

ITA Nos.1999 to 2012/Bang/2018 &
ITA Nos.2142 to 2144/Bang/2018
M/s. Divyashree Infrastructure, Bangalore &
M/s. Shyamaraju & Co. Pvt. Ltd., Bangalore

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1999 to 2005/Bang/2018
Assessment Years: 2008-09 to 2014-15

M/s. Divyashree Infrastructure “Divyashree Chambers”, “A” Wing #11, O;Shaugnessy Road Bengaluru 560 025 PAN NO :AAFFD3896A	Vs.	Deputy Commissioner of Income-tax Central Circle-2(3) Bengaluru
APPELLANT		RESPONDENT

ITA Nos.2006 to 2012/Bang/2018
Assessment Years : 2008-09 to 2014-15

M/s. Shyamaraju & Company (India) Pvt. Ltd. “Divyashree Chambers”, “A” Wing #11, O;Shaugnessy Road Bengaluru 560 025 PAN NO : AACCS6562L	Vs.	Deputy Commissioner of Income-tax Central Circle-2(3) Bengaluru
APPELLANT		RESPONDENT

ITA Nos.2142 to 2144/Bang/2018
Assessment Years :2012-13 to 2014-15

Deputy Commissioner of Income-tax Circle-6(1)(1) Bengaluru	Vs.	M/s. Shyamaraju & Company (India) Pvt. Ltd. Bengaluru 560 025
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Chandrashekhar & Sri Narendra Sharma, A.Rs
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	02.03.2022
Date of Pronouncement	:	26.04.2022

ORDER

PER BENCH:

All these appeals filed by the respective assesseees and the appeals of the revenue are directed against the orders passed by Ld. CIT(A)-11, Bengaluru. All these appeals relate to the assessment years 2008-09 to 2014-15. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

M/s Divyashree Infrastructure

2. We shall first take up the appeals filed by M/s Divyashree Infrastructure. The said assessee is challenging the decision of Ld. CIT(A) in confirming the disallowance of depreciation made by the A.O. in assessment year 2014-15. Even though no specific addition was made in assessment years 2008-09 to 2013-14, since the observations made by the A.O. in those years has culminated into addition in AY 2014-15 and since those observations were confirmed by Ld. CIT(A), the assessee has filed appeals for AY 2008-09 to 2013-14 also.

3. The facts relating to the issue contested by M/s Divyashree Infrastructure are stated in brief. The assessee is a Partnership

Firm and is engaged in the business of construction and renting out of commercial buildings. A search & seizure action was carried out in the case of M/s. Shyama Raju & Company (I) Pvt. Ltd. on 20.3.2014, which is a group company of the assessee herein. During the course of search, certain documents belonging to the assessee herein were seized and hence, the A.O. initiated proceedings u/s 153C of the Income-tax Act, 1961 [‘the Act’ for short] for assessment years 2008-09 to 2013-14. The assessment was completed for those years u/s 143(3) r.w.s. 153C of the Act. The assessment of assessment year 2014-15 was completed u/s 143(3) of the Act.

4. During the course of search, it was noticed that the assessee M/s Divyashree Infrastructure was purchasing materials from unregistered dealers (herein after referred as “URD purchases”). Such kind of purchases were in the nature of sand, size stones, crushing rock fine, stone dust, gravel, wet mix, jelly, hollow blocks, solid blocks, soiling, etc. It was also noticed that the standard operating procedures prescribed for accounting receipt of materials were not followed in respect of above said purchases. Some of the employees also confirmed that the prescribed procedures have not been followed in respect of some of the URD purchases. Accordingly, during the course of search proceedings, the Chairman and Managing Director of assessee company, Shri Shyama Raju was enquired about URD purchases, in view of certain discrepancies noticed in not following standard operating procedures in respect of the above said purchases. As noted earlier, the query was also based on statement given by certain employees of the company. In the sworn statement, Shri Shyama

Raju deposed against the genuineness of the URD purchases. According to the Ld. A.R., the statement was taken from Shri Shyama Raju in the wee hours of 22.3.2014 (search commenced on 20.3.2014) and Shri Shayamaraju had to depose to ward off enormous amount of trauma and stress. The Ld A.R further submitted that Shri Shayamaraju obtained copy of sworn statement subsequently on 20.6.2014 and he immediately filed a letter dated 27.6.2014 retracting his statement and further clarifying the issue of URD purchases in detail. In that letter, Shri Shyama Raju also made it clear that URD purchases of the assessee are of genuine purchases.

5. The details of URD purchases identified in various years are tabulated below:-

Assessment year	URD purchases (Rs.)
2008-09	11,53,338/-
2009-10	1,33,57,492/-
2010-11	2,05,29,760/-
2011-12	5,74,29,070/-
2012-13	8,97,06,314/-
2013-14	10,37,79,233/-
2014-15	9,50,70,013/-

6. During the course of assessment proceedings, the assessee explained in detail about the URD purchases, but the same was not accepted by the AO. For the sake of convenience, the explanation given by the assessee and the view expressed by the AO are extracted below:-

(A) Assessee's Explanations:-

"4.11 The assessee replied vide letter dated:29.02.2016 that-

'We are in receipt of the aforesaid notice above, inviting our attention in terms of Annexure-1 to the said notices, wherein it is proposed to disallow depreciation in respect of certain capitalized amount in the nature of URD purchases forming part of the building and in continuation to our earlier replies, we wish to reiterate and continue to substantiate as under:-

1. At the outset, it is submitted that the purported statement u/s 132(4) dated 21/03/2014 given by the Director of the aforesaid company, Dr.P.Shyama Raju was duly clarified and retracted vide his letter dated 27/06/2014 addressed to the Investigation Wing. During the post search appraisal proceedings it was also brought to the light of the Investigation Wing that all such Unregistered Dealers purchases(URD) involved in the construction of the likes of jelly, sand, gravel, stone dust, hollow blocks, solid blocks etc., were all genuine purchases necessarily required for the purposes of putting up the super structure evidenced duly by vouchers. Further all such payments were made by banking channels capable of being fully vouchsafed.

2. Further, it was also brought to the light of the Investigation Wing that the issue of URD purchases were specifically dealt with prior to the second search on 20/03/2014. Wherein, it was also specifically pointed out to the Investigation Wing that prior to the Second search on 20/03/2014, wherein there was an earlier search carried out on 01/03/2007 (hereinafter referred to as First Search) that for the then search Assessment year viz., 2007-2008 onwards, assessments were duly completed accepting such URD purchases as genuine.

3. While on this point, it is submitted that in the Assessment Proceedings completed prior to the Second Search, wherein for the Assessment year 2012-2013 correspondences were filed as regard to URD purchases and the correspondences filed with the Assessing Officer and the Assessment orders thereof completed are enclosed to this letter in Exhibit-I for your Honour's kind perusal.

4. In this backdrop, having substantiated that all such purchases in the nature of URD may kindly be treated as genuine and not to treat the same as non genuine.

5. Without prejudice to the above, it is further to be noted that in your goodselves aforesaid notices in Annexure-I, wherein it is treated by your Honour that all such URD purchases have been

capitalized to the Building Block, which is false. While on this point, it is stressed that even on a perusal of the financial accounts of the aforesaid company for the aforesaid Assessment years no such amount of URD purchases have been captured in the accounts as Building or Addition to the Building and are accounted as capital work in progress in the Balance Sheet for the Assessment years 2011-2012 to 2013-14. However, a sum of Rs.50,31,85,373/- has been shown as Additions during the previous year towards Building reflected in Fixed Assets under the head "DivyaSree Technopolis Project Block-'A'".

6. Thus, such arbitrarily holding that the amount of URD purchases have been capitalized are without any basis and further that at no point of time there is any Revenue Impact vis-à-vis the disallowance of the Unregistered Dealers purchases and your good selves proposal of treating the same are against the scheme of the Act."

(B) Assessing Officer's Observations:-

4.12 The reply of the assessee is perused and not found acceptable. Firstly with regard to point no. land 2 above, the assessee claims that all the URD purchases are genuine and that the disclosure made u/s 132(4) has been retracted. This argument of assessee is weak and self serving. It has already by way of the statements of several employees like- Sh. Praveen Parmeshwar, Sh. G.P.Balaji, Sh. Rupesh Kumar, Sh. RaghavavendraRao and Sh. Vasu M , been proved that bogus URD purchases have been made. The assessee's retraction carries no weight and is hereby rejected. Reliance is placed on the following case-laws :

B.Kishore Kumar Vs. DCIT 52 taxmann.com 449 (Madras)
Ravindra Kumar verma Vs. CIT 30 taxmann.com 367 (Allahabad)
Sudarshan P. Amin vs. ACIT 35 taxmann.com 370 (Gujarat)
NavdeepDingra Vs CIT 56 taxmann.com 75 [2015] (Punjab and Haryana)

Raj Hans Towers P. Ltd Vs CIT 56 taxmann.com 67 [2015](Delhi)

4.13 With regard to point no. 3 and 4 of the assessee that the URD purchases have been accepted by assessing officers in the regular assessments concluded u/s 143(3) and hence cannot be questioned is not logical. The search action in case of the assessee has brought to light the fact of bogus URD purchases and various statements of the employees of the assessee substantiate the finding of bogus URD purchases, hence in the light of the new evidence, the URD purchases cannot be allowed.

4.14 In point no. 5 and 6, the assessee states that the URD purchases have not been capitalized and are still part of the capital work in progress and hence the disallowance of depreciation is not acceptable. On perusal of the depreciation schedule one also finds that there is a claim of depreciation on account of the block building(new building) during the year amounting to Rs. 1,85,51,264/- pertaining to addition to the block of building(new building) amounting to Rs.50,31,85,873/-. Bogus URD purchases (both of previous years and the current year) amounts to Rs.38,10,25,220/-. It is hereby held that the bogus URD purchase of Rs.18,55,12,640/- has been capitalized during the year and hence, depreciation of Rs. 1,85,51,264/-pertaining to it is disallowed. The argument that the URD purchases still remain in the capital WIP is hereby rejected as the ledgers submitted by the assessee pertaining to capital WIP cannot be relied upon as the assessee was in the practice of inflating cost.”

Accordingly, the AO held that the depreciation claimed on the bogus URD purchases should be disallowed. Since the assessee had claimed depreciation of Rs.1,85,51,264/- in AY 2014-15, the AO disallowed the same in that year. In other earlier years, since the assessee did not claim any depreciation, there was no occasion for the AO to make any addition. The Ld CIT(A) also confirmed the action of the AO in AY 2008-09 to 2014-15 and also concurred with the observations made by the AO. The assessee is aggrieved by the orders passed by Ld CIT(A).

7. We heard the parties and perused the record. Since the assessee was undertaking construction of the projects, all the URD

purchases have been included in the “Capital work in progress” account. We notice that the assessing officer has identified URD purchases every year and he has held them to be bogus in nature, i.e., according to AO, the assessee has inflated the expenses by accounting URD purchases. We noticed that the AO did not make addition of the alleged inflated/bogus expenses in the respective years. However, the AO has taken the view that the depreciation claimed should be disallowed. Since the assessee did not claim any depreciation in AY 2008-09 to 2013-14, there was no occasion for the AO to make any addition as per the view taken by him. Since the assessee had claimed depreciation in AY 2014-15 only, the AO disallowed the depreciation so claimed in A.Y. 2014-15.

8. We notice that the AO has placed his reliance on the sworn statement given by Shri Shyama Raju. However, the Ld A.R submitted that the sworn statement so given has since been retracted and hence the AO could not have placed reliance on it. The Ld A.R also submitted that the URD purchases consisted of sand, gravel, metal, bricks etc. could be purchased from unorganized sector only and the building could not be constructed without those materials. He submitted that the AO did not examine the technical feasibility of constructing the building without the alleged URD purchases.

9. In our view, there is merit in the said contentions. We find that the assessment order is silent as to the quantum of alleged bogus/inflated expenses. As pointed out by Ld A.R, there are technical specifications regarding the quantum of consumption of various materials in the construction of a building. The moot

question is, if the alleged bogus/inflated purchases are removed from the value of construction, whether the same would meet the technical specifications relating to quantum of usage of various materials required for construction of building. Admittedly, this exercise has not been carried out. There was no occasion for the assessee to carry out the said exercise, since it has maintained its stand that all URD purchases are genuine. However, the AO has not done the same. We also notice that the AO has also not effectively dealt with legal effect of the retraction of the sworn statement given by Shri Shyama Raju. However, we do not find it necessary to deal with these questions for the reasons discussed in the ensuing paragraphs.

11. Be that as it may, we noticed that the assessing officer did not make any addition with regard to the URD purchases, which were considered to be bogus or inflation of expenses, in the respective years. In our considered view, without making addition of alleged bogus/inflated expenses, the A.O. could not have disallowed the depreciation alone in A.Y. 2014-15. Accordingly, we are of the view that the disallowance of depreciation made by the A.O. in assessment year 2014-15 is not justified in the facts and circumstances of the case. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance of depreciation made in A.Y. 2014-15. Since no addition was made in other years, there is no issue on merits requiring adjudication on merits.

12. However, in assessment years 2008-09 to 2013-14, the assessee has raised certain legal grounds questioning the validity of

initiation of proceedings u/s 153C of the Act in its hands and also questioning the validity of search. Since we have deleted the addition made by the A.O. on merits, those legal issues shall become academic in nature. Hence we do not find it necessary to adjudicate the legal grounds urged by the assessee in the above said years.

M/S SHYAMARAJU & CO (INDIA) PVT LTD.

13. The assessee has filed appeals for assessment years 2008-09 to 2014-15 and the revenue has filed the appeals for assessment years 2012-13 to 2014-15. We shall first take up the appeals filed by the assessee.

14. As noticed earlier the revenue carried out search and seizure operation in the hands of this assessee on 20.3.2014 and hence the assessments were completed for assessment years 2008-09 to 2013-14 u/s 143(3) r.w.s. 153A of the Act. The assessment for assessment year 2014-15 was completed u/s 143(3) of the Act.

15. During the course of search, it was noticed that the assessee has purchased materials from unregistered dealers (URD purchases) and it was further noticed that the standard operating procedures was not followed in respect of URD purchases. As noticed earlier, a sworn statement was taken from Shri P. Shyama Raju during the wee hours on 22.3.2014 wherein he deposed against the genuineness of the URD purchases. Subsequently, he retracted the statement on 27.6.2014 by filing a letter, i.e. after getting the copy of sworn statement on 20.6.2014. In that letter, Shri Shyama Raju also stated that all the URD purchases are genuine purchases. The

assessing officer did not accept the submissions of the assessee made in the letter, the details furnished by Shri Bhaskar N. Raju, Executive Director of the company and also the submissions made during the course of assessment proceedings. The assessing officer took the view that the depreciation relating to URD purchases are required to be disallowed and accordingly disallowed the depreciation claimed by the assessee in assessment years 2008-09 to 2013-14. The details of disallowance are tabulated as under:

Assessment year	Depreciation on URD purchases (Rs.)
2008-09	1,06,82,454/-
2009-10	5,31,800/-
2010-11	25,77,968/-
2011-12	53,06,605/-
2012-13	35,33,344/-
2013-14	12,68,468/-
2014-15	Nil

The A.O. also made additions u/s 14A of the Act in assessment years 2012-13 to 2014-15. While computing book profit u/s 115JB of the Act, the A.O. adopted the amount of disallowance computed u/s 14A of the Act for making addition to the net profit under clause (f) of Explanation 1 to sec. 115JB of the Act.

16. The Ld. CIT(A) also confirmed additions relating to disallowance of depreciation. In respect of the addition made u/s 115JB of the Act, the Ld. CIT(A) held that the amount of disallowance computed u/s 14A of the Act cannot be imported into the provisions of section 115JB of the Act. In this regard, he placed his reliance on the decision rendered by Delhi Special bench in the case of ACIT Vs. Vireet Investment Pvt. Ltd. 165 ITD 27. Aggrieved

by the orders passed by Ld. CIT(A), the assessee has filed these appeals for assessment years 2008-09 to 2014-15. The revenue is aggrieved by the decision of Ld. CIT(A) in assessment year 2012-13 to 2014-15 in deleting the addition made to book profit.

17. With regard to the disallowance of depreciation on alleged bogus/inflated URD purchases, we have held in the preceding paragraphs, while dealing with the appeals filed by M/s. Divyashree Infrastructure (supra), that the A.O. could not have disallowed the depreciation without making addition of alleged bogus/inflated URD purchases. Accordingly, we have deleted the disallowance of depreciation made in the hands of Divyashree Infrastructure on identical set of facts. Following the above said decision, we hold that the A.O. was not justified in disallowing the depreciation on alleged bogus/inflated URD purchases without making addition of the above said alleged purchases. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in assessment years 2008-09 to 2013-14 and direct the A.O. to delete the disallowance of depreciation on URD purchases.

18. In assessment year 2014-15, the A.O. has not made any disallowance of depreciation. From the grounds of appeal urged by the assessee, we notice that the assessee is questioning the observations made by the A.O. with regard to disallowance of depreciation on alleged bogus/inflated URD purchases. Since no specific addition was made, mere observations made by AO do not require any specific adjudication.

19. In assessment years 2008-09 to 2013-14, the assessee is also challenging the validity of search proceedings conducted u/s 132 of the Act. Since we have deleted the addition made by the A.O. on merits, those legal issues shall become academic in nature. Hence we do not find it necessary to adjudicate the legal grounds urged by the assessee in the above said years.

20. We shall now take up the appeals filed by the revenue for AY 2012-13 to 2014-15. The only issue urged in this appeal relates to the decision of Ld CIT(A) in holding that the disallowance computed u/s 14A of the Act cannot be straight away added for computing book profit under clause (f) of Explanation 1 to sec.115JB of the Act. We notice that the Ld CIT(A) has followed the decision rendered by Delhi Special Bench of Tribunal in the case of Vireet Investments Pvt Ltd (supra). However, we notice that the Ld CIT(A) has deleted the addition made to book profit u/s 115JB of the Act. The special bench has only said that the disallowance computed u/s 14A of the Act cannot be adopted straight away for the purpose of clause (f) of Explanation 1 to sec.115JB of the Act, meaning thereby, the amount to be added under clause (f) of Explanation 1 to sec.115JB of the Act has to be computed independently having regard to the books of account. Accordingly, we modify the order passed by Ld CIT(A) on this issue in AY 2012-13 to 2014-15 and restore this issue to the file of AO with the direction to compute the addition to be made clause (f) of Explanation 1 to sec.115JB of the Act independently on the basis of books of accounts.

21. In the result, all the appeals filed by the assessees, viz., M/s Divyashree Infrastructures and M/s Shyamaraju & Company (India)

Page 14 of 14

Pvt Ltd for assessment years 2008-09 to 2014-15 are treated as allowed. The appeals filed by the revenue in the case of M/s Shyamaraju & Company (India) Pvt Ltd for AY 2012-13 to 2014-15 are treated as partly allowed.

Order pronounced in the open court on 26th Apr, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 26th Apr, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.