

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM
(HYBRID HEARING)**

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.366/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2018-19)**

Vallurupalli Prabhu Kishore D.No. 10-50-22/1 Siripuram Junction Visakhapatnam – 530003 [PAN: AARPV7235M]	v.	ACIT – Circle – 3(1) Infinity Tower Shankarmatham Road Santhipuram Visakhapatnam – 530016 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**आयकर अपीलसं./I.T.A.No.419/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2018-19)**

DCIT – Circle – 3(1) 35, 50-92-35 Shankarmatham Road Opposite Reliance Fresh Beside Reliance Fresh Nearby Main Road Madhuranagar, Dwarakanagar Visakhapatnam – 530016	v.	Vallurupalli Prabhu Kishore D.No. 10-50-22/1 Siripuram Junction Visakhapatnam – 530003 [PAN: AARPV7235M]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri D. Hema Bhupal, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	27.01.2025
घोषणा की तारीख/Date of Pronouncement	:	20.02.2025

आदेश / ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. The appeal in ITA No. 366/VIZ/2024 filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1067196352(1) dated 31.07.2024 for the A.Y.2018-19 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short ‘Act’) dated 29.09.2021. The revenue has filed cross appeal in ITA No. 419/VIZ/2024.

2. Since both the appeals are inter-connected, these appeals are clubbed, heard and a consolidated order being passed. First, we take up the assessee’s appeal in ITA No. 366/VIZ/2024.

ITA NO. 366/VIZ/2024 (A.Y. 2018-19) - (ASSESSEE’S APPEAL)

3. Brief facts of the case are that, assessee being an individual e-filed its return of income on 31.10.2018 admitting a total income of Rs. 13,91,84,930/-. The case was selected for scrutiny under CASS and statutory notices under section 143(2) and 142(1) of the Act were issued along with questionnaire and served on the assessee from time to time. In response, assessee furnished information / documents through ITBA system from time to time. Ld. AO on

examining the information furnished by the assessee found that the assessee is engaged in the business of Wholesale & Retail sales of motor vehicles as proprietary concern in the name “Varun Motors” and Hire Purchase financing as proprietary concern in the name “Lakshmi Finance”. Assessee is also earning insurance commission in his individual account. Ld. AO after considering the submissions made by the assessee observed that assessee has incurred an interest expenses of Rs. 18.42 crores appearing in consolidated P&L account and observed the ratio of non-business assets to total assets and thereby made disallowances of Rs.6,51,00,000/- as not allowable under the provisions of Act. Accordingly, he issued show-cause notice dated 13.06.2021 wherein assessee responded on 17.07.2021. Considering the reply, Ld. AO having not accepted the explanation furnished by the assessee disallowed sum of Rs.6,51,00,000/- and added back to the total income of the assessee.

4. Further, Ld. AO also observed that assessee has not deducted tax at source on various expenditures and accordingly issued a show-cause notice dated 13.06.2021 requiring the assessee to show cause why 10% of the total expenditure as stated in Para No. 6.1 of the order of the Ld. AO shall not be disallowed which amounts to Rs.5,00,00,000/-. The assessee submitted his reply on 17.07.2021. After carefully perusing the Assessee’s submissions, the Ld. AO did not accept the explanations provided by the assessee thereby

proceeded to add an amount of Rs. 5,00,00,000/- to the total income of the assessee.

5. Further Ld. AO also proceeded to add an amount of Rs. 29,28,802/- under the head “income from house property” stating that the assessee has shown rental income as Nil in the Profit & Loss Account, inspite of earning rental income from several properties.

6. Being aggrieved by the above additions, assessee filed appeal before Ld.CIT(A). Assessee reiterated the submissions made before Ld. AO. Ld.CIT(A) called for Remand Report from the Jurisdictional Assessing Officer which was received on 26.02.2023. Remand Report was sent to the assessee for its rebuttal. Assessee filed its response on Remand Report on 14.08.2023. Ld.CIT(A) considering the Remand Report and the reply furnished by the assessee, upheld the addition of Rs. 1.71 crores on which no TDS has been made as declared by the assessee and reproduced in the order of the Ld.AO as follows:

Nature of Expense	Total Amount	No TDS Amount, for which no party -wise details given
Advertisement	1.78	1.09
Business promotion	0.83	0.36
Bonus & Leave Encashment - Salaries -	2.51 24.73	25.05
Incentive & Marketing exp.	5.82	5.40
Office & Workshop Maint.	1.34	0.96

Nature of Expense	Total Amount	No TDS Amount, for which no party -wise details given
Printing & Stationary	1.11	0.85
Rent, rates & taxes	4.89	2.03
Repairs & Maint – Building	0.58	0.38
Repairs & maint – Office equip	0.67	0.41
Show room maintenance	1.97	1.28
Staff welfare	1.45	1.40
Transport charges	0.59	No details submitted
Travelling & conveyance	1.71	1.71

7. Further, Ld. CIT(A) considering the submissions on the addition to the rental income, Ld. CIT(A) found that income has been considered in the computation of total income and partly allowed by confirming addition of Rs.8,21,741/- which assessee claimed that the property was vacant for the period of nine months.

8. With respect to the addition of Rs.6.51 crores, the Jurisdictional Assessing officer has mentioned in his Remand Report that since the assets consist of investment made in various proprietary concerns and there are no assets which can be termed as non-business assets and hence requested the Ld.CIT(A) to grant relief to the extent of Rs.6.51 crores. Ld. CIT(A) considering the reply to the Remand Report deleted the addition of Rs.6.51 crores. Thus, the appeal made by the assessee was partly allowed by the Ld.CIT(A).

9. 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 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 Rs.1,71,00,000 out of the total addition of Rs.5,00,00,000 made by the assessing officer towards ad-hoc disallowance of expenditure.

3. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining Rs.8,21,741 out of the total addition of Rs.8,22,538 made by the assessing officer towards shot-fall in rent admitted in respect of property situated beside Varun Motors.

4. Any other ground that may be urged at the time of appeal hearing.”

10. Ground Nos. 1 & 4 are general in nature and needs no adjudication.

11. Ground No. 2 is with respect to sustaining of Rs. 1,71,00,000/- by the Ld.CIT(A) towards adhoc disallowance of expenditure comprising of Travelling & Conveyance for not deducting tax at source. On this issue Ld.Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has not deducted TDS on various expenditures since it is well below the threshold as prescribed under the respective sections. He further submitted that copies of the bills were made available before Ld. AO which was not considered by the Ld.AO. Ld. AO without any basis proceeded to make an adhoc disallowance of Rs. 5,00,00,000/- on the basis of assumptions. He therefore pleaded that the

issue may be remitted back to the file of Ld. AO to verify the requirement of deductibility of tax under various provisions of the Act.

12. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully relied on the orders of the Ld. AO.

13. We have heard both the sides and perused the material available on record. Assessee has incurred following expenses as detailed below : -

Nature of Expense	Total Amount	No TDS Amount, for which no party -wise details given
Advertisement	1.78	1.09
Business promotion	0.83	0.36
Bonus & Leave Encashment - Salaries -	2.51 24.73	25.05
Incentive & Marketing exp.	5.82	5.40
Office & Workshop Maint.	1.34	0.96
Printing & Stationary	1.11	0.85
Rent, rates & taxes	4.89	2.03
Repairs & Maint – Building	0.58	0.38
Repairs & maint – Office equip	0.67	0.41
Show room maintenance	1.97	1.28
Staff welfare	1.45	1.40
Transport charges	0.59	No details submitted
Travelling & conveyance	1.71	1.71

14. The assessee has given party wise details of only such parties from whom TDS was deducted whereas assessee has failed to provide party wise details for the remaining amounts on which TDS was not deducted. Ld. AO considering the non-deduction portion as suspicious, therefore proceeded to consider the

entire expenditure of Rs. 49.98 crores on which he proceeded to disallow 10% adhoc amounting to Rs. 5 crores which was considered as reasonable by the Ld.AO. The Ld.AO presumed that the assessee has not complied with the TDS provisions and thereby considered Rs.5 Crores, being the expenditure on which tax was not deducted at source. We find merit in the argument of the Ld.AR that the disallowances cannot be made on assumptions and surmises. Considering the plea of the Ld.AR we deem it fit to remit the issue back the file of the Ld. AO and direct the assessee to submit the invoices before Ld. AO for verification. Ld. AO is directed to examine the invoices and the applicability of the corresponding TDS provisions while deciding the issue on merits in accordance with law. Thus, this ground raised by the assessee is allowed for statistical purposes.

15. Ground No. 3 is with respect to addition of Rs. 8,21,741/-. Ld.AR submitted that rental income for the property was offered for three months and for the balance nine months assessee has claimed vacancy allowance as permissible under the Act. Ld.AR further submitted that the Revenue Authorities did not consider the vacant position of the property and has proportionately computed the rental income for the purpose of addition to the total income declared by the assessee. He therefore pleaded that this amount may be deleted.

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

17. We have heard both the sides and perused the material available on record. It is an admitted fact the assessee has declared rental income as per the actual rent received during the impugned assessment year. Section 23(1)(c) of the Act is reproduced below for the purpose of ready reference.

“Section 23(1)

(a)

(b) ...

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable.”

18. On a bare reading of the section, if the property is vacant for part of the year annual value shall be determined on the basis of the actual rent received or receivable by the owner of the property in respect thereof owing to vacancy is less than the sum referred to in clause (a) of the Act, which is the sum for which the property might reasonably be expected from year to year. We therefore of the considered view that assessee is entitled to claim the vacancy allowance as per section 23(1)(c) of the Act referred above and direct Ld. AO to delete the addition of Rs.8,21,741/-. Thus, ground no. 3 raised by the assessee is allowed.

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

ITA No. 419/VIZ/2024 (A.Y. 2018-19) – (REVENUE APPEAL)

20. Facts being the same, are not discussed again.

21. Revenue has raised following grounds of appeal: -

“1. The Order of the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi is erroneous in law and to the facts of the case.

2. The Ld.CIT(A) erred in deleting the addition to the extent of Rs.3.29 crores out of adhoc disallowance of Rs.5,00,00,000/- made towards unsubstantiated miscellaneous expenditure of Rs.49.98 crores on the ground that as per the assessment order only an amount of Rs. 1.71 crores being the expenditure towards 'Travelling & Conveyance' suffered no TDS at all and as such was fit for disallowance. This finding given by the Ld. CIT(A) is not acceptable since as per the assessment order, the expenditures which did not suffer TDS, be it in part, totalled to Rs.40.92 crores and as such the same required enhanced disallowance as in the case of 'Travelling & conveyance' considered by the CIT(A).

3. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.

4. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that the above addition be restored.”

22. Ground Nos. 1, 3 & 4 are general in nature and needs no adjudication.

23. Ground No. 2 is with respect to deletion of addition of Rs.3.29 crores by the Ld. CIT(A).

24. Ld. DR relied on the order of the Ld. AO.

25. Per contra, Ld.AR requested the issue may be remitted back to the file of the Ld. AO for verification of actual disallowances arising out of not complying with the TDS provisions.

26. We have heard both the sides and perused the material available on record. While adjudicating the appeal in ITA No. 366/VIZ/2024 filed by the assessee the assessee has raised identical ground and the issue was remitted back to the file of Ld. AO for verification and deciding the disallowances in accordance with law. Since Ground No. 2 raised by the revenue is identical to the Ground No. 2 our decision mentioned in the aforesaid paragraphs while adjudicating the assessee's appeal, shall apply to the appeal of the revenue also. Thereby this ground by the revenue is allowed for statistical purposes.

27. In the result, appeal of the revenue is allowed for statistical purposes.

28. To sum-up, assessee's appeal is partly allowed for statistical purpose and revenue appeal is allowed for statistical purposes.

Order pronounced in the open court on 20th February, 2025.

Sd/-

(के.नरसिम्हा चारी)

(K. NARASIMHA CHARY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated: 20.02.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee : **Vallurupalli Prabhu Kishore**
D.No. 10-50-22/1
Siripuram Junction
Visakhapatnam – 530003
2. राजस्व/ The Revenue : **ACIT – Circle – 3(1)**
Infinity Tower,
Shankarmatham Road
Santhipuram
Visakhapatnam – 530016
Andhra Pradesh
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