

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.81/Viz/2022

(निर्धारण वर्ष / Assessment Year :2017-18)

Penmetsa Rama Krishna Varma,
Bhimavaram.
PAN: AHJPP 5598 A

Vs. The Asst. Commissioner of
Income Tax,
Circle-1,
Rajahmundry.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

Sri GVN Hari, Advocate

प्रत्यर्थी की ओर से / Respondent by

Sri ON Hari Prasada Rao,
Sr. AR

सुनवाई की तारीख / Date of Hearing

: 07/02/2023

घोषणा की तारीख/Date of

: 16/02/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] in DIN & Order No.ITBA/NFAC/S/50/2021-22/1041153996(1), dated 21/3/2022 arising out of the order passed U/s. 143(3) of the Act for the AY 2017-18.

2. Brief facts of the case are that the assessee is an individual and proprietor of Varma Hospitals, Bhimavaram. The assessee filed his return of income declaring a total income of Rs. 2,02,45,230/- for the AY 2017-18 on 25/10/2017. Subsequently, the case was selected for scrutiny under CASS and a notice U/s. 143(2) was issued on 28/09/2018 and the same was duly served on the assessee. In response to the notice u/s. 143(2) and 142(1) of the Act, the assessee submitted various information called for by the Ld. AO. The Ld. AO observed from the submissions that the assessee has received the employee's contribution of Provident Fund from its employees amounting to Rs. 6,52,269/- and which was paid to the relevant fund account after stipulated due date under respective Act. Similarly, the Ld. AO also observed that the employee's contribution from ESI was not deposited in the relevant account on or before the stipulated due date under the relevant Act. The Ld. AO therefore disallowed a sum of Rs. 6,52,269/- and Rs. 95,693/- towards employees contribution of PF and ESI respectively. The Ld. AO also further disallowed a sum of Rs. 4,93,020/- claimed by the assessee towards vehicle maintenance expenses. Further, the Ld. AO also observed that the assessee has deposited Rs. 93,43,840/- in cash during the demonetization period in three different bank

accounts. Out of the above mentioned cash deposits the Ld. AO found that an amount of Rs. 47,43,840/- was deposited in specified bank notes (SBNs). The Ld. AO considered the opening balance in the books of accounts of the assessee on 8/11/2016 at Rs. 35,92,085/- and the personal cash of Rs. 3,35,840/- at the residence of Dr. PRK Varma (the assessee) kept at his home to meet the personal expenditure and treated the balance Rs. 8,16,000/- as unaccounted cash and added it to the total income of the assessee U/s. 68 of the Act. It is the case of the Ld. AO that SBNs ceased to be a legal tender w.e.f 8/11/2016 vide Notification in S.O. No. 3407(E), dated 8/11/2016 and hence considered the amount deposited as unexplained and taxed u/s. 68 of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), NFAC.

3. Before the Ld. CIT(A), the assessee's representative argued that Rs. 8,16,000/- cannot be treated as unexplained because it is accounted in the books of accounts and it cannot be covered u/s 68 of the Act. Further, the Ld. Assessee's Representative also argued before the Ld. CIT (A) regarding the belated payment of employee's contribution of PF and ESI and cited various judicial decisions. Considering the above submissions, the

Ld.CIT (A) partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

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

- "1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 6,52,269/- made by the AO towards employee's contribution to PF.*
- 3. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 95,693/- made by the Assessing Officer towards employee's contribution to ESI.*
- 4. The Ld. CIT(A) is not justified in upholding the action of the Assessing Officer in treating the fee of Rs. 8,16,000 collected from patients in SBNs after demonetization as 'income from other sources' and bringing the same to tax U/s. 115BBE of the Act.*
- 5. Any other grounds may be urged at the time of hearing."*

5. Grounds No. 1 & 5 are general in nature and needs no adjudication.

6. With respect to Ground No.2 & 3 regarding the disallowance of employee's contribution to PF & ESI amounting to Rs. 6,52,269/- and Rs. 95,693/- respectively, the Ld. AR did not press these grounds due to the decision rendered by the Hon'ble Supreme Court in the case of Checkmate Services Private Limited,

Civil Appeal No.2833 of 2016 dated 2nd October 2022. Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

7. We have heard both the parties and perused the material placed on record. It is apparent from records that the assessee has not deposited the employee contributions of EPF and ESI to respective fund account before the due date specified under the provisions of respective Acts, but deposited the same before the due date of filing of return of income u/s 139(1) of the Income Tax Act, 1961. Hon'ble Supreme Court in it's latest judgement in the case of Checkmate Services Private Limited, Civil Appeal No.2833 of 2016 dated 2nd October 2022, held that *delayed payment of employee contributions of PF / ESI are no longer available for deduction u/s 43B and should suffer disallowance u/s 36(1)(va)*. For the sake of clarity and convenience, relevant part of the order of the Hon'ble Supreme Court is extracted as under :

"54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessee are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee

employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."

8. Respectfully, following the ratio laid down by the Hon'ble Supreme Court, we do not find any reason to interfere with the order passed by the Ld.CIT(A) and accordingly, dismiss the grounds raised by the assessee.

9. Regarding Ground No.4, the Ld. AR argued that the assessee being a Doctor by profession collected his fees in SBNs and accounted it in the books of accounts of the assessee and the cash book was also submitted before the Ld. AO. The Ld. AR further submitted that the hospital was situated in a semi-urban area and most of the patients pay the amount by way of cash. The Ld. AR relied on the decision of the Coordinate Bench of the Tribunal in the case of ITO vs. Sri Tatiparti Satyanarayana in ITA

No. 76/Viz/2021, dated 16/3/2022 regarding the acceptance of the SBNs. The Ld. AR pleaded that the order of the Ld. CIT (A) be set-aside on this issue.

Per contra, the Ld. DR submitted that the hospital is a multi-specialty facility hospital and the patients had multiple ways other than cash to make payments to the hospital. The Ld. DR further submitted that the patients who can afford to receive the services of the multi-specialty hospital also possess the means to pay their fees through electronic modes. The Ld. DR therefore pleaded that the order of the Ld. Revenue Authorities be upheld.

10. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly the assessee has deposited cash to the extent of Rs. 93,43,480/- out of which an amount of Rs. 47,43,840/- was deposited in the denominations of SBNs. The Ld. AO has not disputed the fact regarding treating the cash deposits as turnover of the assessee. the Ld. AO based on the cash book submitted by the assessee treated the amount of Rs. 8,16,000/- as receipts from the patients during the demonetization period in SBNs and treated the same to be

taxable u/s. 68 of the Act, on the premise that SBNs ceased to be a legal tender w.e.f 8/11/2016 vide Notification in S.O. No. 3407(E), dated 8/11/2016.

Section 5 of the Specified Bank Notes (Cessation of Liabilities Act, 2017) Act (herein referred as "SBN Act") clearly states that *on and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or **receive** any specified bank note.* Section 2(1)(a) of the Specified Bank Notes (Cessation of Liabilities Act, 2017) also defines "appointed day" which means the 31st Day of December, 2016. As per the SBN Act, no person is prohibited from receiving/accepting the SBNs on or before 31/12/2016. Further, the guarantee of the Central Government and the liability of the Reserve Bank of India do not cease to exist till 31/12/2016. A person receiving SBNs after the announcement of demonetization where the SBNs ceased to be a legal tender, solely depends on the discretion of the person accepting such payment. The assessee has therefore accepted such SBNs as professional fees and accounted for in the books of accounts and deposited the SBNs into the bank account on or before the specified date. We therefore find the contention of the Ld. Revenue Authorities considering the receipt of SBNs from fees

collected as illegal and thereby invoking the provisions of section 68 is not valid in law. We are therefore inclined to quash the decision of the Ld. CIT(A) on this ground and allow the ground raised by the assessee.

11. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on the 16th February, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 16.02.2023

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

OKK - SPS

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

1. निर्धारिती/ The Assessee – Penmetsa Rama Krishna Varma, D.No.4/2, Suryanarayana Puram, JP Road, Bhimavaram, Andhra Pradesh – 534202.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-1, Aayakar Bhavan, Veerabhadra Puram, Rajahmundry, Andhra Pradesh-533105.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), NFAC, Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam