

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM**

(HYBRID HEARING)

**श्री विजय पाल राव, उपाध्यक्ष, एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI VIJAY PAL RAO, HON’BLE VICE PRESIDENT**

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.52/VIZ/2025

(निर्धारण वर्ष/ Assessment Year: 2018-19)

DCIT – Central Circle -1 5 th Floor, Direct Taxes Building MVP Colony, Visakhapatnam – 530017 Andhra Pradesh	v.	Datla Vivekananda Raju Flat No. 302. MAP Hightide Rushikonda, Madhurawada Visakhapatnam – 530041 Andhra Pradesh [PAN: ACOPD8861A]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

सी.ओ सं. / C.O. No. 16/VIZ/2025

[आयक अपील सं. से उत्पन्न / ARISING OUT OF I.T.A. No. 52/VIZ/2025 (A.Y. 2018-19)]

Datla Vivekananda Raju Flat No. 302. MAP Hightide Rushikonda, Madhurawada Visakhapatnam – 530041 Andhra Pradesh [PAN: ACOPD8861A]	v.	DCIT – Central Circle -1 5 th Floor, Direct Taxes Building MVP Colony, Visakhapatnam – 530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	30.04.2025
घोषणा की तारीख/Date of Pronouncement	:	09.06.2025

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), Visakhapatnam [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/APL/250/2024-25/1070248359(1) dated 11.11.2024 for the A.Y. 2018-19 arising out of order passed under section 153A of the Income Tax Act, 1961 (in short ‘Act’) dated 28.09.2021. Cross objection is filed by the assessee in support of the order of the Ld.CIT(A).

2. Brief facts of the case are that, assessee is an individual and a Director in M/s. Vijaynagar Biotech Pvt. Ltd. The assessee filed his return of income for the A.Y. 2018-19 on 20.08.2018 admitting a total income of Rs. 28,27,550/-. Subsequently, a search action under section 132 of the Act was conducted in the case of the assessee on 10.01.2020 in the registered office of the assessee along with group concern of M/s. Vijaynagar Biotech Pvt. Ltd. Consequent to search under section 132 of the Act the case was centralized with the Central Circle-1, Visakhapatnam after obtaining the orders from the Appropriate Authority. Thereafter notice under section 153A of the Act was issued on 25.02.2021 calling for the return of income. Since the assessee did not respond, notice under section 142(1) of the Act calling for information was issued and served on the assessee. Assessee partly responded. Subsequently, a show-cause notice was issued on the assessee on 09.09.2021 calling for explanation. In response

assessee filed his reply on 20.09.2021 furnishing the information called for along with the evidences in support of his claim. It was noticed that the assessee also filed his return of income on 13.09.2021 admitting the same total income. Since assessee did not e-verify the return of income electronically, the Ld. AO treated the return of income as non-est and observed that no notice under section 143(2) of the Act could be issued. However, after considering the submissions made by the assessee, Ld. AO treated an amount of Rs. 33,00,000/- as unexplained investments under section 69 of the Act and Rs. 1,25,00,000/- as unexplained expenditure under section 69C of the Act.

3. On appeal before the Ld. CIT(A), assessee made various submissions in support of the grounds of appeal. The Ld. CIT(A) after examining the additional evidences filed by the assessee forwarded the same to the Ld. AO calling for the Remand Report. Ld. AO submitted his Remand Report on 31.08.2023. Ld.CIT(A) called for the rejoinder from the assessee in response to the Remand Report. Assessee also made submissions on 28.06.2024 and further submission on 23.10.2024. After considering the reply furnished by the assessee and the Remand Report of the Ld. AO, Ld. CIT(A) by relying of the decision of the jurisdictional Tribunal in the case of Badam Bhogalinga Swamy v. ACIT in ITA No. 06 & 09/VIZ/2021 dated 24.05.2021 partly allowed the appeal of the assessee. The Ld. CIT(A) thus allowed sum of Rs. 33,00,000/-

and also directed the Ld.AO to delete the addition of Rs. 1,25,00,000/- made by the Assessing Officer.

4. On being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising nine grounds of appeal.

5. The core issue emanating from the grounds of appeal raised by the revenue is with respect to allowing the telescoping benefit by the Ld. CIT(A) with respect to marriage expenditure incurred by the assessee for Rs.1,25,00,000/-. On this issue, Ld. Departmental Representative [hereinafter in short “Ld. DR”] submitted that the marriage expenditure of the children of the Director amounting to Rs.1,25,00,000/- was found from the incriminating material found and seized during the course of search. Ld. DR further submitted that during the course of search proceedings the assessee has agreed to admit the income of Rs.1,25,00,000/- and accordingly accepted to pay the taxes on such income. However, in the return of income filed in response to notice under section 153A of the Act assessee did not admit this unaccounted income but has reiterated the original admitted income. The Ld. DR argued that the case of *Badam Bhogalinga Swamy v. ACIT* (supra) relied on by the Ld.CIT(A) could not be applied to the instant case due to the fact that cash was recovered in that case which is not the fact in the instant case. He therefore pleaded that the order of the Ld.AO be upheld on this issue.

6. Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the Ld. AO during the remand proceedings vehemently objected to the telescoping benefit claimed by the assessee but has not negated the information furnished by the assessee. Ld.AR further submitted that there was unaccounted income which was admitted in the hands of M/s. Vijaynagar Biotech Pvt. Ltd., arising out of the sale of gunny-bags which was admitted while filing the return of income by M/s. Vijaynagar Biotech Pvt. Ltd., and hence the same could be telescoped for the purpose of marriage expenditure of the children of the assessee. Ld.AR heavily relied on the orders of the Ld.CIT(A).

7. We have heard rival contentions and gone through the material available on record. The only contention of the Ld. AO is that the cash arising out of the unaccounted income towards sale of gunny-bags which was admitted in the hands of M/s. Vijaynagar Biotech Pvt. Ltd., cannot be telescoped to the marriage expenditure incurred by the assessee in his personal capacity. The main objection of the Ld. AO is that the said unaccounted income / cash belongs to the company i.e., M/s. Vijaynagar Biotech Pvt. Ltd., but does not belong to the assessee and hence the benefit of telescoping cannot be granted to the assessee. However, we find that the assessee is the Director of M/s.Vijaynagar Biotech Pvt. Ltd., and the expenditure regarding the marriage of the children of the assessee was based on the incriminating material seized from the residence/business premises of the assessee. Further, we also find from the

Remand Report that Ld. AO has not disputed the claim of the assessee that he had incurred an expenditure of Rs. 1,20,00,000/- as against Rs.1,25,00,000/-. Even though the Ld.AO accepted that assessee incurred an amount of Rs. 1,20,00,000/- but added an amount of Rs.1,25,00,000/- during the 153A proceedings. The Ld. AO also did not dispute the fact that the unaccounted income from sale of gunny bags was admitted in the hands of M/s.Vijaynagar Biotech Pvt. Ltd. The Ld. CIT(A) while considering the above facts has relied on the ratio laid down in the case of Badam Bhogalinga Swamy v. ACIT (supra) and held in Para No. 7.7 as under: -

“7.7 I have considered the above submissions and rival contentions. The Appellant's AR also submitted that an identical issue was considered and allowed by my predecessor in the case of D Jyotsna. The CIT(A), in turn relied upon the jurisdictional Hon'ble ITAT in the case of Badam Bhogalingaswamy Vs ACIT in ITA no.s 06&09/VIZ/2021. The relevant findings of the order passed by CIT(A)-3 dtd 1.5.2023 in the case of D Jyotsna for AY 2014-15 is as below;

*"Hence, the issue here is considering the balance amount of Rs. 15 lakhs only for telescoping benefits from the additional income of Rs.63 lakhs admitted by Vijayanagar Biotech Limited. The AO did not accept the telescopic benefit by holding that the income was offered by a third party and hence telescopic benefits cannot be granted to the appellant. From the material on record it is seen that all the group concerns are owned by one family headed by Sri D. Ranga Raju and the AO himself accepted the fact that there is interlacing of funds among the group. It was further explained that the claim for telescopic benefits in the hand of all the members of the group is less than the total additional income admitted by the Vijaynagar Bio-tech * Limited. Further there is no material to suggest that the additional income was invested by the company or by the members of the group elsewhere other than in shares of the company. No such expenditure from additional income offered has been mentioned. Coming to denial of telescoping benefit by*

holding that the income declared by a third party cannot be claimed by the appellant, the hon'ble Jurisdictional Tribunal Visakhapatnam held in the case of Badam Bhogalinga Swamy Vs. ACIT, Central Circle-1 in I.T.A Nos. 06&09VIZ/2021 (Asst. Years: 2017-18 & 2018-19 as under:

“20. Per contra, the Ld.AR submitted that the assessee has admitted the additional income of Rs.1,23,88,439/- for the earlier year in the hands of the company and the cash found was belonged to the company and hence, requested for telescopic benefit. The Ld.AR further argued that the residential premises of all the directors and the business premises of the company were searched and no evidence was found during the course of search evidencing any expenditure for which the source was not explained and therefore submitted that it is unfair to reject the telescopic benefit requested by the assessee, hence, argued that the Ld.CIT(A) has rightly deleted the addition, and no interference is called for in the order of the Ld.CIT(A).

21. We have heard both the parties, perused the material placed on record. There is no dispute that the assessee has admitted the additional income of Rs.1,33,88,439/- for the A.Y.2017-18 and the assessee stated that the cash found during the course of search was belonged to the company M/s.Phozo Digital Pvt. Ltd. and it was the practice to keep cash with the directors of the company in their residences. Since, search u/s 132 was conducted in the residence and the business premises and no evidence was found evidencing application of additional income admitted by the assessee, either in the hands of the company or in the hands of the directors, we do not find any reason to reject the telescopic benefit requested by the assessee. Hence, we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Appeal of the revenue on this ground is dismissed.”

Considering the above judicial pronouncement and facts of the case the addition of Rs. 15,00,000/- is deleted and ground No. 4 is allowed.”

8. In the instant case, it was also not disputed by the revenue that the unaccounted cash admitted by the M/s. Vijaynagar Biotech Pvt. Ltd., has been utilised for some other purpose other than the marriage expenditure. During the search conducted in the residence and business premises of the assessee, no evidences were found or brought on record towards application of unaccounted income either by the Company or by the directors. In these circumstances, we find that the Ld. CIT(A) has rightly relied on the ratio laid in Badam Bhogalinga Swamy v. ACIT (supra) and therefore we find no reason to interfere with the order of the Ld. CIT(A) while upholding the same. Thus, grounds raised by the revenue are dismissed.

9. With regard to cross objection filed by the assessee, since the grounds raised by the revenue are dismissed as aforesaid, the cross objection which is supporting the order of the Ld.CIT(A) is dismissed as infructuous.

10. In the result, appeal of the revenue as well as cross objection of the assessee are dismissed.

Order pronounced in the open court on 09th June, 2025.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
उपाध्यक्ष/VICE PRESIDENT
Dated: 09.06.2025
Giridhar, Sr.PS

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

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Datla Vivekananda Raju**
Flat No. 302. MAP Hightide
Rushikonda, Madhurawada
Visakhapatnam – 530041
Andhra Pradesh
2. राजस्व/ The Revenue : **DCIT – Central Circle -1**
5th Floor, Direct Taxes Building
MVP Colony, Visakhapatnam – 530017
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