

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

श्री के नरसिम्हाचारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRIK NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T.A.286/Viz/2023
(निर्धारण वर्ष/ Assessment Year: 2018-19)

Three Seasons Ware Housing,
Kakinada.
PAN: AAJFT4738R

Vs. Income Tax Officer,
Ward-1,
Kakinada.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by
प्रत्यर्थीकीओरसे/ Revenue by

: Sri GVN Hari, AR
: Dr. Satyasai Rath, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 27/01/2025

घोषणाकीतारीख/Date of Pronouncement

: 20/02/2025

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (“Ld. CIT(A)-NFAC”) vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1056546659(1), dated 26/09/2023 for the AY 2018-19 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 (“the Act”), dated 30/04/2021.

2. Briefly stated the facts of the case are that the assessee is a partnership firm established with the objects of engaging in the business of maintenance of warehouses, transportation, loading / unloading and construction of godowns and factory buildings on EPC Basis. The assessee filed its return of income on 31/08/2018 admitting a total income of (-) Rs.21,506/- for the AY 2018-19. Subsequently, the case was selected for complete scrutiny for the following reasons viz.,

- (i) investment / advances / loans and
- (ii) business loss.

Accordingly, statutory notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. The Ld. AO, on verification of the return of income filed by the assessee, noticed that the assessee has received unsecured loans from others amounting to Rs. 16,23,00,000/- and therefore, issued a questionnaire on various dates asking the assessee to submit the details of persons who have given the unsecured loans to the assessee during the year. However, the assessee has not responded to any of the notices. Thereafter, a final reminder notice U/s.142(1) of the Act was issued to the assessee to establish the genuineness, identity and creditworthiness of the persons from whom loans and advances have been received. In response, the assessee

submitted that it has received advances from M/s. Three Seasons Exim Ltd but has not furnished the copy of PAN, return of income and bank statements showing the transactions. Further, a notice U/s. 133(6) of the Act was issued on M/s. Three Seasons Exim Ltd (“the company”) from whom the advance was received by the assessee. The company has also never responded to the said notice. Thereafter, the Ld. AO observed that inspite of several opportunities to establish the genuineness of the transactions, the assessee has failed to comply with the same. He therefore, proceeded to make an addition of Rs. 16,23,00,000/- U/s. 68 r.w.s 115BBE of the Act as unexplained cash credits. On being aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. The assessee reiterated the submissions made before the Ld. AO. Further, the assessee has also made written submissions before the Ld.CIT(A)-NFAC. The Ld. CIT(A)-NFAC observed from the written submissions of the assessee wherein it was contended that the advance from M/s. Three Seasons Exim Ltd amounting to Rs. 16,23,00,000/- was provided out of the available idle funds and further where the assessee submitted that it has fulfilled the onus U/s. 68 of the Act and hence, the proceedings U/s. 68 of the Act is not tenable and subsequently order passed U/s. 143(3) of the Act is unsustainable. The Ld. CIT(A)-NFAC

also found from the submissions made that the assessee has given an advance of Rs. 6,78,00,000/- to Mr. J. Bala Gandhi Raju and Rs.9,45,00,000/- to Mrs. J. Padmavathi for purchase of materials. Shri J. Bala Gandhi Raju and Mrs. J. Padmavathi are partners in the assessee-firm as well as Directors in the M/s. Three Seasons Exim Ltd from whom the advance of Rs. 16,23,00,000/- was received by the assessee-firm. It was further observed by the Ld. CIT(A)-NFAC that the total payments and receipts occurred during the single month i.e., May 2017 between 06/05/2017 to 20/05/2017. The Ld. CIT(A)-NFAC therefore, rejected the contention of the assessee since it was not satisfactorily explained by the assessee to the satisfaction of the Ld. AO proving the identity, genuineness and creditworthiness of the parties. Relying on various case laws, as narrated in the order dated 26/09/2023, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee. On being aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) ought to have quashed as invalid the assessment order passed without giving sufficient opportunity of hearing to the appellant.*
3. *Without prejudice to the above, the Ld. CIT(A) is not justified in sustaining the addition of Rs. 16,23,00,000/- made by the Assessing Officer U/s. 68 of the Act towards alleged unexplained secured loan / advance.*
4. *Any other grounds may be urged at the time of hearing.”*

4. Grounds No. 1 & 4 are general in nature and need no adjudication.
5. Vide Ground No.3, the only issue contested by the assessee is with respect to the addition of Rs. 16,23,00,000/- made U/s. 68 of the Act as unexplained unsecured loan / advance. On this issue, the Learned Authorized Representative (“Ld. AR”) submitted that the name of the company, bank statements and the PAN of the company were submitted before the Ld. AO. He further submitted that the transactions originated in the year 2017-18 wherein M/s. Three Seasons Exim Ltd granted material advance to the assessee-firm which was also reflected in the financials of the company which is available at Page No. 87 in Note No.19 – Short Term Loans and Advances. The Ld. AR further submitted that these amounts were given by the assessee-firm to the partners of the firm for Rs. 6,78,00,000/- to Mr. J. Bala Gandhi Raju and Rs.9,45,00,000/- to Mrs. J. Padmavathi. The Ld. AR further explained that these amounts were again re-invested by the partners of the assessee-firm in M/s Three Seasons Exim Ltd as share capital / unsecured loan. On this issue, the Ld. AR drew our attention to the additional evidence submitted before us in the form of confirmation letters from the company viz., M/s. Three Seasons Exim Ltd, Ld. CIT(A)’s order of M/s. Three Seasons Exim Ltd dated 29/02/2024 for the AY2018-19 and a copy of the ledger account and bank statement stating

that the loans / advance have been paid during the FY 2023-24 and prayed that the additional evidence may be admitted. He further submitted that the additional evidence prove the fact that the transactions were circuitous in nature and the same amount received as advance by the assessee-firm is being reinvested in the company M/s.Three Seasons Exim Limited in the form of share capital / unsecured loans by the partners of the firm who are also promoter Directors of the company. He further submitted that the Ld. CIT(A) while disposing the appeal of the company M/s Three Seasons Exim Limited for the AY 2018-19 has not observed any negative inferences with respect to the material advance payment. He therefore, pleaded that since the original source is established, which is material advance paid to the assessee, no addition can be made U/s. 68 of the Act as unexplained cash credit.

6. Per contra, the Learned Departmental Representative ("Ld. DR") heavily relied on the orders of the Ld. Revenue Authorities. The Ld. DR relied on the judgment of the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) and pleaded that since the three ingredients necessary for establishing the genuinity of the transactions was not proved by the assessee, the addition made U/s. 68 of the Act by the Ld. AO be upheld.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Since the additional evidence submitted by the assessee is relevant, it is admitted. It is an undisputed fact that the assessee has received an amount of Rs.16,23,00,000/- during the AY 2018-19 from its associate concern M/s. Three Seasons Exim Ltd. It is also undisputed that Mr. J. Bala Gandhi Raju and Mrs. J. Padmavathi are partners of the assessee-firm and also shareholders / Directors of the company M/s. Three Seasons Exim Ltd. We find from the submissions made by the Ld. AR that the company M/s. Three Seasons Exim Ltd has granted material advance to the assessee-firm amounting to Rs. 16,23,00,000/- during the FY 2017-18. This fact was recorded in the books of account of the company in Note No. 19 – Short Term Loans and Advances as “Advance for plant and machinery, materials”. This fact was never disputed by the Revenue. The submission of the assessee is that this amount was subsequently transferred to the partner’s account ie., Rs. 6,78,00,000/- to Mr. J. Bala Gandhi Raju and Rs. 9,45,00,000/- to Mrs. J. Padmavathi. This amount was again re-invested into the company viz., M/s. Three Seasons Exim Ltd by the partners of the assessee-firm in their capacity as shareholders / Directors of the company M/s Three Seasons Exim Ltd. As submitted by the Ld. AR, we find that the same amount has

been circuitously accounted in the books of account, as material advance in the company and subsequently transferred to the partners of the assessee-firm which was invested in the company as share capital / unsecured loans. Further, on a perusal of the admission of additional evidence submitted by the Ld. AR we notice that the unsecured loans / advance received by the assessee-firm during the AY 2018-19 have been repaid during the FY 2023-24. Further the Ld.CIT(A) while disposing of the appeal of the company M/s Three Seasons Exim Limited has not made any observation regarding the payment of material advance by the company to the assessee firm. The Revenue has also not brought in any material challenging the material advance amount paid by M/s Three Seasons Exim Ltd to the assessee-firm, except stating that no material is supplied. The only contention of the Revenue is that the identity, creditworthiness and genuineness of the transaction was not proved before the Ld. Revenue Authorities, could not be accepted, given the facts that the Revenue has not disputed the material advance received by the assessee-firm from the company M/s Three Seasons Exim Limited through banking channels. In these circumstances, we are of the considered view that the source of the funds which originated from the payment of material advance, was re-cycled between the assessee-firm and M/s. Three Seasons Exim Ltd has been properly explained and

hence, no addition can be made U/s. 68 of the Act as unexplained cash credits. Therefore, we direct the Ld. AO to delete the addition made U/s.68 of the Act thereby allowing the Ground No.3 raised by the assessee.

8. Ground No.2 is with respect to passing of the assessment order without providing sufficient opportunity to the assessee. Since the appeal is adjudicated in favour of the assessee by adjudicating Ground No.3, the adjudication of Ground No.2 becomes merely an academic exercise. It is ordered accordingly.

9. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 20th February, 2025.

Sd/-
(श्रीकेनरसिम्हाचारी)
(K NARASIMHA CHARY)
न्यायिकसदस्य/JUDICIAL MEMBER

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

Dated :20/02/2025
OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Three Seasons Ware Housing, D.No. 2-62-8, Pedhireddy Vari Street, Santhi Nagar, Kakinada, Andhra Pradesh-533003.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, O/o. ITO, Deepthi Towers, Main Road, Kakinada, Andhra Pradesh-533001.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam