

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री ललित कुमार, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI LALIET KUMAR, HON’BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.318, 327 & 328/VIZ/2024
(निर्धारण वर्ष/ Assessment Years: 2015-16, 2016-17 & 2017-18)

ACIT – Circle – 1(1) Central Revenue Buildings M.G. Road, Vijayawada – 520002	v.	Andhra Pradesh Urban Financial and Infrastructure Development Corporation 54-15-5, Srinivasa Nagar Bank Colony Opp. Venue Convention Centre-520008 Vijayawada, Andhra Pradesh [PAN: AAIFA9311J]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

C.O. Nos. 9, 10 & 11/VIZ/2024

[आयकर अपीलसं./ ARISING OUT OF I.T.A.Nos.318, 327 & 328/VIZ/2024
(निर्धारण वर्ष/ Assessment Years: 2015-16, 2016-17 & 2017-18)]

Andhra Pradesh Urban Financial and Infrastructure Development Corporation 54-15-5, 5 th Floor Dhoom Complex, Srinivasa Nagar Vijayawada – 520008, Andhra Pradesh [PAN: AAIFA9311J]	v.	ACIT – Circle – 1(1) Central Revenue Buildings M.G. Road, Vijayawada – 520002
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Subrahmanyam, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	21.01.2025
घोषणा की तारीख/Date of Pronouncement	:	22.01.2025

आदेश /ORDER

PER BENCH:

1. These appeals and cross objections are filed by the revenue and assessee respectively. Appeals are filed by the revenue feeling aggrieved by the order of the Ld. CIT(A) and raised identical grounds in all these appeals. We take up the appeal in ITA No. 318/VIZ/2024 for the A.Y. 2015-16 as a lead appeal. Grounds raised by the revenue are reproduced below: -

“1. The order of the Ld.CIT(A) is erroneous on facts and in circumstances of the case as narrated in the statement of facts.

2. The Ld. CIT(A) erred in deleting the addition made by the AO basing on the additional evidence submitted by the assessee during appellate proceedings, without giving sufficient time to the assessing officer for submission of remand report, which is violation of Rule 46A of the Income Tax Rules, 1962.

3. The Ld. CIT(A) erred in deleting the addition made by the AO basing on the additional evidence i.e., bank account statements and written submissions stating that the assessee was a nodal agency for channelizing the funds to implementing agencies for urban infrastructure projects / schemes of the Government on the directions of state government, without having filed the documentary evidence from competent authority by the assessee.

4. The Ld.CIT(A) erred in not considering the facts that the assessee, having made bank deposits in hundreds of crores of Rupees in its various bank accounts, had not filed the return of Income, when it is mandatory obligation of the assessee to file its ITR.

5. *The Ld.CIT(A) erred in allowing the appeal by directing the assessing officer to delete the complete addition, even though the assessee failed to submit confirmation from Competent Authority of Telangana State Government in respect of deposits of Rs.100,08,22,040/- stated to be belongs to State of Telangana.*

6. *The Ld. CIT(A) failed to recognize that in the financials submitted by the assessee in the independent Auditor's report submitted as additional evidence, the name is mentioned as 'ANDHRA PRADESH URBAN INFRASTRUCTURE FUND'. However, the name of the assessee as per PAN details and ss mentioned in the bank account statements is "ANDHRA PRADESH URBAN FINANCIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION'*

7. *The Ld. CTA) failed to recognize that in Schedule-F((B) 1)- Notes on Accounts in the Independent Auditor's Report submitted by the assessee as additional evidence, it is stated that Andhra Pradesh Urban Infrastructure Fund (APUIF) was established as a Trust under the Indian Trust Act, 1882 pursuant to orders by the Government of Andhra Pradesh vide G.O.Ms.NO.72, M.A, dated 18.02.2005. However, the assessee claims that status of assessee is 'company'.*

8. *The order of the Ld CIT(A) is erroneous on facts and in circumstances of the case as narrated in grounds of appeal Nos. 2 to 7, as the CIT(A) passed the order basing on additional evidence submitted by the assessee without Remand Report as required as per Rule 48A of the Income Tax Rules, 1962.*

9. *Any other ground that may be urged at the time of appeal hearing."*

2. However, Ground No.5 as above, is not raised in ITA No. 328/VIZ/2024 for the A.Y. 2017-18.

3. Brief facts of the case are that, assessee is a Company incorporated under the Companies Act, 1956 and wholly owned by the Government of Andhra Pradesh. Assessee is incorporated for the purpose of acting as a 'Special Purpose Vehicle' for channelizing the funds for urban infrastructure schemes/projects sponsored by the Government of Andhra Pradesh and Government of India.

Assessee acts as a ‘Nodal Agency’ – an intermediary for transfer of funds to implementing agencies for urban infrastructure schemes or projects initiated by the Government. Assessee has not filed return of income for the A.Y. 2015-16. Further assessee is also holding a PAN AAIFA9311J which erroneously issued in the status of partnership firm. Based on the information received from “Directorate of systems, CBDT, New Delhi, through the NMS module of ITBA under “Multi-Year NMS” category regarding, Ld. Assessing Officer [hereinafter in short “Ld. AO”] observed that the assessee is having total deposits of Rs.1581,02,42,296/- (Rupees One Thousand Five Hundred Eighty-One Crores, Two Lakhs Forty-two thousand and Two Hundred Ninety Six only) and TDS return payment of Rs.63,99,271/- for the F.Y 2014-15. Since assessee has not filed return of income, Ld. AO, Ward 6(1) Hyderabad issued notice under section 148 of the Act on 30.03.2021. Subsequently, a notice under section 142(1) was issued on 08.09.2021. Thereafter on 11.11.2021 the case was transferred to ReAC from Ward – 6(1), Hyderabad. Again, the case was transferred back to Ward 2(3), Vijayawada on 02.02.2022 from ReAC. Subsequently, notice under section 142(1) of the Act dated 02.03.2022 was issued and served on the assessee. Ld. AO. Ward-6, Hyderabad also issued notice under section 133(6) of the Act to Union bank of India. In response to notice under section 142(1) of the Act assessee produced the copy of statement of Profit & Loss Account and balance sheet as on 31.03.2015 and explained in detail about the organisation. However,

Ld. AO noticed that assessee could not produce the bank account details and statements. Ld. AO therefore found the source of deposits remained unexplained which is failure on the part of the assessee. Thereafter proceeded to make an addition of Rs.1581,02,42,296/- (One Thousand Five Hundred Eighty-One Crores and Two Lakhs Forty-Two Thousand Two Hundred and Ninety-Six Rupees only), as income chargeable to tax which has escaped assessment within the meaning of section 147 of the Act for the A.Y. 2015-16.

4. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A). After seeking adjournment for the notice issued by the Ld. CIT(A) dated 29.11.2023, assessee on 29.12.2023 submitted its written submissions before Ld. CIT(A) stating as follows:

“3. The funds received under the schemes by the Appellant-Company are parked in the designated accounts maintained with commercial banks, with a separate account for each of the schemes. Any interest earned thereon forms part of the fund balance and the same is either transferred to the implementing agencies or are refunded to the Government, along with the unspent amount. The Appellant-Company has no recourse to the funds, if any, representing the interest earned on funds deposited with banks. Thus, the Appellant does not own any of the funds received; nor does it have any revenue that is liable to be taxed.”

5. Ld. CIT(A) observed that the assessee has not produced any evidences before Ld. AO during the assessment proceedings but has adduced additional evidences before the First Appellate Authority. Ld. CIT(A) as per Rule 46A of the I.T. Rules provided copy of the additional evidences through ITBA on

25.04.2024 directing the Ld. AO to submit his Remand Report on a priority basis on or before 03.05.2024. Ld. AO failed to submit Remand Report. Ld. CIT(A) provided another opportunity to the Ld. AO vide ITBA portal on 06.06.2024 directing him to submit Remand Report by 14.06.2024. The Ld. AO did not respond to that notice also. Thereafter, Ld. CIT(A) after examining the submissions and the material facts on record allowed the appeal of the assessee.

6. Being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us. Assessee also filed Cross objections.

7. Before us, the ld.DR has submitted that though the Ld.CIT(A) had called for the remand report from the Assessing Officer on two occasions, which is evident from Para 6.2 of the order of Ld.CIT(A), however, as the Assessing Officer failed to file the remand report. Therefore, the Ld.CIT(A) was left with no other option to decide the matter based on the material available on record. The ld.DR submitted that it was incumbent upon the Ld.CIT(A) either to ensure compliance by calling for the remand report or he should have independently conduct necessary inquiries under the provisions of Sections 250(4) to (6) of the Income Tax Act. It was submitted that even if the Assessing Officer fails to provide the remand report, the Ld.CIT(A) being vested with co-terminus powers, should have undertaken sufficient inquires and adjudicated the matter

accordingly. The Id.DR requested that the matter may kindly be remanded back to the file of Assessing Officer for proper adjudication. On merits, it was argued that the Ld.CIT(A) in Paragraphs 9.2 to 9.6, has merely reproduced the submissions of the assessee without applying his mind and therefore, the order passed by the Ld.CIT(A) on merit is also incorrect.

8. On the other hand, Id.AR has submitted that the Ld.CIT(A) has discharged his duties as required under the Act by calling for remand report from the Assessing Officer. It was the responsibility of the Assessing Officer to comply with the directions issued by the Ld.CIT(A) in the case of the assessee, who happens to be extended arm of the Government. The assessee is a Nodal Agency of the Government, entrusted with implementing government objectives. The Id.AR also submitted that there is a huge demand of more than Rs.4000 crores for all the three years. The Id.AR submitted that the assessee apprehended that the assessee will face hardships if the matter is remanded back to the file of Assessing Officer. The assessee has also raised the legal issue and if the legal issues are adjudicated by the Tribunal there will be no demand. The Id.AR further submitted that if the matter is remanded back, the directions should be issued to the Revenue to refrain from attaching the assessee's bank accounts till passing of the final order.

9. In rebuttal, the Id.DR has submitted that the Ld.CIT(A) has failed to follow the prescribed procedure. It was further submitted that the Ld. CIT(A) has not waited for the Remand Report.

10. We have heard both the parties and perused the material on record. The Ld. CIT(A) in his order at Paragraph No. 6.2 to 6.4 observed as follows: -

“6.2 In view of the above provision of sub rule (3) of rule 46A, the AO was provided copy of evidences/ additional evidences through ITBA on 25/04/2024 to submit his remand report with direction that in this case, a priority communication letter been received for early disposal of appeal, therefore, the remand report should reach to the office of appellate authority on or before 03/05/2024, failing to which order will be passed accordingly. But the AO failed to submit remand report. Following the principle of natural justice, another opportunity was given to AO vide ITBA’s notice dated 06/06/2024 to submit remand report by 14/06/2024. But the AO again failed to avail off last opportunity in order to submit remand report regardless the fact that in the present case, a priority communication has been received for early disposal of appeal.

6.3 On perusal of assessment order, I find that the AO has noted that the assessee failed to give all bank details and statements. In the absence of which the verification of deposits is not possible and therefore the order was passed u/s 144 read with section 147 of the Act. It is well settled law that once the appellant discharges his initial duty by offering explanation about queries raised by the AO, then the burden shifts over the AO to deny the assertion of appellant by bringing concrete evidence on record. But the AO simply passed the order u/s 144 on not submitting banks details. Further, in the case the evidence surface after the assessment order and appellant moved with such evidence and produce before the CIT(A) which are the vital evidence and touch the roots of the case, the admissibility of such evidences cannot be denied over riding the principles of natural justice.

6.4 In the case of Jute Corporation of India Ltd. v. CIT 1991 AIR 241, 1990 SCR Supl.(1) 340 the Hon’ble Supreme Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good

reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case must be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.”

11. From perusal of the above, it is clear that two opportunities were given by the Ld.CIT(A) to the Assessing Officer to file the remand report. However, the Assessing Officer, for the reasons best known to him, has failed to comply without offering any valid explanation. At this stage, the ld.DR has submitted that the Assessing Officer was busy in election duties and therefore, the remand report was not filed. However, from the statement of facts attached to the appeal we observe that Ld. AO could not submit the Remand Report in view of voluminous documents. Non-submission of the Remand Report by the Ld. AO was also attributed to the limited transfers taken place during the month of March and the new incumbent taken charge on 9.05.2024. But to our surprise, no such reasons were submitted by the revenue before the Ld.CIT(A). No evidence has been filed establishing that Assessing Officer was busy in the election duty or otherwise. In the present case, the order passed by the Ld.CIT(A) is cryptic, non-speaking order, no independent finding of fact had been given by the Ld.CIT(A) and has not applied his mind on the facts and submissions filed by the assessee,

no record / reports were called from the bank to rectify double additions and had also not verified as to the claim of assessee that it has no income. we also find that before Ld. AO there was no compliance by the assessee and therefore the Ld.AO passed the assessment order to the best of his judgement under section 144 of the Act. In view of all these reasons, we deem it appropriate to remand back the matter to the file of Assessing Officer with a direction to examine the additional evidences submitted by the assessee and decide the matter on merits in accordance with law after providing opportunity of being heard to the assessee. The assessee is directed to appear before the Assessing Officer on the date of hearing fixed by the Assessing Officer without seeking unnecessary adjournments. Accordingly, all the appeals filed by the Revenue are allowed for statistical purposes.

12. In the result, appeals filed by the revenue are allowed for statistical purposes.

C.O. Nos. 9, 10 & 11/VIZ/2024

13. Assessee raised cross objections against the appeal filed by the revenue by raising identical grounds. We extract below the grounds raised in C.O.NO.9/VIZ/2024.

“1. Notice u/s 148 dt.31.03.2021 issued on dt. 01.04.2021 is without compliance to the newly mandated procedure under section 148A of the IT

Act, as considered by the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal, therefore, the consequential impugned order suffers from legal infirmity.

2. The ITO ward 2(3) Vijayawada is not the Jurisdictional Officer to pass the order u/s 147 r.w. 144 of the IT Act dt. 30.03.2022 in view of the provisions of sec 144B of the IT Act, in the absence of it the impugned order is null and void and liable to be quashed.”

14. However, the cross-objection No. 1 was not raised in CO.Nos. 10 & 11/Viz/2024.

15. Since the appeals filed by the revenue are remitted back to the file of the Ld. AO, the cross objections filed by the assessee becomes infructuous and hence disposed of accordingly.

16. In the result, cross objection filed by the assessee are disposed off accordingly.

Order pronounced in the open court on 22nd January, 2025.

Sd/-

Sd/-

(एस बालाकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	(ललित कुमार) (LALIET KUMAR) न्यायिक सदस्य/JUDICIAL MEMBER
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Dated: 22.01.2025
Giridhar, Sr.PS

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

1. निर्धारिती/ The Assessee : **Andhra Pradesh Urban Financial and Infrastructure Development Corporation**
54-15-5, Srinivasa Nagar Bank Colony
Opp. Venue Convention Centre-520008
Vijayawada, Andhra Pradesh
2. राजस्व/ The Revenue : **ACIT – Circle – 1(1)**
Central Revenue Buildings
M.G. Road, Vijayawada – 520002
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