

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.92, 93, 94 & 95/Viz/2020

(निर्धारण वर्ष / AYs: 2010-11, 2012-13, 2013-14 & 2014-15)

Anumolu Avnash,
D.No.11-8-34, Daspalla Hills,
Visakhapatnam,
Andhra Pradesh-530003.
PAN: AAMPA 1094 J

(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. Deputy Commissioner of
Income Tax,
Central Circle-2,
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri G.V.N. Hari, Advocate

Sri MN Murthy Naik, CIT-DR

27/10/2022

21/12/2022

ORDER

PER BENCH:

The captioned appeals are filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in appeal Nos. 181, 183, 184 & 185/2017-18/CIT(A)-3/VSP/2019-20, dated 31/10/2019 arising out of the order passed U/s. 143(3) r.w.s 153A of the Income Tax

Act, 1961 [the Act]. Since the issues raised in all these appeals are identical, for the sake of convenience, these appeals are clubbed, heard together and disposed off in this consolidated order. Considering the identical issues involved in all these appeals, we shall take up ITA No. 92/Viz/2020 (AY: 2010-11) as a lead appeal and proceed to adjudicate the same in the following paragraphs.

2. Briefly stated the facts are that the assessee is an individual filed his return of income for the AY: 2010-11 admitting a total income of Rs. 20,73,610/-. Subsequently, search and seizure operations were conducted u/s. 132 of the Act along with Sri A.T. Rayudi, Sri a. Avnash, Smt. A. Ammaji and M/s. ATR Ware Housing Private Limited, Visakhapatnam on 14/10/2015. During the course of the search proceedings certain documents, loose sheets and total apart from data in computers found and seized. Accordingly, notice U/s. 153A of the Act was issued and served on the assessee. In response, the assessee filed return of income on 23/11/2016 admitting the same income filed U/s. 139(1) of the Act. Subsequently, notice U/s. 143(2) was issued on 19/06/2017 and served on the assessee on 20/06/2017 and notice U/s. 142(1) was issued on 21/07/2017 and served on the

assessee on 10/08/2017. Thereafter another notice U/s. 143(2) was issued on 21/7/2017 to furnish the information with respect to the questionnaire attached to the notice. The assessee sought adjournment stating that he was approaching Settlement Commission. A final opportunity was provided on 1/12/2017 to the assessee for which also there was no response from the assessee. Another reminder was issued on 20/12/2017 to the assessee. In response, on 23/12/2017, the assessee sought adjournment to 26/12/2017. Consequent to the information furnished by the assessee and the Ld. AR, the Ld. AO framed the assessment by making an addition of Rs. 41,23,643/- for the AY 2010-11 considering the unsecured loans taken in cash by the assessee which is not recorded in the books of account of the assessee u/s. 68 of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee submitted various information and also asserted that the assessee is not aware of the CD seized from the premises of M/s. ATR Warehousing Private Limited. Before the Ld. CIT(A), the assessee also submitted that since the one entry in the name of Smt. Padmaja Kolluru is available in the Excel Sheet named FINANCE.XLS which is accounted in the books of account of the assessee does not mean that the other entries

belongs to the assessee and hence should not be considered in the hands of the assessee. The Ld. CIT(A) dismissing the arguments of the Ld. AR, confirmed the order of the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

3. The assessee has raised the following grounds of appeal:

"The order of the Ld. CIT(A) is bad and unsustainable in the eyes of law as the same is passed without proper application of mind, as it is also contrary to the spirit and provisions of the Income tax Act, 1961:

- (i) That having regard to the facts and circumstances of the case, the present assessment pursuant to section 153A is not justified as the search conducted on the appellant was based on illegal search warrant.*
- (ii) That having regard to the facts and circumstances of the case, the present assessment is not justified as no incriminating material was found in the course of search.*
- (iii) That having regard to the facts and circumstances of the case, the Ld. AO has not erred in passing the impugned assessment order which was passed pursuant to a notice issued U/s. 153A which itself was perverse in law.*
- (iv) The Ld. CIT(A) has erred in law and on facts by holding the sum of Rs. 41,23,643/- being cash receipts without corresponding entries in books of account and that the aforesaid sum should be treated as undisclosed income.*
- (v) The Ld. CIT(A) has erred in law and on facts by holding the said sum as undisclosed income based on surmises and conjectures."*

4. With respect to Grounds No. (i) to (iii) raised by the assessee, we have perused the material available on record and the orders of the Authorities below. Grounds Nos. (i), (ii) and (iii) pertain to justification of the search conducted and

consequential order passed by the Ld. AO which was considered perverse. It is not the fact that no incriminating material found during the search operations. The Ld. AO in his order has clearly corroborated the evidences found at the time of search and seizure in para 5.5 of the order and quoted the reference to the Annexure/A/ATR/PO/Res/1. It is a settled law that once a search was made U/s. 132 of the Act the Assessing Officer is bound to issue notice U/s. 153A of the Act to the assessee. Consequently, the Ld. AO is also empowered to assess or reassess the total income of the assessee for a period of six assessment years. In the instant case, it is also found that some incriminating material with respect to the unsecured loans has been seized by the Ld. Revenue Authorities. Assessments and reassessments pending on the date of search shall abate and it empowers the Ld. AO to re-do the assessment with the same. In respect of non-abated assessments if any incriminating material is found for the relevant assessment year, section 153A empowers the Ld. AO to reassess the income with respect to the assessment year in which the incriminating material was found. In our considered opinion this would be correct understanding of the provisions of section 153A of the Act as otherwise the necessity

of bifurcation of abated and non-abated assessment in section 153A would become redundant and would lose its relevance. In the instant case, the incriminating material found at the time of search with respect to unsecured loans has been reassessed by the Ld.AO with respect to the non-abated assessment for the impugned assessment year. Therefore, we are of the considered view that these grounds raised by the assessee do not have legs to stand and hence dismissed. Having dismissed the legal grounds we now proceed to adjudicate the other grounds raised by the assessee on merits.

5. With respect to Grounds No.(iv) & (v) regarding undisclosed income of Rs. 41,23,643/- for the impugned assessment year, the Ld. AR argued that the additions were made by the Ld. AO without mentioning the section under which the additions were made. The Ld. AR further submitted that the Search & Seizure Team has not confronted the Excel file named FINANCE.XLS with the assessee. The Ld. AR further submitted that based on one entry, which is received by way of cheque from Smt. K. Padmaja and which is also reflected in the books of account of the assessee does not mean that the other amounts in the Excel Sheet belongs to the assessee. The Ld. AR further submitted that

the Ld. AO merely on the basis of assumption treated all the other entries as unexplained receipts and added to the assessee's income in the respective assessment years. The Ld. AR further submitted that the Excel Sheet was seized from the computer in the office premises of M/s. ATR Warehousing Pvt Ltd and not in the premises of the assessee. The Ld. AR therefore pleaded that the order of the Ld. Revenue Authorities be quashed.

Per contra, the Ld. DR relied on the order of the Ld. Revenue Authorities.

6. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. The fact in this case is Excel Sheet named FINANCE.XLS was seized from the computers available at the premises of M/s. ATR Warehousing Pvt Ltd., the very same computer used by the assessee. On perusing the contents of the Excel Sheet, the Ld. AO observed that there are numerous receipts from various persons but none of those receipts except from Smt. K. Padmaja was recorded in the books of account maintained by the assessee. It is also a fact that the content of the Excel Sheet was not confronted with the assessee. The Ld. AO has merely relied on the statement recorded U/s. 131 of the Act

as reply to Question No.5 where the assessee declared the list of persons known to him. The Ld. AO except for the amount received from Smt. Padmaja by way of cheque presumed the other amounts were received by way of cash and hence the assessee did not disclose in its books of accounts. Consequently the Ld. AO treated this undisclosed receipts as undisclosed income of the assessee in the respective assessment years. We find that the Ld. AO has not brought on record any evidence that these amounts belong to the assessee. Further, we find that the Excel Sheet was seized from the business premises of M/s. ATR Warehousing Pvt Ltd., and hence could not be related to the assessee. It is also a fact that no cash been seized from the premises of the assessee. The Search & Seizure Team has also not found any document given by the assessee admitting to cash receipts from various parties. It is also found that the Ld. AO has made an addition of Rs. 41,23,644/- without mentioning whether the addition is made u/s 68 or 69 or any other provisions of law under which the addition is being made. Mere surmises and conjectures of the Ld. AO cannot be a basis for the addition. Even in the statement recorded U/s. 132 of the Act, dated 20/10/2015, 30/10/2015 and 7/12/2015 the contents of the Excel Sheet was not confronted with the assessee. In view of the

above discussions in the instant case, we find that the Ld. AO has merely presumed the cash receipts found in the loose sheets as cash received from various parties by the assessee and has made an addition with respect to the cash receipts in the respective assessment years which is not in accordance with law and therefore we are inclined to delete the addition made by the Ld. AO. Thus, the Grounds No.(iv) & (v) raised by the assessee are allowed.

7. In the result, appeal filed by the assessee is partly allowed.

आयकर अपील सं./ I.T.A. No.93, 94 & 95/Viz/2020
(निर्धारण वर्ष / AYs: 2012-13, 2013-14 & 2014-15)

8. These appeals are filed by the assessee against the order of the Ld. CIT (A)-3, Visakhapatnam. The assessee has raised identical grounds in all these appeals which are similar to that of the grounds raised by the assessee in ITA No. 92/Viz/2022 for the AY 2010-11, which is adjudicated in the above paragraphs of this order. Since the issues involved in all these appeals are identical, our decision given while adjudicating the assessee's appeal for the AY 2010-11 (ITA No. 92/Viz/2022) mutatis mutandis applies to the instant appeals for the AYs

2012-13, 2013-14 & 2014-15 (I.T.A. No.93, 94 & 95/Viz/2020) also. Thus, the grounds raised by the assessee in these appeals are partly allowed.

9. In the result, all the appeals filed by the assessee are partly allowed.

Pronounced in the open Court on the 21ST December, 2022.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated 21.12.2022
OKK - SPS

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

1. निर्धारिती/ The Assessee – Anumolu Avnash, D.No.11-8-34, Daspalla Hills, Visakhapatnam, Andhra Pradesh-530003.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Central Circle-2, MVP Colony, Sector-8, Pratyakshakar Bhavan, Beside Post Office, Visakhapatnam, Andhra Pradesh-530017.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-3, Visakhapatnam.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam