

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI MANJUNATHA G., ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 801/Hyd/2024  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Devi Agro Industries Vs. Income Tax Officer  
Hyderabad Ward-2  
[PAN No.AAFFD9813M] Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

आ.अपी.सं / ITA No. 802/Hyd/2024  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Devi Agro Industries Vs. Income Tax Officer  
Hyderabad Ward-1  
[PAN No.AAFFD9813M] Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR  
राजस्व द्वारा/Revenue by: Shri Srinath Sadanala, DR

सुनवाई की तारीख/Date of hearing: 25/11/2024  
घोषणा की तारीख/Pronouncement on: 04/12/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 16/07/2024 passed by the learned  
Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre

(NFAC), Delhi ("Ld. CIT(A)"), in the case of Devi Agro Industries ("the assessee") for the assessment year 2012-13, assessee preferred these appeals. Since the issue involved in these appeals is common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under.

2. Briefly stated relevant facts are that the assessee is a partnership firm engaged in the business of rice mill. It filed the return of income for the assessment year 2012-13 on 30/09/2012, declaring an income of Rs.6,50,780/-. Assessment under section 143(3) of the Income tax Act, 1961 ("the Act"), was completed by order dated 09.01.2015 by assessing the total income at 9,50,780/-.

3. Subsequently, learned Assessing Officer received information from CTO, Bodhan circle, Nizamabad Division stating that there was a short payment of sales tax for the period from January, 2011 to May, 2011 claimed through fake challan copies attracting provisions of section 43B of the Act and name of the assessee is in the list enclosed to the letter dated 27/02/2018. Thereupon, the learned Assessing Officer initiated reopening proceedings by issuing notice under section 148, but the assessee did not file return of income in response thereto.

4. Since the assessee did not respond to any of the notices issued thereafter, learned assessing officer completed the assessment on best judgement mode. Learned Assessing Officer noticed from the financial statements that the assessee claimed Rs.60,96,416/- as expenditure towards VAT, Rs.2,60,605/- as expenses towards CST and Rs.41,03,882/- towards the payment of RD Cess in its Profit and Loss Account. Assessee failed to produce the challan/proof of payment of VAT and the CST, stating that in the circumstances, such production is beyond the control of the assessee. In the circumstances, learned Assessing Officer added a sum of Rs.1,04,60,903/- to the income of the assessee and determined the total income at Rs.1,14,11,683/-.

5. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal and produced additional evidence like income

tax return copy, balance sheet, profit and loss account, audit report, computation of total income and written submissions to show that the assessee paid the VAT and CST payments in the year, and pleaded that merely because the CTO did not confirm the genuineness of the VAT and CST payments, no relief could be denied.

6. Apart from this, before us, the assessee took another plea that the tax consultant deeply frauded the assessee by breaching VATIS portal and preparing bogus challans driven by the greed to unduly enrich himself, which the assessee is unaware of. The further plea of the assessee on this aspect is that an FIR was lodged with police against the tax consultant and evidence to that fact is furnished to the state CID also. On this score also, the assessee pleaded before the learned CIT(A) that since it paid the amount to the VAT consultant, who misappropriated the same, assessee is entitled to claim the loss arising out of the misappropriation by the agent.

7. Learned CIT(A) considered all these aspects and recorded that the assessee filed the copies of the VAT returns and copies of the challan along with copy of FIR and CID investigation report. But since the issue relates to a scam or criminal breach of trust, forgery and criminal conspiracy with the connivance of the Commercial Tax Office, Bodhan and the CID highlighted all these facts, still the fact remains that the assessee is entitled to claim the deduction of only such amount if any, as received by the Govt. treasury and, therefore, the learned Assessing Officer rightly added Rs.1,04,60,903/-.

8. Assessee is therefore, before us in this appeal contending that the authorities below failed to consider the evidence produced by the assessee in support of its contention that the assessee made the entire payment towards VAT and CST and as a matter of fact, the assessee filed cases against the tax consultant and it is proved that CID also highlighted this fact shows that the assessee suffered due to the misappropriation by the agent, which is an allowable deduction.

9. Per contra, learned DR submitted that the assessee is not entitled to claim the deduction under section 37(1) of the Act in respect of the amounts said to have been misappropriated by the tax consultants in connivance with the CTO office in respect of which the inquiry by the CID is pending. She submitted that the assessee is not entitled to claim to off-set the misappropriated portion of the money and claim deduction in the return.

10. We have gone through the record in the light of the submissions made on either side. It is a fact that no part of the total sum of Rs.1,04,60,903/- was proved to have been remitted to the Government exchequer and therefore, learned Assessing Officer disallowed the same. Assessee claims to be a victim of the fraud committed by the agent and entitled to claim deduction in respect of such sum also, which the authorities below denied. To establish the fraud, assessee filed complaint against the tax auditor and produced the copies of FIR and the CID report before the learned CIT(A). But, the authorities below refused to grant any relief under section 37(1) of the Act.

11. On this aspect, in the case of *Badridas Daga vs. CIT* [1958] 34 ITR 10, the Hon'ble Apex Court affirmed the view that the loss resulting from embezzlement by an employee or agent of a business is admissible as a deduction under section 10(1) of the 1922 Act, corresponding to section 28 of the Act, if it arises out of the carrying on of the business and is incidental to it. In the case of *Associated Banking Corporation of India Ltd. vs. CIT* [1965] 56 ITR 1, the Hon'ble Court held that the loss must be deemed to have arisen only when the employer comes to know about it and realizes that the amounts embezzled cannot be recovered.

12. It was held by the Hon'ble Supreme Court in the case of *Associated Banking Corporation of India Ltd. (supra)* that it would be wrong to say that irrespective of other considerations, as soon as an embezzlement of the employer's funds takes place, whether the employer is aware or not of the embezzlement, there results a trading loss, and so long as there is a reasonable prospect of recovery of the embezzlement, trading loss in a commercial sense cannot be deemed to have resulted. Further in the case

of Hopkin and Williams (Travancore) Ltd. v. CIT (1967) 64 ITR 76 (Ker) it was held that deduction claimed was an admissible deduction if it was not possible to recover the loss from the persons responsible for the same. If the assessee has made the necessary attempts to recover the loss from the persons concerned and had failed or if the assessee did not make such attempts, because it was useless to make them in view of the financial position of the persons concerned, then and then alone the loss could be allowed. All the factual aspects require consideration by the authorities below in the light of the decisions reported in the cases of Badridas Daga (supra) Associated Banking Corporation of India Ltd. (supra) and Hopkin and Williams (Travancore) Ltd (supra). It would, therefore, be in the interest of justice to set aside the impugned order and restore the issue to the file of the learned Assessing Officer for verification of the facts in respect of entitlement of the assessee to claim deduction of the amount said to have been misappropriated by the VAT consultants.

13. We, therefore, set aside the impugned order and restore the issue to the file of the learned Assessing Officer for verification of the facts in respect of entitlement of the assessee to claim deduction of the amount said to have been misappropriated by the VAT consultants. Grounds are accordingly treated as allowed for statistical purposes.

14. Since the issue in ITA No.801/Hyd/2024 is restored to the file of the learned Assessing Officer for verification, the issue with regard to levy of interest under section 234A and 234B, raised in Ground No.3 in ITA No.802/Hyd/2024 is also restored to the file of the learned Assessing Officer.

15. In the result, appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 4<sup>th</sup> day of December, 2024.

Sd/-

**(MANJUNATHA G.)  
ACCOUNTANT MEMBER**

Hyderabad,

Dated: 04/12/2024

*L.Rama, SPS*

Sd/-

**(K. NARASIMHA CHARY)  
JUDICIAL MEMBER**

Copy forwarded to

1. Devi Agro Industries, C/o P.Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad, Telangana
2. The Income Tax Officer, Ward-2, Hyderabad
3. The Pr.CIT, Hyderabad
4. The DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD