

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.616/Viz/2019

(निर्धारणवर्ष/ Assessment Year : 2009-10)

Pydimarri Venkata Naga Suresh
Kumar, Gollapudi,
Vijayawada.

PAN: AJDPP 5173 H

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Appellant by

प्रत्यार्थीकीओरसे/ Respondent by

Vs. Income Tax Officer,
Ward-1(3),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri K. Siva Ram Kumar, CA

Sri ON Hari Prasadarao, Sr AR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of
Pronouncement

: 18/07/2022

: 22/08/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the rectification order U/s. 154 passed by the Learned Commissioner of Income Tax (Appeals), Vijayawada [Ld. CIT (A)] in appeal No.19/CIT(A)/VJA/15-16, dated 26/07/2019 for the AY 2009-10.

2. Brief facts of the case are that the assessee is engaged in the business of wholesale trading in Copra and Sugar filed his return of income for the AY 2009-10 admitting a total income of Rs. 1,22,030/-. The Ld. AO made an addition of Rs. 7,57,765/- towards the profit derived from unaccounted business transactions in Copra carried out through the bank account held with ICICI bank and determined the total income of Rs. 8,79,770/-. Thereafter, the Ld. CIT, Vijayawada invoked the provisions of section 263 of the Act after issuing a show cause notice to the assessee and directed the AO to adopt gross profit rate @ 40.25% on the undisclosed purchases made by the assessee. The Ld. AO as per the directions of the Ld. CIT, Vijayawada passed an order U/s. 143(3) r.w.s 263 of the Act determining the total income at Rs. 17,46,110/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the CIT(A), Vijayawada. The Ld. CIT(A), Vijayawada while disposing off the appeal followed the decision of the Hon'ble ITAT, Visakhapatnam in the assessee's own case in ITA No.294/Vizag/2017, dated 11/07/2018 directed the AO to adopt gross profit @ 15% on the unaccounted turnover. Aggrieved by the order of the Ld. CIT(A), the AO filed a rectification petition u/s. 154 of the Act before the Ld. CIT(A), Vijayawada. The Ld.

CIT(A), Vijayawada after considering the submissions made by the assessee allowed the rectification petition filed by the AO based on the fact that the Ld. AO had acted duly on the specific direction of the CIT. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

3. The assessee has raised various grounds of appeal and the crux of the issue relates to the validity of the rectification order passed by the Ld. CIT(A).

4. The Ld. Authorized Representative [Ld. AR] argued that even though the assessee has not contested the order passed by the Ld. CIT, Vijayawada U/s. 263 of the Act, but has contested the assessment order passed U/s. 143(3) r.w.s 263 of the Act before the Ld. CIT(A). The Ld. CIT(A) considering the assessee's own case in the AY 2007-08 allowed the appeal of the assessee by respectfully following the decision of the ITAT, Visakhapatnam in ITA No.294/Vizag/2017, dated 11/07/2018.

Per contra, the Ld. DR relied on the orders of the Authorities below.

5. We have heard both the parties and perused the material available on record and the orders of the Authorities below. The

only issue in this case is the validity of rectification order passed U/s. 154 of the Act by the Ld. CIT(A), Vijayawada. It is noticed that the Ld. CIT(A), Vijayawada while passing the original order dated 10/08/2018 has considered the decision of the Hon'ble ITAT in ITA No.294/Vizag/2017, dated 11/07/2018 by allowing the estimation of gross profit @ 15% of the turnover for the AY 2007-08. Since the facts are similar for the AY 2009-10, we find that the rectification order passed U/s. 154 of the Act by the Ld. CIT(A), Vijayawada in appeal No. 19/CIT(A)/VJA/15-16, dated 26/07/2019 did not have legs to stand. Therefore, we are of the considered view that the rectification order passed by the Ld. CIT(A) dated 26/07/2019 deserves to be set-aside the original order of the Ld. CIT(A), Vijayawada dated 10/08/2018 be restored and the appeal of the assessee is hereby allowed. It is ordered accordingly.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 22nd August, 2022.

Sd/-

(दुव्वूरुआर.एलरेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 22.08.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-Pydimarri Venkata Naga Suresh Kumar, Prop. Sri Madhavi Enterprises, Shop No.223, MGW Commercial Complex, Gollapuri, Vijayawada, Andhra Pradesh – 520012.
2. राजस्व/The Revenue –Income Tax Officer, Ward-1(3), Central Revenue Buildings, MG Road, Vijayawada, Andhra Pradesh-520002.
3. The Principal Commissioner of Income Tax, Vijayawada.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), Vijayawada.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam