

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ I.T.A. Nos.203, 204, 205, 206 & 207/Viz/2023

(निर्धारण वर्ष / Assessment Years: 2015-16 to 2019-20)

Assistant Commissioner of
Income Tax,
Central Circle-2,
Rajahmundry, E.G. District,
Andhra Pradesh.

(अपीलार्थी/ Appellant)

Vs. M/s. Usha Bala Agro Farms
Pvt Ltd.,
Somanchivari Street,
Powerpet, Eluru, W.G. District,
Andhra Pradesh.
PAN: AAACU 2745 B

(प्रत्यर्थी/ Respondent)

C.O. Nos. 23, 24, 25, 26 & 27/Viz/2023

(In आयकर अपील सं./ I.T.A. Nos.203, 204, 205, 206 & 207/Viz/2023)

(निर्धारण वर्ष / Assessment Years: 2015-16 to 2019-20)

M/s. Usha Bala Agro Farms Pvt
Ltd.,
Somanchivari Street,
Powerpet, Eluru, W.G. District,
Andhra Pradesh.
PAN: AAACU 2745 B

(Cross Objector)

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से / Revenue by

Vs. Asst. Commissioner of
Income Tax, Central Circle-2,
Rajahmundry, E.G. District,
Andhra Pradesh.

(Appellant in appeal)

Sri M.V. Prasad, AR

Dr. Satya Sai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 06/09/2023

: 19/10/2023

O R D E RPER BENCH :

The captioned appeals are filed by the Revenue against the order of the Ld. CIT (Appeals), Visakhapatnam-3 in DIN & Order No. ITBA/APL/S/250/2023-24/1052589571(1), ITBA/APL/S/250/2023-24/1052589825(1); ITBA/APL/S/250/2023-24/1052591413(1); ITBA/APL/S/250/2023-24/1052591834(1); ITBA/APL/S/250/2023-24/1052592275(1), dated 4/5/2023 for the AYs 2015-16 to 2019-20 respectively. Since the Revenue has raised the common issues in all these appeals, they are clubbed, heard together and disposed off in this consolidated order. The assessee has filed cross objections. Considering the similarity of the issues involved, we shall take up ITA No. 203/Viz/2023 (AY: 2015-16) as a lead appeal.

ITA No.203/Viz/2023
(AY: 2015-16)

2. This appeal filed by the Revenue against the order of the Ld. CIT(A), Visakhapatnam-3 arising out of the order passed U/s. 153A of the Income Tax Act (the Act) in DIN & Order No ITBA/AST/S/153A/2021-22/1041719889(1), dated 27/03/2022 for the AY 2015-16.

3. Brief facts of the case are that the assessee is a Private Limited Company deriving income from Aqua Culture filed its return of income on 29/09/2015 declaring total income of Rs. 21,56,660/-. Subsequently, a search and seizure operation U/s. 132 of the Act was conducted on 28/01/2021 in the case of the assessee. Since the impugned assessment year falls under the block of six years a notice U/s. 153A of the Act was issued. In response, the assessee filed its return of income on 29/11/2021 admitting total income of Rs. 1,29,56,660/- by including an additional income of Rs. 1,08,00,000/-. Subsequently, the Ld. AO issued notices U/s. 143(2) and 142(1) of the Act. In response the assessee furnished the information as called for by the Ld. AO from time to time. During the search operations, certain amount of cash was seized from the lockers. Further, the Ld. AO also observed that the seized material contains hand written books which contains the details of date wise receipts and payments pertaining to the entities of Usha Bala Group. The Ld. AO requested Sri VV Balakrishna Rao to explain the nature of transactions. In response, Mr. VV Balakrishna Rao stated that the said hand written books were rough version of daily cash receipts and payments which may contain some duplicate

transactions, non-material transactions and some of the transactions are recorded in the regular books of accounts. The Ld. AO rejected the explanation of Sr. VV Balakrishna Rao and concluded that the daily cash receipts and payments are systematically entered and cannot be considered as a rough version. The Ld. AO further also observed that the assessee has indulged in huge transactions in cash mode which is possible only by using hawala mode of transfer of cash. It was also submitted before the Ld. AO that the assessee admitted unaccounted cash of Rs. 30 Crs is also recorded as payments in the hand written books which further indicate that the said hand written books are not rough version as stated by Sri VV Balakrishna Rao. The Ld. AO further observed that Sri VV Balakrishna Rao had declared additional income of Rs. 40 Crs based on the transactions present in the said hand written books. The Ld. AO also reproduced entity wise admission of undisclosed income based on the transactions present in the said hand written books as detailed in the assessment order. The Ld. AO further observed that most of these receipts and payments are related to Aqua Culture entities of Usha Bala Group and are not recorded in the regular books of account. The Ld. AO also further observed that a part of money has been received in cash

and partly through banking channels. The Ld. AO further also noticed that even the expenditure incurred in cash for child fish purchase, feed purchase and medicine purchase are also not recorded in the books of account. The Ld. AO also stated that there are three entities dealing with Aqua Culture business of Usha Bala Group viz., Usha Bala Agro Farms (P) Ltd, UBK Hotels & Resorts (P) Ltd and VBK Exim (P) Ltd. The Ld. AO also tabulated the land holdings of the above entities as per the submissions of Sri VV Balakrishna Rao vide answer to Q.No. 18 of the statement recorded on 29/07/2021 as under:

S. No.	Entity	Own (Acres)	Leased (Acres)	Total (Acres)
1.	Usha Bala Agro Farms (P) Ltd	130	110	240
2.	UBK Hotels & Resorts (P) Ltd	-	65	65
3.	VBK Exim (P) Ltd		52	52
	Total	130	227	357

The Ld. AO further observed that since the Aqua Culture activity being operated in 357 Acres, the exact entity of each transaction could not be identified by Sri VV Balakrishna Rao. Therefore, the Ld. AO based on the seized material vide Annexures UPF/RP/EL/41, 74, 81, 82, 90 to 155 observed that there are various types of unaccounted receipts and payments including

Aqua culture pertaining to the entities Usha Bala Agro Farms Pvt Ltd (UBAFPL), UBK Hotels & Resorts Pvt Ltd (UBKHRPL) and VBK Exim Pvt Ltd (VBKEPL). The details of the receipts and payments for the FY 2014-15 relevant to the AY 2015-16 are segregated in respect of UBAF & UBKH & VBKE as under:

Transaction Type	Receipts	Transaction Type	Payments
Fish Sales	47502079	Payments	4206417
Lease Income	20615744	Feed Purchase	9978839
Receipts	7708022	Land Purchase in ITR	0
Lease Income & Fish Sales	5531790	Labour Payments	7047371
Bogus Payments in ITR	792910	Lease Payment	1325929
Scrap Sales	243375	Payments into Bank	2000000
		Child Fish Purchase	0
		Land purchase not in ITR	0
		Medicine Purchases	2665278
		Salary Payment	20000
		Transportation Charges	70990
		Sand Filling	0
		Electricity Bill	62123
		Donations	0
Total	82393920	Total	27376947

The Ld AO thus worked out the unaccounted income at Rs. 5,50,16,973/- (ie total receipts – total payments) as above. The Ld AO then bifurcated the unaccounted income to Usha Bala Agro Farms Pvt Ltd (UBAFPL), UBK Hotels & Resorts Pvt Ltd (UBKHRPL) and VBK Exim Pvt Ltd (VBKEPL), in the ratio of their turnover as discussed above, since no separate entity wise

transactions were recorded in the said hand written books. The entity wise bifurcation of undisclosed income for the AY 2015-16 is as below:

FY	AY	UBAFPL	UBKHRPL	VBKEPL	Total
2014-15	2015-16	45592824	3940808	5483342	55016973

Thus, the undisclosed income of M/s. Usha Bala Agro Farms Pvt Ltd consequent to the search is worked out to (from the above table) for the AY 2015-16 as under:

FY	Undisclosed income worked out in Rs.
2014-15	45592824

The Ld. AO also noticed that this unaccounted income generated by various entities was used by the assessee as on money component in purchase of properties like land, building and Gold. The Ld. AO therefore issued a show cause notice to the assessee as to why the difference between the unaccounted income worked on the basis of incriminating material seized of Rs. 4,55,92,824/- and Rs. 1,08,00,000/- admitted in the return of income filed U/s. 153A of the Act amounting to Rs. 3,47,92,824/- should not be added to the total income for the year under consideration as undisclosed income as per the seized hand written books. In response to the show cause notice, the assessee referred to the statement recorded on 18/08/2021 and

submitted that maintaining regular books of account is not possible in Aqua Culture because it is a non-organized sector. The assessee further also submitted that the Ld. AO has arrived at the income on estimation on the lands given on own culture and leased rental receipts could not be accepted since the activities of pisci culture is not so profitable. The assessee also further submitted before the Ld. AO that the income on fish culture per acre would be between Rs. 30,000/- to Rs. 35,000/- on own lands and Rs. 20,000/- to Rs. 25,000/- from leased lands. The assessee also submitted that the bund area should be excluded while computing the income from Aqua Culture on acre basis. The Ld. AO observed that the above submissions were not supported by cogent evidences and hence rejected the objections raised by the assessee. The Ld. AO therefore proceeded to add an amount of Rs.3,47,92,824/- to the total income of the assessee as undisclosed income. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-3, Visakhapatnam.

4. On appeal, the Ld. CIT(A), considering the submissions of the assessee's Representative, found that no separate entity wise transactions are recorded in the said hand written books. The Ld CIT also found that the basis for working out of the undisclosed

income of the assessee for the year under consideration lacks clarity by the Ld. AO. Further, the Ld. CIT(A), also observed that there is no corroborative evidence on record to consider the contentions of the Ld. AO. The Ld. CIT(A) therefore placed reliance on the Central Board of Direct Taxes [CBDT] Instruction No. 8/2014, dated 27/10/2014 and by relying on the Hon'ble Jurisdictional ITAT decision in the case of DCIT, Circle-2(1), Vijayawada vs. Krishna Fisheries Vijayawada in ITA Nos. 325 to 330/Vizag/2015 for AY 2006-07 to 2011-12 and found that the assessee has admitted an income of Rs. 74,458/- (average per acre) which is above the estimate made by jurisdictional Bench in the case of Krishna Fisheries Vijayawada (supra). The Ld. CIT(A) therefore deleted the additions made by the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT (A) is erroneous on grounds of facts and law.*
2. *On the facts and circumstances of case and in law, the Ld. CIT(A) is not correct in relying upon the Board's Circular dated 19/10/1993 as the same relates to the Asst. Year 1993-94 for which an amount of Rs. 4000/- per acre water spread area was prescribed which was reasonable during that time. The said Circular also considered genuine difficulties of the fish farmers particularly with reference to the interior areas lacking banking facilities, availability of water, lack of knowledge of accounting, the vagaries of nature etc.,*

while deciding the above estimation which will not have any relevance when incriminating material was seized evidencing undisclosed income?

3. *The Ld. CIT(A) has erred in overlooking the fact that determination of the assessee's income from Aqua business solely on estimation basis will not be applicable since the Board's Circular as also the decision in the case of M/s. Krishna Fisheries (ITA No. 305 of 330/Vizag/2015) did not have the situation of existence of incriminating material evidencing undisclosed income from aqua business in addition to the facts of non-maintenance of books of account.*
4. *The Ld. CIT (A) is not correct in placing reliance on the decision of the jurisdiction ITAT in the case of M/s. Krishna Fisheries as the facts of the said case are different from that of the instant case.*
5. *Any other ground that may be raised with the permission of Bench."*

5. **Grounds No.1 and 5** are general in nature and therefore they need no adjudication.

6. **Grounds No.2, 3 & 4** are with respect to deletion of addition by the Ld. CIT (A) by relying on the Board Instruction and the decision of the jurisdictional ITAT Bench in the case of Krishna Fisheries Vijayawada (supra). The Ld. DR at the outset submitted that in the case relied on by the Ld. CIT(A) in the case of Krishna Fisheries Vijayawada (supra) there is no incriminating material. However, in the instant case, there is incriminating material which has been relied on by the Ld. AO while making the

additions. The Ld. AR therefore pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. Authorized Representative referred to the sworn statement of the Managing Director wherein he has clearly mentioned that the rough cash books prepared by the Accountant cannot be relied upon. Further, the Ld. AR submitted that with respect to the receipts and payments prepared by the Ld. AO based on the seized material, there is no authenticity of the income receipts extracted by the Ld. AO. Further, the Ld. AR also argued that the Ld. AO also failed to identify the undisclosed income entity wise and has merely estimated based on the accounted turnover. Further, the Ld. AR also submitted that the assessee has declared Rs. 30 Crs in Income Disclosure Scheme, 2016 [IDS-2016] and Rs. 40 Crs for the group companies during the search and seizure operations. The Ld. AR further submitted that Sri VV Balakrishna Rao in his sworn statement on 18/8/2021 has clearly explained the difficulty in maintaining the regular books of account in this kind of business as it (Aqua Culture) is a non-organized sector. The Ld. AR further submitted that the assessee has admitted an income of Rs. 1,08,00,000/- in addition to the original return of income filed U/s. 139(1) of the

Act. The average income admitted per acre is around Rs. 74,458/- which is more than the estimate of income in the case of Krishna Fisheries Vijayawada (supra). The Ld. AR also further submitted the following table:

USHABALA AGRO FARMS PRIVATE LIMITED
Calculation of per acre income admitted after deducting bund portion

AY	Income as per section 139(1)	Admitted income in 153 returns	Total income	Total acreage cultivated	Per acre income
2015-16	21,56,660	1,08,00,000	1,29,56,660	168	77,123
2016-17	16,82,368	1,08,00,000	1,24,82,368	168	74,300
2017-18	15,35,102	1,08,00,000	1,23,35,102	168	73,423
2018-19	15,88,732	1,08,00,000	1,23,88,732	168	73,742
2019-20	15,16,588	1,08,00,000	1,23,16,588	168	73,313

Calculation of per Acre income admitted without deducting bunds portion

AY	Income as per section 139(1)	Admitted income in 153 returns	Total income	Total acreage cultivated	Per acre income
2015-16	21,56,660	1,08,00,000	1,29,56,660	168	53,986
2016-17	16,82,368	1,08,00,000	1,24,82,368	168	52,010
2017-18	15,35,102	1,08,00,000	1,23,35,102	168	51,396
2018-19	15,88,732	1,08,00,000	1,23,88,732	168	51,620
2019-20	15,16,588	1,08,00,000	1,23,16,588	168	51,319

Calculation of per Acre income as per AO after deducting bunds portion

AY	Addition made as per the AO	Admitted income in 153 returns	Total income	Total acreage cultivated	Per acre income
2015-16	2,74,72,850		2,74,72,850	168	1,63,529
2016-17	1,59,43,297		1,59,43,297	168	94,901
2017-18	2,40,86,862		2,40,86,862	168	1,43,374
2018-19	2,29,14,122		2,29,14,122	168	1,36,394
2019-20	2,79,06,292		2,79,06,292	168	1,66,109

Calculation of per Acre income as per AO without deducting bunds portion

AY	Addition made as per the AO	Admitted income in 153 returns	Total income	Total acreage cultivated	Per acre income
2015-16	2,74,72,850		2,74,72,850	240	1,14,470
2016-17	1,59,43,297		1,59,43,297	240	66,430
2017-18	2,40,86,862		2,40,86,862	240	1,00,362
2018-19	2,29,14,122		2,29,14,122	240	95,476
2019-20	2,79,06,292		2,79,06,292	240	1,16,276

The Ld. AR therefore pleaded that since the assessee has declared higher income, the order of the Ld. CIT(A) 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. It is an admitted fact that the assessee has offered an additional income of Rs. 1,08,00,000/- while filing return of income U/s. 153A of the Act which translates to Rs. 74,458/- per Acre. Based on the land holdings of the assessee with respect to Aqua Culture it is noticed that the assessee has admitted an average income of Rs. 74,458/- as detailed in its submissions. Further, the Ld. AO has merely relied on the seized material but has not corroborated with the additional evidence while calculating the revenue per acre estimated for the business of Aqua Culture by the assessee and its group companies. It is also noticed that Sri VV Balakrishna Rao in his sworn statement has stated that it is a rough version of daily cash receipts and

payments which also contains some duplicate entries. Further, it is also an admitted fact that maintaining books of accounts in this line of business (Aqua Culture) which is a non-organized sector, which is further evident from the fact that the CBDT has issued Instruction No. 8/2014, dated 17/10/2014 that the income with respect to Fish Culture in Andhra Pradesh may be decided by committee comprising of Two Commissioners, Two Representatives of Farmer's Association to determine the income that may be estimated for that Financial Year. Therefore, in these given circumstances, we also find that the Ld. AO has estimated the income based on the net receipts calculated as per the seized material and by apportioning it on the basis of the accounted turnover of three entities dealing with Aqua Culture business of Usha Bala Group viz., Usha Bala Agro Farms (P) Ltd, UBK Hotels & Resorts (P) Ltd and VBK Exim (P) Ltd. The Ld. AO has rejected the reply to the show cause notice without assigning proper reasons by merely relying on the estimation without any justification. Further, we also find that the Ld. AO has not given any break-up of the income by deducting the bund area and also the income from Fish Culture with respect to the leased lands. We therefore find that the Ld.CIT (A) while discussing the issue at length in his order has considered the CBDT Instruction No.

8/2014 (supra) and also the decision of the jurisdictional Bench of ITAT in the case of Krishna Fisheries Vijayawada (supra) and has concluded that the additional income of Rs. 74,458/- per Acre disclosed by the assessee is reasonable and in accordance guidelines issued by the CBDT and is also above the amount of Rs. 25,000/- to Rs. 35,000/- per Acre fixed by the decision of this Bench in the case of Krishna Fisheries Viajaywada (supra). We also find from the submissions made by the Ld. AR that if the addition is made as per the Ld. AO, the income per acre on an average works out to Rs. 1,20,000/- which is practically impossible in the opinion of the assessee in this trade. From the facts discussed as above, we are of the considered view that since the assessee has offered an amount of Rs. 74,458/-per Acre (net of Bund area), and which is more than the rate per Acre fixed by the jurisdictional Bench, the Ld. CIT(A) has rightly held and deleted the addition made without any justification / corroborative evidences, by the Ld. AO, and therefore we find no infirmity in the order of the Ld. CIT(A) and thereby dismiss the grounds raised by the Revenue.

8. In the result, appeal of the Revenue is dismissed.

I.T.A. Nos. 204, 205, 206 & 207/Viz/2023
Assessment Years: 2016-17 to 2019-20

9. These appeals are filed by the Revenue against the orders of the Ld. CIT(A), Visakhapatnam-3 arising out of the orders passed U/s. 153A of the Act.

10. In all these appeals for the AYs 2016-17 to 2019-20, the Revenue has raised identical grounds to that of the grounds of appeal for the AY 2015-16. Therefore, our decision given on the issues raised by the Revenue in its appeal for the AY 2015-16 which is adjudicated in the foregoing paragraphs of this order in ITA No. 203/Viz/2023, mutatis mutandis applies to the issues raised by the Revenue in its appeals for the AYs 2016-17 to 2019-20. Accordingly, grounds raised by the Revenue are dismissed.

11. In the result, appeals of the Revenue for the AYs 2016-17 to 2019-20 are dismissed.

C.O. Nos. 23, 24, 25, 26 & 27/Viz/2023
(In आयकर अपील सं./ I.T.A. Nos.203, 204, 205, 206 & 207/Viz/2023)
(निर्धारण वर्ष / Assessment Years: 2015-16 to 2019-20)

12. All these Cross Objections are raised by the assessee. Out of the 07 Grounds of Cross Objections raised by the assessee for

the AYs 2015-16 to 2019-20, Ground No.7 is general in nature and the Grounds No. 1 to 6 are fully supportive in nature to the decision of the Ld. CIT(A). Since the Grounds raised by the Revenue in its appeals for the AY 2015-16 to 2019-20 are dismissed and held in favour of the assessee, the adjudication of these grounds of Cross Objections raised by the assessee becomes infructuous. Thus, all the Cross Objections raised by the assessee are disposed off.

13. Ex-consequenti, the Revenue's appeals for the AYs 2015-16 to 2019-20 are dismissed and the Cross Objections raised by the assessee are disposed off as mentioned herein above.

Pronounced in the open Court on 19th October, 2023.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

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

Dated :19.10.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. Usha Bala Agro Farms Pvt Ltd., Somanchivari Street, Powerpet, Eluru, West Godavari District, Andhra Pradesh.
2. राजस्व/The Revenue – Assistant Commissioner of Income Tax, Central Circle-2, Shiva Towers, 5th Floor, Danavaipeta, Rajahmundry, Andhra Pradesh-533103.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam