

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरुआर एल रेड्डी, न्यायिकसदस्य एवं श्री एसबालाकृष्णन, लेखासदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. Nos.87 & 88/Viz/2017

(निर्धारणवर्ष/ Assessment Year :2013-14 & 2014-15)

R.S. Pabla Constructions Pvt
Ltd., Plot No.102, Saikutir
Apartments, Beach Road,
Visakhapatnam -530002,
Andhra Pradesh.
PAN: AACCR 6632 C

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से/ Revenue by

सुनवाई की तारीख/ Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. The Deputy Commissioner of
Income Tax,
Circle-4(1),
Visakhapatnam,
Andhra Pradesh.

(प्रत्यर्थी/ Respondent)

Sri G.V.N. Hari, AR

Dr. Satya Sai Rath, CIT-DR

06/9/2023

16/10/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeals are filed by the assessee. In the first instance, both the appeals were heard and disposed off vide exparte order dated 23/02/2022 as there was no representation on behalf of the assessee. Thereafter, the assessee filed

Miscellaneous Applications with a prayer to recall the order to provide one more opportunity of being heard to the assessee as per the principles of natural justice. Considering the assessee's request, the appeals were recalled, heard and disposed off in this consolidated order.

2. In both the appeals, the assessee has raised identical issues. Therefore, for the sake of convenience, both these appeals are clubbed, heard together and disposed off in this consolidated order. Considering the similarity of the issues, we shall take up ITA No. 87/Viz/2017 (AY 2013-14) as a lead appeal.

ITA No. 87/Viz/2017
(AY: 2013-14)

3. This appeal filed by the assessee against the combined order of the Ld. CIT(A)-2, Visakhapatnam in ITA No. 37 & 39/2016-17/CIT(A)-2/C-4(1)/VSP/2016-17, dated 18/01/2017 for the AYs 2013-14 & 2014-15 respectively arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act].

4. The assessee has raised the following grounds of appeal:-

- “1. *The Order passed by the CIT(A) is arbitrary and unjustifiable.*
- 2 *The CIT(A) is not justified in rejecting to admit the additional evidence filed by the assessee company, no opportunity is given at the time of asst. proceedings to prove genuineness of*

both Labourers and material creditors and hence this is a fit case to remand the same to the file of the AG

3. *The CIT(A), is not justified in confirming the addition made by the AG, as the assessee company has returned reasonable profit in the ROT, books of accounts of the assessee were rejected in the past asst. proceedings, assessee company has made a request to the AO to reject books of accounts and to adopt profit @8% hence it is a no books of case, ought to have allowed the appeal of the assessee keeping in view of the facts of the case, hence addition of Rs.2,18,94,300/- towards material creditors and Labour creditors, is liable to be deleted in the hands Of the assessee company.*
4. *The CIT(A), is not justified in confirming the addition made by the AO, as the assessee company has returned reasonable profit in the ROI, books of accounts of the assessee were rejected in the past asst. proceedings, assessee company has made a request to the AO to reject books of accounts and to adopt profit @ 8%, hence it is a no books of case, Ought to have allowed the appeal of the assessee keeping in view of the facts of the case, the parties mentioned to whom work on subcontract basis is mentioned were part of groups of Labourers, hence, TDS provisions do not apply, hence addition of Rs. 24,15,012/- u/sec. 40(a)(ia) is liable to be deleted in the hands of the assessee company.*
5. *Any other grounds those may be prayed at the time of hearing.”*

5. Brief facts of the case are that assessee namely R.S. Pabbla Constructions Pvt. Ltd. is engaged in the business of executing contract work relating to construction of chimneys, overhead reservoirs, cooling towers, buildings and high rise structures of various plants across the country. The assessee filed its return of income for the A.Y. 2013-14 on 25/10/2013 declaring total income of Rs. 1,04,86,040/-. The case was selected for scrutiny. During the pendency of scrutiny proceedings, a survey u/sec. 133A was conducted in the assessee's premises on

21/09/2015. During the course of survey, the Managing Director of the company Sri R.S. Pabbla admitted that certain credits outstanding in the books are bogus and fictitious and offered additional income of Rs. 1.51 crores for the A.Y. 2013-14 and Rs. 3.60 crores for A.Y. 2014-15 in the sworn deposition given by him on 21/09/2015. During the scrutiny proceedings, the AO called upon the assessee to substantiate the claim of sundry creditors to the tune of Rs. 6.46 crores shown as outstanding as on 31/03/2013 in its balance sheet. After providing various opportunities by the AO, the assessee filed the break-up in regard to 17 labour groups and the outstanding was given to be Rs. 5,72,13,840/- as on 31/03/2013 and the balance amount of Rs. 74,37,720/- represent liabilities towards material purchase. The AO also noted that the assessee failed to adduce primary evidence in support of the existence of some of such credit liabilities. As a result, an amount of Rs. 1,61,61,069/- was added to the total income, after excluding the opening balance and liability claimed towards sub-contractors. The AO also made an addition of Rs. 24,15,012/- by way of disallowance u/sec. 40(a)(ia) and thus determined total income of Rs. 3,47,95,350/-. Similarly for the A.Y. 2014-15 certain additions amounting to Rs. 6,98,71,035/- were made towards unexplained labour credits. It is also noted that the assessee failed to produce confirmation letters from both labour and material contractors.

6. Aggrieved by the above additions, the assessee preferred an appeal before the Id.CIT(A). Before the Id.CIT(A) assessee filed a letter dated 13/12/2016 for admission of additional evidence in the form of confirmation letters for 8 out of 17 labour creditor groups. It was submitted by the assessee that there is sufficient and reasonable cause for not submitting the confirmation letters before the AO and hence, requested to admit the additional evidence. The Id.CIT(A) forwarded the same to the AO for his comments and on admissibility. The AO vide his report dated 15/12/2016 submitted that balance confirmation letters furnished by the assessee afresh may not be admitted as additional evidence. Ld.AR pleaded that AO neither insisted for submission of confirmation letters nor given any opportunity to produce them during the assessment proceedings, and therefore the assessee company was prevented by sufficient and reasonable cause in not submitting the confirmation letters before the AO. On the other hand, the AO in his remand report has contended that the assessee was afforded sufficient opportunities and that the assessee failed to produce any evidence in support of claim of credit liabilities towards labour. The AO in his remand report has elaborately referred to the opportunities afforded and the non-compliance of the assessee. The AO has also pointed out that the assessee failed to produce the original records, the ledger extracts, the muster rolls etc.

7. Considering the submissions made by the AR and the remand report of the AO, ld.CIT(A) confirmed the additions made by the AO to the extent of Rs. 1,61,61,069/- for the A.Y. 2013-14 and Rs.6,98,71,035/- for the A.Y. 2014-15. The ld.CIT(A) also confirmed the disallowance u/sec. 40(a)(ia) of the Act of Rs. 24,15,012/- for the A.Y. 2013-14 and Rs. 94,77,602/- for the A.Y. 2014-15.

8. Aggrieved by the order of the ld.CIT(A), the assessee is in appeal before this Tribunal.

9. At the outset, the Ld. AR argued that the Ld. CIT (A) has rejected the additional evidences filed by the assessee during the First Appellate Proceedings. The Ld. AR also pleaded that the assessee has produced confirmation letters from various creditors before the Ld. CIT(A) whereas no opportunity was provided to the assessee before the Ld. AO. The Ld. AR further submitted that due to voluminous records, minute details regarding the labour contractors could not be produced before the Ld. Revenue Authorities. The Ld. AR also submitted that the Ld. AO has sent notices U/s. 133(6) of the Act to various parties wherein some of them have responded as detailed in para 8 of the order of the Ld. AO. The Ld. AR therefore pleaded that the additions made by the Ld. Revenue Authorities be deleted.

Per contra, the Ld. Departmental Representative (Ld. DR) submitted that the Ld. CIT(A) in para 6 of his order has discussed about the admission of the additional evidence and after obtaining a remand report from the Ld. AO, rejected the additional evidences provided by the assessee. The Ld. DR further submitted that the assessee has failed to produce Muster Rolls / Attendance of the 17 labour groups which were sought by the Ld. AO. The Ld. DR further submitted that the onus is on the assessee to prove that the labour payments were genuine by providing the copies of the Attendance Register, Muster Rolls etc. The Ld. DR further submitted that the assessee has even failed to produce the samples of the Muster Rolls in case if the assessee considers it as a voluminous data. He therefore pleaded that the orders of the Ld. Revenue Authorities be upheld. Countering the arguments of the Ld. DR, the Ld. AR submitted that various confirmation letters have been provided in page 45 of the paper book.

10. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly, in respect of the opportunities provided by the Ld AO, the assessee has failed to produce the required evidence in support of the expenditure claimed by the assessee. Further, the assessee prepared to file additional evidence before the First Appellate Authorities which was also

rejected by the Ld. AO vide his remand report dated 15/12/2016. It is also found from the remand report of the Ld. AO that the assessee has produced confirmation letters from Eight Labour Groups out of the 17 Labour Groups. The Ld. AO in his remand report also stated that these confirmation letters provided before the Ld. CIT(A) as additional evidence are similar to the one given before the Ld. AO and hence requested the Ld. CIT(A) to reject the admission of the additional evidence. Further, we also find that there is no merit in the argument of the Ld. AR that the assessee was not given adequate opportunity to submit the additional evidence before the Ld. AO. The Ld. AO has provided various opportunities to the assessee as detailed in the assessment order. As the assessee has failed to discharge the onus cast on it by providing material evidence with respect to labour payments and material payments even before us, we find that the Ld. CIT(A) has rightly sustained the addition made by the Ld. AO and therefore we find no infirmity in the order of the Ld. CIT (A) and hence no interference is required in the order of the Ld. CIT(A).

11. Further, with respect to Grounds No. 3 and 4, we find that the Ld. AO has not rejected the books of accounts and thus has not accepted the request of the assessee to reject the books of account and estimate the income. The assessee being a Private Limited Company is necessarily

subjected to Audit under Companies Act and was also covered by the provisions of section 44AB of the Act. In these circumstances, the Ld. AO has rightly not considered the request of the assessee to estimate the income by rejecting the books of accounts. Since the books of accounts have not been rejected and the income is not estimated by the Ld AO, and therefore the plea of the assessee that the additions made on account of labour creditors are liable to be deleted could not be accepted. We therefore dismiss Ground Nos. 3 & 4 raised by the assessee.

12. Further, with respect to additions made U/s. 40(a)(ia) of the Act, we find that the assessee has failed to deduct the tax at source and therefore the Ld. AO has rightly disallowed by invoking the provisions of section 40(a)(ia) of the Act. We find that it is not in dispute that the assessee is under obligation to deduct tax at source on various payments as envisaged in the Act. In the instant case, the assessee has failed to deduct the tax at source thereby disallowance U/s. 40(a)(ia) is warranted. We therefore find that the Ld. AO has rightly made disallowance by invoking the provisions of section 40(a)(ia) of the Act which is confirmed by the Ld. CIT(A). We therefore find no infirmity in the order of the Ld. CIT(A) and hence no interference is required in the order of the Ld. CIT(A).

13. In the result, appeal of the assessee is dismissed.

ITA No. 88/Viz/2017
(AY: 2014-15)

14. This appeal filed by the assessee against the combined order of the Ld. CIT(A)-2, Visakhapatnam in ITA No. 37 & 39/2016-17/CIT(A)-2/C-4(1)/VSP/2016-17, dated 18/01/2017 for the AYs 2013-14 & 2014-15 respectively arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act].

15. The assessee has raised the following grounds of appeal:-

- “1. *The Order passed by the CIT(A) is arbitrary and unjustifiable.*
2. *The CIT(A) is not justified in rejecting to admit the additional evidence filed by the assessee company, no opportunity is given at the time of asst. proceedings to prove genuineness of both Labourers and material creditors and hence this is a fit case to remand the same to the file of the AO.*
3. *The CIT(A), is not justified in confirming the addition made by the AO, as the assessee company has returned reasonable profit in the ROI, books of accounts of the assessee were rejected in the past asst. proceedings, assessee company has made a request to the AO to reject books of accounts and to adopt profit @8% hence it is a no books of case, ought to have allowed the appeal of the assessee keeping in view of the facts of the case, hence addition of Rs.6,98,71,035/- towards material creditors and Labour creditors, is liable to be deleted in the hands Of the assessee company.*
4. *The CIT(A), is not justified in confirming the addition made by the AO, as the assessee company has returned reasonable profit in the ROI, books of accounts of the assessee were rejected in the past asst. proceedings, assessee company has made a request to the AO to reject books of accounts and to adopt profit @ 8%, hence it is a no books of case, ought to have allowed the appeal of the assessee keeping in view of the facts of the case, the parties mentioned to whom work on subcontract basis is mentioned were part of groups of Labourers, hence, TDS provisions do not apply, hence*

addition of Rs. 94,77,602/- u/sec. 40(a)(ia) is liable to be deleted in the hands of the assessee company.

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

16. Since there is no change in the facts and circumstances of the assessee's cases for the AY 2013-14 and 2014-15, our decision given while adjudicating the assessee's appeal for the AY 2013-14 in ITA No. 87/Viz/2017 *mutatis mutandis* applies to the assessee's appeal for the AY 2014-15 in ITA No. 88/Viz/2017 also. Accordingly, the grounds raised by the assessee are dismissed.

17. In the result, appeal of the assessee is dismissed.

18. Ex-consequenti, both the assessee's appeals are dismissed.

Pronounced in the open Court on 16th October, 2023.

Sd/-

(दुव्वुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 16.10.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–R.S. Pabbla Constructions Pvt Ltd., Plot No.102, Saikutir Apartments, Beach Road, Visakhapatnam - 530002, Andhra Pradesh.
2. राजस्व/The Revenue –The Deputy Commissioner of Income Tax, Circle-4(1), Visakhapatnam, Andhra Pradesh.
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

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