

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. No.85 & 86/Viz/2020

(निर्धारण वर्ष / Assessment Year : 2006-07 & 2007-08)

Special Deputy Collector
(Land Acquisition),
NAVY, Elamanchili,
Visakhapatnam.

TAN: VPNO00199D

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs.

Income Tax Officer,
Ward-6(2),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri Santhibhushan,
Dy. Tahasildar

Sri S.P.G. Mudaliar, Sr. AR

25/04/2022

27/04/2022

ORDER

PER DUVVURU RL REDDY, Judicial Member :

The captioned two appeals are filed by the assessee against the orders of the Ld. CIT(A)-2, Visakhapatnam in F.No. ITA No. 781 & 782/2011-12/ITO, W-6(2)/VSP/2019-20, dated

26/09/2019 passed U/s. 201(1)/201(1A) r.w.s 250(6) of the Act for the AYs 2006-07 and 2007-08.

2. The assessee has raised five similar grounds in its two appeals for the AYs 2006-07 and 2007-08 and therefore for the sake of reference the grounds raised for the AY 2006-07 are extracted herein below:

- “1. *The order of the CIT(A)-2, Visakhapatnam is contrary to the facts of the case.*
2. *The CIT(A) was not justified in stating that none appeared and therefore the case is finalized based on merits of the case. The observations of the Ld. CIT(A) is not based on facts as the CIT(A) did not issue any notice of hearing and finalized the appeal without hearing the appellant. Hence the appellant prays for relief.*
3. *The appellant paid the compensation amount to the respective owners of the land which was acquired by the Special Deputy Collector, Land Acquisition Navy. In fact, the land thus acquired was an agricultural land and is not subject to tax provisions for making TDS U/s. 201(1) of the Income Tax Act, 1961 and consequent levy of interest U/s. 201(1A) of the Act. As the appellant did not have the opportunity to make any submissions in this regard, the appellant prays for relief.*
4. *As the appellant had gathered very vital information with great difficulty on the basis of the observations of the Hon'ble Tribunal in the same assessee's case when it was set aside to the file of Assessing Officer. However, as proper opportunity was not given by the Ld. CIT(A), the same could not be produced. Hence, the appellant prays for relief.*

5. *For these and other grounds that may be urged at the time of appeal hearing, the appellant prays for relief.”*

3. Before us, on behalf of the assessee Shri Santhibhushan, Deputy Tahasildar appeared and submitted that this is the second round of proceedings before the Hon'ble Tribunal. In the first round of proceedings, in the case of the assessee the Ld. AO (Income Tax Officer, Ward-6(3), Visakhapatnam) had passed orders U/s. 201(1)/201(1A) of the Act, dated 15/07/2008 for both AYs 2006-07 and 2007-08 holding that the assessee has failed to make TDS on the compensation paid to ryots against acquisition of the lands other than agricultural lands in addition to the structures, if any and raised demands of Rs.1,57,63,161/- and Rs.64,73,794/- for the AYs 2006-07 and 2007-08 respectively. Aggrieved by the orders of the Ld. AO, the assessee filed appeals before the Ld. CIT(A) and the Ld. CIT (A) dismissed the appeals. On further appeal, the Hon'ble Tribunal considering the submissions of the assessee set-aside the orders of the Ld. CIT(A) and directed the Ld. AO to verify the nature and use of the lands relatable to the compensation paid to the Ryots and compute the liability U/s. 201(1)/201(1A) afresh. Consequently, giving effect to the order of the Hon'ble Tribunal, complying the directions of the Tribunal, the Ld. AO computed the tax liability U/s. 201(1)/201(1A) afresh and raised demand of Rs. 1,25,03,825 and Rs.87,34,775/- for the AYs 2006-07 and 2007-08

respectively. Aggrieved by the orders of the Ld. AO, the assessee filed appeals before the Ld. CIT(A). On appeal, the Ld. CIT (A)-2, Visakhapatnam had passed *ex-parte* orders without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A) in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. Deputy Tahasildar and argued that sufficient opportunities had been provided to the assessee however, on the given dates of hearing none appeared before the Ld. CIT (A). Therefore the Ld. CIT (A) had no other option but to pass *ex-parte* order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that at the time of hearing of the appeals before the Ld. CIT(A), none appeared on behalf of the assessee before the CIT(A) on the given dates of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeals *ex-parte*. In this situation, considering the nature of issues involved in the appeals and the prayer of Mr. Santhibhushan, Deputy Tahasildar appeared for the assessee, following the principles of

natural justice as well as in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeals afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, we also hereby caution the assessee being a Government Authority to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on record. It is ordered accordingly.

5. In the result, two appeals filed by the assessee are allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on the 27th April, 2022.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :27.04.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee – Special Deputy Collector, Land Acquisition, NAVY, Elamanchili, Visakhapatnam Dist., Andhra Pradesh – 532001.
2. राजस्व/The Revenue – Income Tax Officer, Ward-6(2), Infinity Towers, Sankharmattam Road, Visakhapatnam.

3. The Chief Commissioner of Income Tax, Visakhapatnam. (ii) The Commissioner of Income Tax (TDS), Vijayawada.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-2, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam