld.AR further submitted that Assessing Officer being not satisfactory with the vouchers, proceeded to arrive at the steam cost based on the Directors Report annexed to the financial statements for the impugned assessment year. He therefore arrived at the average cost of fuel at Rs. 1200/- and arrived at the consumption of steam production at Rs. 2,55,47,100/- thereby disallowing a sum of Rs. 61,19,772/-. Ld.AR further contended that Assessing Officer has taken only the basic raw material cost whereas the cost of stores and spares consumption which is required along with raw material to generate the steam was not considered by the Assessing Officer. He therefore submitted in the Directors Report the basic cost of raw material only is disclosed and does not include the cost of stores and spares consumed in the process. He further contended that allocation made to

the paper unit by the assessee for the impugned assessment year is 49% of the total cost of fuel whereas the Assessing Officer has allocated 39% of the total cost of fuel. Ld.AR further submitted that Assessing Officer failed to recognize cost of stores and spares which accounted for approximately 8 to 10% of the total fuel cost. He therefore pleaded that the disallowances made by the Assessing Officer be deleted.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that Assessing Officer has rightly worked out the cost of fuel consumption based on the Directors Report duly endorsed by the Managing Director of the Company. He therefore pleaded that the basis of valuation adopted by the Assessing Officer is on the basis of published reports and not made on assumption. He therefore pleaded that addition may be sustained.

10. We have heard both the sides and perused the material available on record. The case of the Assessing Officer is that the assessee has claimed deduction under section 80IA of the Act with respect to the steam cost supplied to the paper unit by considering it as income in the books of the account of the assessee, thereby enhancing the profit of the power plant which is eligible for deduction under section 80IA of the Act and claiming the same as cost in the hands of the Paper unit. However, the only contention of the Ld.AR is with respect to the valuation of the steam adopted by the assessee. The Assessing

Officer has resorted to value the steam based on the Director's Report annexed to the financial statements, wherein the average cost of various raw materials i.e., husk, fire wood, saw dust, chipper dust was disclosed. The Assessing Officer proceeded to compute the average cost based on these disclosures and arrived at a cost of Rs. 1200/- per ton of fuel consumption for the purpose of generation of steam. The main contention of the Ld.AR is that as per the Companies Act, 1956 only material cost for the power consumption is disclosed in the Directors Report annexed to the financial statements whereas the stores and spares and other overheads consumed in the process of generation of steam are not disclosed. There is merit in the argument of the Ld.AR that apart from the main fuel cost certain other overheads in the form of stores and spares and other overheads are required for the purpose of generation of steam. Further we also find from the submissions of the Ld.AR that the Assessing Officer has allocated 39% of the basic fuel cost whereas assessee has allocated 49% of the total fuel cost. We also find that the Assessing Officer has not considered the consumption of stores and spares and other overheads as claimed by the Ld.AR. In our considered view, if the other costs are considered for the computation of the average cost of fuel consumption used for the purpose of generation of steam the rate of Rs. 1500/- per ton of fuel adopted by the assessee-company is reasonable. Therefore, the disallowances of Rs. 61,19,772/- under section 80IA of the Act could not be justified. We are therefore inclined to allow the

deduction under section 80IA as claimed by the assessee, thereby allow the ground raised by the assessee.

11. In the result, appeal filed by the assessee is partly allowed.

ITA No. 196/VIZ/2023 (A.Y. 2012-13)

12. Coming to the appeal relating to A.Y. 2012-13, since the issues and facts in this case are identical, the decision taken in assessee's case for the A.Y.2010-11 as in preceding paras shall *mutatis mutandis*, applicable to ITA No.196/VIZ/2023. Accordingly, appeal filed by the assessee is partly allowed.

13. To sum-up, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 24th October, 2024.

Sd/-
(दुव्वूरु आरएल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 24.10.2024
Giridhar, Sr.PS

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

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : Sri Luxmi Tulasi Agro Papers (P.) Ltd.,
D.No. 25-2-20, Jayakrishnapuram
Rajamundry – 533105
Andhra Pradesh
2. राजस्व/ The Revenue : Joint Commissioner of Income Tax
Rajahmundry Range
Aayakar Bhavan Annexe
Veerabhadrapuram
Kambala Cheruvu
Rajamahendravaram
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam