

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुळारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.139/Viz/2022

(निर्धारणवर्ष/ Assessment Year :2014-15)

Sri Goluguri Nagi Reddy,
Flat No.5, Shiridi Sai Apartments,
Balasumudi, Bhimavaram.
PAN: ABKPG 1138 J

(अपीलार्थी/ Appellant)

Vs. ACIT,
Central Circle-1,
Rajahmundry.

(प्रत्यर्थी/ Respondent)

आयकरअपीलसं./ I.T.A. No.140/Viz/2022

(निर्धारणवर्ष/ Assessment Year :2017-18)

Sri Goluguri Nagi Reddy,
Flat No.5, Shiridi Sai Apartments,
Balasumudi, Bhimavaram.
PAN: ABKPG1138 J

(अपीलार्थी/ Appellant)

Vs. ACIT,
Central Circle-1,
Rajahmundry.

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

: Sri M.V. Prasad, CA

प्रत्यर्थीकीओरसे/ Revenue by

: Sri MN Murthy Naik, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 16/02/2023

घोषणाकीतारीख/Date of

: 28/02/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

Both the captioned appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax-12, Hyderabad [Ld. CIT(A)]

in appeal Nos.10087/2018-19, dated 14/2/2022 (ITA No. 139/Viz/2022) and 10172/2018-19, dated 18/02/2022 arising out of the orders passed U/s. 143(3) r.w.s 153A (AY: 2014-15) and U/s. 143(3) (AY: 2017-18). Though the issues raised in these appeals are different, since both the appeals are pertaining to one assessee, for the sake of convenience, they are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order:

ITA No. 139/Viz/2022

(AY: 2014-15)

2. At the outset the Ld. AR mentioned that there is a delay of 81 days in filing the appeal before the Tribunal. The Ld. AR drew our attention to the affidavit filed by the assessee wherein the assessee explained the reasons for filing the appeal before the Tribunal beyond the prescribed time limit and sought for condonation of delay of 81 days. The Ld. Authorised Representative (Ld.AR) submitted that no proper notice was issued and served on the assessee. Further, the assessee was aware of the appellate order only when consequential order has been intimated to the assessee. The assessee has filed his affidavit as follows:

"1.....

2. *The appellant is not well educated and do not have any knowledge about the Income Tax Law procedures. On receipt of the order he thought that the appeal was finalized in favour of the appellant and did not even consult his authorized representative due to lack of sufficient knowledge. Later when the Department has informed that he need to pay the entire demand raised along with interest, he came to understand that the appeal was dismissed. He immediately approached Authorized Representative who has suggested for further appeal to the Tribunal. Hence the delay is caused due to the unawareness of knowledge.*

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3. On perusal of the explanation given by the assessee for belated filing of the appeal before the Tribunal, we find that the assessee was prevented by a reasonable and sufficient cause in filing the appeal with a delay of 81 days. Considering the same, we hereby condone the delay of 81 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

4. Brief facts of the case are that the assessee is an individual deriving income from business and other sources filed his return of income for the AY 2014-15 admitting a total income of Rs. 4,69,334/- and agricultural income of Rs. 60,000/- on 18/11/2014. The return was summarily processed U/sd. 143(1) of the Act. Subsequently, a search and seizure operation U/s. 132 of the Act was undertaken on 18/1/2017 in the case of Nexus Group. Consequently, the warrant was executed in the name of the assessee and search and seizure operation was carried

out in the assessee's premises. Pursuant to the search and seizure operation the case was centralized with Central Circle-1, Rajahmundry from the erstwhile jurisdiction of ITO, Ward-1, Bhimavaram vide order U/s. 127(2)(a) of the Act passed by the Ld. Pr. Commissioner of Income Tax, Rajahmundry in F.No. 62/Juris./CIT/RJY/2017-18, dated 28/8/2017. Accordingly, notice u/s. 153A was issued on 10/02/2018 and served on the assessee on 16/2/2018. In response, the assessee filed its return of income on 18/3/2018. Subsequently, notice U/s. 143(2) of the Act was issued on 25/05/2018 and served on the assessee on 31/5/2018. A detailed questionnaire was also issued U/s. 142(1) of the Act on 13/8/2018 and the same was served on the assessee. In response the assessee appeared and furnished the details / information called for. The Ld. AO found that a registered affidavit in the name of the assessee containing the details of investment of Rs 25 lakhs as on 30/11/2013 in Annexure-A/NFL/SN/77 and noticed that the assessee has not disclosed the investment in his financial statements. The Ld. AO found that in the balance sheet submitted for the AY 2014-15 this investment in share capital was not disclosed. The Ld. AO therefore, issued a letter dated 4/12/2018 asking him to show cause as to why the above mentioned amount of Rs. 25 lakhs should not be considered as unexplained. Since the assessee did not give any reply but merely stated that it is shown as sundry Debtors in the balance sheet which is

representing the investment. The Ld. AO considered the reply given by the assessee is not acceptable as it is only an afterthought of the assessee to escape tax liabilities and treated it as unexplained investment U/s. 69 of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-12, Hyderabad. Before the Ld. CIT(A), the Assessee's Representative made written submissions on-line to the Ld. CIT(A). The Ld. CIT(A) found that the submissions made by the assessee that the investment of Rs. 25 lakhs in the affidavit was made for enabling the sanction of loan by banks to the related parties where the assessee stood as a guarantor. The Ld. AR submitted before the Ld. CIT(A) that the affidavit was made only for the bank purposes and solely for taking the loan by the company. The Ld. CIT(A) rejected the explanation of the assessee and confirmed the order of the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

5. The assessee has raised eight grounds in its appeal however, the crux of the issues are:

- (i) Legal validity of the notice issued U/s. 153A/153C of the Act; and
- (ii) Treating the amount of loan of Rs. 25 lakhs as unexplained amount by the Ld. Revenue Authorities.

6. With respect to the validity of the notice issued U/s. 153 of the Act, the Ld. AR submitted that the Ld. AO relied on the affidavit found in the premises of Nexus Group where the search and seizure operation was carried out during January 2017, but during the search and seizure operations in the assessee's premises no such incriminating material was found and hence notice issued u/s. 153A of the Act is invalid and the assessment based thereon is void-ab-initio. The Ld. AR relied on the decision of the ITAT, Delhi "C" Bench in the case of DCIT vs. Shivali Mahajan (ITA Nos. 5585/Del/2015 and others) and also the decision of the "G" Bench of the Delhi Tribunal in the case of Mr. Trilok Chand Chaudhary vs. ACIT in ITA No. 5870/Del/2017, dated 20/08/2019. Therefore, the Ld. AR pleaded to quash the assessment order passed U/s. 143(3) r.w.s 153A of the Act.

Per contra, the Ld. DR submitted that the assessee cannot question the validity of the notice whether it is issued U/s. 153A or U/s. 153C of the Act since the assessee's premises was also subjected to search operations. The Ld. DR further submitted that it is a curable mistake U/s. 292B of the Act. The Ld. DR therefore pleaded that the order of the Ld. Revenue Authorities be upheld.

7. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly the

affidavit was found in the premises of Nexus Group when it was subjected to search during January, 2017. No such corroborative evidence was found during the search operations carried out in the assessee's premises. The Ld AO has also not discussed about any corroborative/incriminating evidence and its seizure in the premises of the assessee. We find merit in the argument of the Ld. AR that in the absence of any incriminating material found in the premises of the assessee, notice U/s. 153A of the Act cannot be issued. In the instant case, the affidavit was found in the premises of Nexus Group vide Annexure-A/NFL/SN/77, page 151 to 153, but any corresponding corroborative evidence was not found in the premises of the assessee. In the absence of any evidence or incriminating material found in the premises of the assessee, issuance of notice U/s. 153A could not be made and the assessment could not be framed U/s. 153A of the Act. The case law relied on by the Ld. AR in Mr. Trilok Chand Chaudhary vs. ACIT (supra) by the Coordinate Bench of the Delhi, wherein it was held that *separate search warrant has been issued in the case of the assessee as well as in the case of other party and where the Assessing Officer has used the material found in the case of the other party in the assessment made U/s. 153A of the Act is not permitted in view of the express provision of the law.* Similarly, the Delhi Bench of the Tribunal in the case of DCIT vs. Smt. Shivani Mahajan [ITA No.5585/Del/2015, dated 19/3/2019]

relied on the various decisions of the Hon'ble Delhi High Court and held that *during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person.* Respectfully following the above precedents, we are of the considered view that the assessment made by the Ld. Revenue Authorities U/s. 153A of the Act is not valid in law and therefore considered as void-ab-initio. Therefore, we are inclined to quash the assessment order passed by the Ld. AO.

8. Since the legal ground raised by the assessee is adjudicated in his favour, the other issues raised by the assessee are academic in nature and therefore they are considered as infructuous.

9. In the result appeal of the assessee is allowed.

ITA No. 140/Viz/2022

AY: 2017-18

10. At the outset the Ld. AR mentioned that there is a delay of 77 days in filing the appeal before the Tribunal. The Ld. AR drawn our attention to the affidavit filed by the assessee wherein the assessee explained the reasons for filing the appeal before the Tribunal beyond the prescribed time limit and sought for condonation of delay of 77 days. The Ld

Authorised Representative (Ld.AR) submitted that no proper notice was issued and served on the assessee. Further the assessee was aware of the appellate order only when consequential order has been intimated to the assessee. The assessee has filed his affidavit as follows:

"1.....

2. *The appellant is not well educated and do not have any knowledge about the Income Tax Law procedures. On receipt of the order he thought that the appeal was finalized in favour of the appellant and did not even consult his authorized representative due to lack of sufficient knowledge. Later when the Department has informed that he need to pay the entire demand raised along with interest, he came to understand that the appeal was dismissed. He immediately approached Authorized Representative who has suggested for further appeal to the Tribunal. Hence the delay is caused due to the unawareness of knowledge.*

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11. On perusal of the explanation given by the assessee for belated filing of the appeal before the Tribunal, we find that the assessee was prevented by a reasonable and sufficient cause in filing the appeal with a delay of 77 days. Considering the same, we hereby condone the delay of 77 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

12. Briefly stated the facts of the case are that the assessee is deriving income from business and other sources filed his return of income

admitting a total income of Rs. 3,62,550/- for the AY 2017-18 on 27/01/2018 besides the agricultural income of Rs. 1 lakh. The return was processed U/s. 143(1) of the Act. Subsequently, a search and seizure operation U/s. 132 of the Act was undertaken on 18/1/2017 in the case of Nexus Group. Consequently, the warrant was executed in the name of the assessee and search and seizure operation was carried out in the assessee's premises. Pursuant to the search and seizure operation the case was centralized with Central Circle-1, Rajahmundry from the erstwhile jurisdiction of ITO, Ward-1, Bhimavaram vide order U/s. 127(2)(a) of the Act passed by the Ld. Pr. Commissioner of Income Tax, Rajahmundry in F.No. 62/Juris./CIT/RJY/2017-18, dated 28/8/2017. Accordingly, notice u/s. 142(1) was issued on 16/02/2018 and served on the assessee on 22/2/2018. In response, the assessee requested to treat the return of income filed on 27/01/2018 as return filed in response to notice U/s. 142(1) of the Act. Subsequently, notice U/s. 143(2) of the Act was issued on 25/05/2018 and served on the assessee on 31/5/2018. A detailed questionnaire was also issued U/s. 142(1) of the Act on 13/8/2018 and the same was served on the assessee. In response the assessee appeared and furnished the details / information called for. During the search and seizure operation 2250.41 gms of Gold Jewellery was found and out of that 400.99 gms was seized from the premises of the assessee. When the assessee was confronted to explain the sources

for the jewellery, the assessee in his statement recorded u/s. 132(4) of the Act admitted that he has purchased Gold Jewellery and submitted four bills for the same. The Ld. AO found that the bills were in other person's name and not in the assessee's name. Since no evidence was produced by the assessee, the Ld. AO treated the same as unexplained jewellery to the extent of 1822.21 gms net weight (2011.70 grms gross weight) which was valued at Rs. 46,78,756/- and treated the same as assessee's income u/s. 69A of the Act for the impugned assessment year. Further, the Ld. AO based on the seized material from the assessee's premises noticed that the assessee has sold plots to Sri Gontla Venu Gopal. The Ld. AO issued summon U/s. 131(1) of the Act to the assessee on 23/12/2018 which was served on the same date. The assessee appeared on 24/12/2018 and admitted that he has sold 9-10 plots and agreed to offer those incomes and pay taxes in the current assessment year. The Ld. AO found that the assessee has converted his agricultural land and divided it into plots and three plots were sold in the FY 2016-17 relevant to the AY 2017-18 for a consideration of Rs. 23,71,000/-. Since the assessee converted the agricultural land into plots and sold the same, the Ld. AO treated it as business income and assessed it in the hands of the assessee during the AY 2017-18. Further, the Ld. AO also observed that from the documents seized from the residence of the assessee, loans amounting to Rs 4 crores were advanced to different

people and interest was received from them in cash. Consequent to the summons issued by the Ld. AO, the assessee admitted that he has given Rs. 4 Crs as loans to various parties and has received interest on the same in cash. The assessee also admitted that the source for the loan was an OD account in the Punjab National Bank, Bhimavaram which is in the name of his wife who is the proprietor of M/s. Sai Nagendra Timber and Saw Mill. Based on the admission of the assessee that the interest income was not offered for tax by the wife of the assessee, the Ld AO treated the amount of interest receipts amounting to Rs. 4,34,310/- as income of the assessee for the AY 2017-18. Aggrieved by the above additions in the order of the Ld. AO, the assessee filed an appeal before the Ld.CIT(A). The Ld. CIT(A) considering the Central Board of Direct Taxes [CBDT] Instruction No. 1916, dated 11/5/1994 allowed 1600.00 gms of Gold Jewellery and directed the Ld. AO to treat the balance of 222.21 gms of Gold Jewellery as unexplained. Further, the Ld. CIT(A) also found that the assessee could not produce any cost details pertaining to the plotting of land and directed the Ld. AO to treated the entire sale consideration of Rs. 23,71,000/- as income of the assessee. Similarly, since the interest income of Rs. 4,34,310/- was not disclosed in the hands of the wife of the assessee, Ld. CIT(A) directed the Ld. AO to consider the entire sum as income in the hands of the assessee.

Aggrieved by the order of the Ld. CIT(A), the assessee filed the present appeal before us.

13. The assessee has raised the following grounds in his appeal:

- "1. The Ld. CIT(A) and Assessing Officer have erred in facts and law while passing the order.*
- 2. The Ld. CIT(A) would have considered that the appellant right in the statement given u/s. 132(4) deposed that the gold found belong to himself, his wife and daughter staying abroad and also belonging to other relatives who are residing along with him and therefore would have allowed the benefit for the entire gold and jewellery under appellant's possession as per the CBDT Circular.*
- 3. The Ld. CIT(A) would have appreciated that each male and female members residing along with the appellant are allowed to possess certain quantity of gold and jewellery as per the CBDT circular out of the quantity found during the search and therefore would have allowed such benefit to the gold and jewellery belonging to such persons before upholding the addition made by the Assessing officer treating the entire gold as unexplained.*
- 4. The Ld. CIT(A) ought to have considered the plea of the appellant that credit for Gold and jewellery to the extent supported by the purchase invoices may be given even though they belong to the other members other than the appellant and his wife.*
- 5. The Ld. CIT(A) would have appreciated that only the profit element out of the sale proceeds of the plots to be taxed and therefore would have allowed appeal to such an extent.]*
- 6. The Ld. CIT(A) would have appreciated that the addition made by the Assessing Officer Rs. 4,34,310/- as unexplained interest income received from many persons is not valid and proper without bringing any cogent evidences in proof of receipt of such interest income.*
- 7. The appellant craves to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary."*

14. Grounds No. 1 and 7 are general in nature and need no adjudication.

15. Grounds No. 2, 3 & 4 pertain to the treatment of 222.21 gms of Gold Jewellery as unexplained in the hands of the assessee. The Ld. AR argued that 222.21 gms of Gold Jewellery belong to the granddaughter of the assessee who is not staying with the assessee but has kept in the premises of the assessee. He therefore pleaded that the benefit of the Board's Instruction (supra) shall be granted to the gold belonging to the granddaughter of the assessee. Per contra, the Ld. DR submitted that the Ld. CIT(A) has already granted benefit of the Board's Instruction (supra) to the family members of the assessee and strongly objected to the plea of the Ld. AR for allowing the balance of 222.21 gms of Gold Jewellery which is allegedly belonging to the granddaughter of the assessee.

16. We have heard both the sides and perused the materials available on record and the orders of the Ld. Revenue Authorities. Admittedly, the Ld. CIT(A) has rightly followed the Board's Instruction No. 1916, dated 11/5/1994 and has allowed the Gold in the possession of the assessee to an extent of 1600 gms in accordance with the family members in the premises of the assessee. The Assessee's Representative could not substantiate with evidence that the balance of 222.21 Gms of Gold

Jewellery belongs to the granddaughter of the assessee who had kept their jewellery in the assessee's premises. Neither the Ld. AR produced any copies of bills for claiming the jewellery being purchased by the assessee. In the absence of any material evidence to substantiate the holding of addition gold in the premises of the assessee we find that the Ld. CIT(A) has rightly given the benefit of Board's Instruction (supra) and accordingly treated the balance gold of 222.21 gms as unexplained. We are therefore inclined not to interfere in the decision of the Ld. CIT(A) on this issue. Accordingly, these grounds raised by the assessee are dismissed.

17. With respect to Ground No.5 regarding sale consideration of plots of Rs. 23,71,000/- considered by the Ld. AO as income of the assessee, the Ld. AR submitted that the agricultural land converted into plots and sold by the assessee and should be considered as capital gains. The Ld. AR strongly objected to the treatment of the income as business of the assessee by the Ld. AO. The Ld. AR further submitted that the assessee has developed the land and the cost of development should be considered before treating the same as income of the assessee. The Ld AR pleaded that alternatively if it is considered as business turnover, the income may be estimated.

Per contra, the Ld. DR submitted that the cost of acquisition of the land the cost of development of the land into plot was not produced before the Ld. Revenue Authorities and hence it cannot be considered. The Ld. DR therefore pleaded that the order of the Ld. Revenue Authorities be upheld.

18. 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 sold three plots in the current year by converting the agricultural land into non-agricultural land which is considered as business income by the Ld. AO. It was also observed by the Ld. CIT(A) that the assessee has not submitted the Fair Market Value (FMV) on the date of conversion of the land for the purpose of considering it as capital gains and subsequently, the FMV of the land on the date of conversion was also not submitted before the Ld. Revenue Authorities for considering the same as expenses / cost of acquisition by the assessee for the sale of plots. Further, we also find that the assessee has not submitted the details of land development charges and has not produced copies of any bills either before the Ld. Revenue Authorities or before us. In the absence of any cogent evidence regarding the cost of acquisition of the agricultural land / conversion into plots, obviously certain expenses would have been incurred by the assessee in acquiring the agricultural

lands and cost towards conversion of the agricultural land in to plots. We find that considering the peculiar circumstances of the case it would be reasonable to estimate the business income at 20% on the sale value of Rs 23,71,000/-. We therefore, direct the Ld AO to compute the business income as decided above and thus, this ground raised by the assessee is partly allowed.

19. With respect to Ground No.6 regarding the addition of interest made by the Ld. Revenue Authorities, the Ld. AR argued that the loan amount belongs to the wife of the assessee wherein the wife of the assessee has taken a loan on OD facility from Punjab National Bank, Bhimavaram for Rs. 4 Crs which was the source for the loans given by the assessee for interest. Per Contra the Ld DR relied on the orders of Revenue authorities.

We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. As admitted by Ld AR we find that the interest was not disclosed in the hands of the wife of the assessee. However incriminating evidences was seized with respect of interest by the assessee in the impugned AY. In view of this the Ld. Revenue Authorities have rightly considered it as income of the assessee during the impugned assessment year and hence we are inclined not to

interfere with the decision of the Ld. CIT(A) on this issue. Thus, this ground raised by the assessee is dismissed.

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

Pronounced in the open Court on the 28th February, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 28.02.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-Sri Goluguri Nagi Reddy C/o. CA M.V. Prasad, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh – 520010.
2. राजस्व/The Revenue –The Assistant Commissioner of Income Tax, Central Circle-1, Aayakar Bhavan, Rajahmundry, Andhra Pradesh – 533101.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (A)-12, Hyderabad.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam