

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.57/Viz/2021
(निर्धारण वर्ष / Assessment Year : 2016-17)**

Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

Vs. Sri Idupulapati Srinivasarao
50-1-41/B, ASR Nagar
Seethammadhara
Visakhapatnam
[PAN : BGCPS1164C]

**Cross Objection No.6/Viz/2022
(Arising out of I.T.A.No.57/Viz/2021)
निर्धारण वर्ष / Assessment Year : 2016-17)**

Sri Idupulapati Srinivasarao
50-1-41/B, ASR Nagar
Seethammadhara
Visakhapatnam
[PAN : BGCPS1164C]

Dy.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

राजस्व की ओर से / Revenue by
निर्धारिती की ओर से/ Assessee by

: Shri ON Hari Prasada Rao, DR
: Shri I Kama Sastry, AR

सुनवाई की तारीख / Date of Hearing

: 02.08.2022

घोषणा की तारीख/Date of Pronouncement

: 09.09.2022

ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the revenue against the order of the
Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]-1,
Visakhapatnam in ITA No.10318/2018-19/CIT(A)-1/VSP/2020-21

dated 14.05.2020 for the Assessment Year (A.Y.) 2016-17 and cross objection is filed by the assessee.

2. Brief facts of the case are that the assessee is an individual and filed his return of income for A.Y.2016-17 on 31.03.2018, declaring a total income of Rs.6,73,160/-. The return of income filed on 31.03.2018 was selected for limited scrutiny under CASS to examine the issue 'cash deposit during the year'. Accordingly, notice u/s 143(2) of the Income Tax Act, 1961 (in short 'Act') dated 14.08.2018 was issued and served upon the assessee on 03.09.2018. The assessee is a director in M/s ISR Infra Pvt Ltd. and the remuneration of Rs.6,00,000/- was received by the assessee. The Assessing Officer (AO) observed that an amount of Rs.1,56,10,000/- was found credited in the bank accounts of the assessee. Accordingly, a show cause notice was issued to the assessee, proposing to treat the credits / deposits of Rs.1,56,10,000/- as unexplained money u/s 69A of the Act. In response to show cause notice, the assessee had filed a reply seeking time to furnish the information. The AO concluded that the assessee has no explanation for the sources of funds appearing as credits / deposits in his bank accounts. Accordingly treated the amount of Rs.1,56,10,000/- as unexplained money u/s 69A of the Act and added to the total income of the assessee for the A.Y.2016-17.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and submitted that the assessee had explained the sources through his ledger account in the books of the company and the cash flow statement on 20.12.2018. The assessee submitted that the AO without considering the explanation, invoked wrong provision and made the addition u/s 69A. M/s ISR Infra Pvt. Ltd. in which the assessee is an MD has become insolvent and the banks have declared NPA and gone for auction on 09.03.2018. Owing to these conditions, the main contractor i.e. IVRCL has gone for insolvency. The bills pertaining to the assessee company were not recovered / collected. The assessee further submitted before the Ld.CIT(A) that he had withdrawn an amount of Rs.95,12,100/- from the bank and the same was deposited. The remaining amount of Rs.60,97,900/- was deposited out of the sale proceeds of quarry material and crusher sales of company M/s ISR Infra (P) Ltd. The deposits were reflected in the books of company. M/s ISR Infra (P) Ltd was scrutinized in the year 2015-16 relevant to the A.Y.2016-17 and no adverse inference was drawn by the AO. There was a running account of the assessee with the company and the amounts transferred from the company were treated as loans given to the MD. The Ld.CIT(A) after careful consideration of the facts, written submissions and the decision of the AO held that the assessee

had produced the copies of bank account. The assessee has made cash deposits in the bank account ICICI Bank / Indus Ind Bank and Indian Overseas Bank. The Ld.CIT(A) observed that the withdrawals were made in these accounts before depositing the money and the sources to the extent of Rs.92,87,000/- is from bank withdrawals. The assessee had also shown commission income of Rs.2,25,000/-. Ld.CIT(A) observed that the remaining sources for Rs.60,97,900/-, the assessee had received Rs.62,52,000/- from M/s ISR Infra (P) Ltd. The Ld.CIT(A) also verified the ledger account and found that the payments are coming from the company.

With regard to invocation of section 69A, the Ld.CIT(A) held that in order to invoke the provisions of section 69A, all the conditions below must exist. Absence of any condition will render the provision ineffective.

1. Money, bullion, jewellery or valuable article must be found to be owned by appellant
2. There must be books of account
3. The money, bullion, jewellery or valuable article is not recorded in the books.
4. Appellant fails to explain the source of acquisition
5. Explanation offered is not to the satisfaction of Assessing Officer

The Ld.CIT(A) observed that the company is maintaining books of account The assessee is maintaining bank account which forms part of his day book, which in turn forms part and parcel of books of account. The

assessee had explained the sources with reference to deposits. The Ld.CIT(A) opined that the assessee had reasonably explained the sources for cash deposits, but the AO wrongly invoked section 69. In view of the facts and circumstances, the Ld.CIT(A) directed the AO to delete the addition made.

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

1. *The order of the Ld.CIT(A) is erroneous both on facts and in law.*
2. *On the facts and in the circumstances of the case, the Ld.CIT(A) erred in deleting the quantum addition made u/s 69A of the Income Tax Act, 1961, when the assessee has not furnished the complete information during the course of assessment proceedings as called for by the Assessing Officer.*
3. *On the facts and in the circumstances of the case, the Ld.CIT(A) ought to have remitted the matter back to the file of the Assessing Officer for verification of the additional information filed during the appellate proceedings.*
4. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and or at the time of hearing of appeal.*
5. *For these and other grounds that may be urged at the time of appeal hearing. It is prayed that addition made by the AO be restored.*

5. At the outset, the Ld.DR brought to the notice of the Bench that the Ld.CIT(A) has not called for remand report from the AO, AO has no opportunity to verify the additional evidence placed before the CIT(A)

during the appellate proceedings. Therefore, he pleaded for one more opportunity to the AO to examine the additional evidence placed before the Ld.CIT(A).

6. Per contra, the Ld.AR submitted that on this aspect, Ld.CIT(A) examined all the cash deposits and withdrawals and also verified the ledger accounts.

7. We have heard both the parties and perused the material placed on record. Admittedly, all the additional evidences which were placed before the CIT(A) were not placed before the AO while passing the assessment order. Therefore, we find force in the argument of the Ld.DR and the matter is remitted back to the file of the AO to examine the additional evidence placed by the assessee during the appellate proceedings. The assessee is directed to place all the additional evidences before the AO, which were placed before the Ld.CIT(A). AO is directed to give opportunity to the assessee before passing the assessment order. Thus, we set aside the order passed by the Ld.CIT(A) and allow the appeal of the revenue for statistical purpose.

8. In the result, the appeal of the revenue is allowed for statistical purpose and cross objection of the assessee is dismissed.

Order pronounced in the open court on 9th September, 2022.

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 09.09.2022

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 Idupulapati Srinivasarao, 50-1-41/B, ASR Nagar, Seethammadhara, Visakhapatnam
2. राजस्व/The Revenue - Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
3. प्रधान आयकर आयुक्त /The Principal Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam