

आयकरअपीलीयअधिकरण, 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.107/Viz/2020
(निर्धारण वर्ष / Assessment Year : 2011-12)**

Sri Kasireddy Mariyya
6-11, Padamara Vipparru
Tadepalligudem Mandal
West Godavari
[PAN : BSFPK9308D]
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer
Ward -1
Tadepalligudem

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Shri S.P.G.Mudaliar, DR

सुनवाई की तारीख / Date of Hearing

: 04.05.2022

घोषणा की तारीख/Date of Pronouncement

: 14.07.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by assessee against the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"], Rajamahendravaram in ITA No.10697/2014-15/CIT(A)/RJY dated 04.12.2019 for the Assessment Year (A.Y.) 2011-12.

2. Brief facts of the case are that the assessee is an individual, filed his return of income admitting total income of Rs.2,79,000/-. The case was

selected for scrutiny under CASS and accordingly, notices were served on the assessee. The assessee failed to produce books of accounts, bills and vouchers. The Assessing Officer (AO) resorted to estimation of income @5% of purchases net off other deductions and estimated the income at Rs.4,98,868/-. An amount of Rs.2,29,903/- was offered in the return of income filed for the relevant assessment year. The differential amount of Rs.2,18,965/- was added back to the income returned. The assessee claimed to have his initial capital investment of Rs.6,20,000/- as loans from 34 different persons. No confirmations were filed in respect of such lenders. In addition, the assessee reflected borrowings from friends and relatives to the tune of Rs.26,00,000/-. In the absence of production of above people for examination and other information, the assessee was asked to show cause why such total credits to the tune of Rs.32,20,000/- should not be added. However, considering the report of the inspector, the AO had allowed Rs.1,50,000/- and added the remaining amount of Rs.30,70,000/- being unsubstantiated capital and unsecured loans and completed the assessment proceedings by passing an order dated 24.03.2014.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO holding that mere submitting the names of lenders is not sufficient to prove their authenticity and creditworthiness. The assessee is accountable to prove the creditworthiness of his lenders.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before the Tribunal and raised the following grounds :

1. *The order dated 04.12.2019 of the Commissioner of Income Tax (Appeals), Rajahmundry in ITA No.10697/2014-15/CIT(A)/RJY for the asst.year 2011-12 under PAN BSFPK9308D is contrary to law, the weight of evidence and the probabilities of the case.*

2. *The Ld.Commissioner of Income Tax (Appeals) erred in confirming the addition towards unsubstantiated capital and unsecured loans of Rs.30,70,000.*

3. *The Ld.Commissioner of Income Tax (Appeals) erred in observing that the persons who had lent money to the appellant were agriculturists and never assessed to tax.*

4. *The Ld.Commissioner of Income Tax (Appeals) ought to have seen that the details of the lenders in the form of income tax returns, financial statements and identity proofs were submitted before him on 29.04.2015.*

5. *The Ld.Commissioner of Income Tax (Appeals) should have seen that the appellant had discharged the onus of proving the identity, genuineness and creditworthiness of the lenders.*

6. *The Ld.Commissioner of Income Tax(Appeals) ought to have considered the submissions made by the appellant during the course of appellate proceedings.*

7. *For these and others that may be urged at the time of appeal hearing, the appellant prays that the appeal may be allowed.*

5. Ground No.1 and 7 are general in nature which does not require specific adjudication.

6. Ground No.2 to 6 are related to confirmation of addition towards unsubstantiated capital and unsecured loans. The Ld. Counsel for the assessee has submitted that without any basis, the AO estimated the income @5% on purchases. The AO failed to appreciate the claim of the assessee about the capital investment of Rs.6,20,000/- as loans from 34 different persons. The assessee borrowed the same from friends and relatives to the tune of Rs.26,00,000/- and all these 34 persons are small farmers and they gave small amounts to the assessee as loans. Therefore, the Ld.Counsel for the assessee submitted that the AO as well as the CIT(A) has not correctly appreciated the facts and pleaded to set aside the orders of the lower authorities.

7. On the other hand, the Ld.DR viewed that the assessee failed to file any confirmation letters before the AO as well as the Ld.CIT(A). However, the assessee has given some details. After considering the same, the Ld.AO

allowed Rs.1.5 lakhs and confirmed the balance of Rs.24,50,000/- as unexplained income and the Ld.CIT(A) also confirmed the addition made by the AO and passed the order. He further submitted that the assessee also filed details of 33 persons shown as creditors before the Ld.CIT(A) during the first appellate proceedings. Therefore, the Ld.CIT(A) remitted the matter back to the file of the AO asking for remand report. Based on the remand report sent by the AO, the Ld.CIT(A) dismissed the grounds of appeal filed by the assessee. Hence, Ld.DR pleaded to confirm the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

8. We have heard both the parties and perused the material available on record. After examination of the details in the remand report, we find that the assessee failed to produce the details of the creditors. For the sake of clarity, the relevant part of the remand report is reproduced as under :

“(ii) 16 out of 43 persons, in their returns of income, have given their address as “D.No.20B-5-26, Sekhar Street, Eluru”, which is not in existence. Further, the remaining 27 persons also could not be located at their addresses mentioned in their returns of income. However, their income tax details are verified on AST and the findings are appended in Annexure-A, along with screen shots.

From the above it could be summarised that 17 name lenders have filed returns for the financial year during which the amount is advanced by them and in 23 cases, the returns were filed upto the assessment year 2009-10, declaring meagre incomes. Subsequent to the assessment year 2011-12, 33 persons did not file the returns of income. This gives a strong impression to come to the following observations :

In the name of friendly gesture, the amount started changing the hands from one person to another with careful planning to avoid the incidence of taxation.

As the essential ingredients are not cumulatively satisfied in respect of the transactions made by the assessee with that of (i) 33 persons (shown as creditors to the tune of Rs.6.20 lakhs from whom the loans were taken directly) (ii) the 10 persons (shown as creditors to the tune of Rs.32.20 lakhs) and such satisfaction utterly failed in respect of the transactions made by the above-said creditors with that of various persons (numbering 27 after considering the repetitive character of persons). As such it is submitted that the addition made by the assessing officer has a clear basis."

Upon perusal of the remand report, we are of the view that the assessee failed to produce satisfactory evidence before the AO during the remand proceedings. The AO has carefully examined the details and he has passed the remand report in detailed manner, which clearly shows that the assessee failed to produce satisfactory evidence to substantiate the claim of the assessee. Therefore, we do not find any infirmity in the orders passed by the lower authorities and dismiss the grounds raised by the assessee.

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

Order Pronounced in open Court on 14th July, 2022.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 14.07.2022

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

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

1. निर्धारिती/ The Assessee - Sri Kasireddy Mariyya, 6-11, Padamara Vipparru, Tadepalligudem Mandal, West Godavari
2. राजस्व/The Revenue – Income Tax Officer, Ward -1, Tadepalligudem
3. प्रधान आयकर आयुक्त / The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. आयकर आयुक्त (अपील) / Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam