

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.50/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Ramesh Karaka
1-47, Velamapeta
Ardhavaram
Ganapavaram Mandalam
West Godavari
[PAN : EIEPK7762M]

Vs. Income Tax Officer
Ward-1
Tanuku

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri K.Siva Ram Kumar, AR
: Shri O.N.Hari Prasada Rao, DR

सुनवाई की तारीख / Date of Hearing
घोषणा की तारीख/Date of
Pronouncement

: 23.02.2023
: 28.02.2023

आदेश /ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], Visakhapatnam-3 in DIN & Order No.ITBA/APL/S/250/2021-22/1038971974(1) dated 21.01.2022 for the Assessment Year (A.Y.) 2017-18.

2. Brief facts of the case are that the assessee is an individual, filed his return of income for the A.Y.2017-18 on 28.03.2018, declaring total income of Rs.31,45,990/-. The return was selected for scrutiny and a survey u/s 133A of the Income Tax Act, 1961 (in short 'Act') was conducted in the case of the assessee on 16.02.2018, during the course of which certain incriminating documents in the form of registered documents for investment in immovable properties during the A.Y. 2017-18, amounting to Rs.31,04,000/- were found. During the course of survey u/s 133A, a sworn statement was recorded from the assessee. The assessee explained that he was engaged in the business of cultivating fish and prawn ponds for the past four to five years. The assessee was also doing fish commission business for the past two years. The assessee submitted that he had invested in the immovable properties out of income generated from fish and prawn cultivation. The assessee admitted that he had not maintained any books of account and the sources for the above investments were unexplainable. Subsequently, the assessee had filed his return of income for the A.Y.2017-18 on 19.09.2018 declaring total taxable income at Rs.31,45,990/-. Since no explanation was offered for investment in immovable properties to the tune of Rs.31,04,000/-, the Assessing Officer (AO) held that Rs.31,04,000/- is

taxable as unexplained investment u/s 69 of the Act at the applicable rate of 60% u/s 115BBE. A show cause letter dated 9/12/2019 was issued to the assessee, requesting to explain why the amount of Rs.31,04,000/- should not be treated as unexplained investment u/s 69. Since there was no compliance to the show cause notice, the AO determined the total taxable income at Rs.31,45,990/- and passed assessment order u/s 143(3) dated 19.12.2019.

3. On being aggrieved, the assessee preferred appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee, holding that it was during the course of survey u/s 133A of the Act, it came to notice that though the assessee had substantial taxable income, he was not filing the returns of income. The assessee himself admitted that he has permanent account number, but he is neither filing the returns of income nor maintaining any books of accounts for the business carried on by him. The assessee had not disclosed his investments in property, which came to light only during survey in the form of registered sale deeds and cash worth Rs.1,03,41,500/- was found at the office cum residential premises of the assessee. In view of the above, the Ld.CIT(A) held that where the investments made from income that has not been declared and taxes due thereon were not paid, remained as unexplained

investments u/s 69 of the Act, as rightly held by the AO. The Ld.CIT(A) held that the plea of the assessee that he is illiterate and levy of tax u/s 69 and application of tax rate @60% as per section 115BBE of the Act is unjustified which deserves to be rejected as the assessee had turnover of Rs.2 crores from the business of fish and besides investments in property, cash of Rs.1,03,41,500/- was found at his residential premises. The Ld.CIT(A) held that the conditions in which section 69 is attracted are squarely applicable to the case of the assessee. Accordingly, upheld the addition made by the AO and dismissed the appeal of the assessee.

4. On being aggrieved, the assessee preferred appeal before the Tribunal and raised the following grounds of appeal :

1. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (Appeals) erred in law and facts in confirming the levy of tax of Rs.31,04,000/- @60% under Sec.115BBE made in the assessment, vide his Order dt.21.1.2022 without considering the appellant's submissions that the learned AO had not brought any material on record to show that the investment made by the appellant was not from his business income as admitted by the appellant and as shown by the material in the possession of the AO during the assessment proceedings.*

2. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (Appeals) erred in law and facts, in his observation that the appellant has not filed his ITR before the Survey operations and as such the source for investment in immovables by him were not entitled to be explained as from his business income. When the appellant's source of income was found during the Survey operations as from business and the fact is not in dispute, learned CIT(Appeals)'s rejection of the appellant's explanation was erroneous on facts and in law. Appellant showed the sources for the investment and the material*

impounded from his premises showed only business transactions and the same constituted his source for investments.

3. On the facts and in the circumstances of the case and in law, the learned C.I.T. (Appeals)'s confirmation of the addition of Rs.31,04,000/- u/s 115BBE on the premise that the ingredients of Sec69 were satisfied was not in accordance with the facts of the case and as per law.

4. On the facts and in the circumstances of the case and in law, the learned C.I.T. (Appeals)'s reliance of the case laws cited in Para.8 of his Order are distinguishable on facts and as per law and don't apply to the appellant's case.

5. On the facts and in the circumstances of the case and in law, the learned C.I.T. (Appeals) has not considered the appellant's case for levy of tax on Rs.31,04,000/- at normal rates and would have been accepted by the learned CIT(Appeals).

6. Your appellant craves leave to add or amend any of the above grounds of appeal.

All the grounds of appeal relate to treating the amount of Rs. 31,08,000/- as unexplained investment u/s 69 of the Act taxable @60% u/s 115BBE of the Act. The Ld.AR contended that the Ld.CIT(A) is not justified in confirming the addition made by the AO as unexplained investment u/s 69 taxable @60%. The Ld.AR further contended that the AO has considered the unexplained investments u/s 69 and taxed @30% for the A.Ys. 2014-15, 2015-16 and 2016-17. Therefore, the AO as well as the CIT(A) is not justified in treating the amount of Rs.31,08,000/- as unexplained investment u/s 69, taxable @60% u/s 115BBE of the Act. Therefore, 60% taxability for unexplained investment is not applicable for

the relevant A.Y.2017-18, since the amendment made in the middle of F.Y.2016. The Ld.AR, therefore, pleaded to set aside the order passed by the Ld.CIT(A) and allow the appeal of the assessee.

5. Per contra, the Ld.DR has contended that the amendment came into force w.e.f. 01.04.2017, therefore, section 115BBE is applicable for the A.Y.2017-18 onwards. Therefore, the AO has rightly levied the taxability rate @60% u/s 115BBE of the Act. For the previous assessment years it was only 30% , since the provisions of section 115BBE came into force only from the A.Y.2017-18. Therefore, he pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

6. We have heard both the parties and perused the material placed on record. The only issue involved in this case is whether section 115BBE is applicable from the A.Y.2017-18 or not. On this aspect, it is an admitted fact that the assessee has invested an amount of Rs.31,08,000/- as unexplained investment u/s 69 of the Act. Now, the question is whether the unexplained investment is taxable @60% or 30% u/s 115BBE of the Act. We have perused the amendment which came into force with effect from 01.04.2017, therefore, it is crystal clear that it is applicable for the A.Y.2017-18 and the AO has rightly levied the tax @60% u/s 115BBE of the Act. The decision of

the Hon'ble Supreme Court relied on by the Ld.AR is only applicable for the A.Y.2016-17 with regard to section 115BBE. Therefore, we are of the considered view that the contention of the Ld.AR is not acceptable. Hence, the ground raised by the assessee is dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28th February, 2023.

Sd/-

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 28 .02.2023

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Shri Ramesh Karaka, 1-47, Velamapeta, Ardhavaram, Ganapavaram Mandalam, West Godavari
2. राजस्व/The Revenue - The Income Tax Officer, Ward-1, Tanuku
3. The Principal Commissioner of Income-Tax (Central), Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, Visakhapatnam