

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

आयकर अपील सं./ I.T.A. No.16/Viz/2023

(निर्धारण वर्ष / Assessment Year :2017-18)

Peela Govind Apparao,
Visakhapatnam.

PAN: AOPPP 2714 K

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-4(3),

Visakhapatnam.

(प्रत्यार्थी/ Respondent)

Sri GVN Hari, Advocate

Sri ON Hari Prasada Rao, Sr. AR

सुनवाई की तारीख / Date of Hearing : 27/02/2023

घोषणा की तारीख/Date of : 28/02/2023

Pronouncement

ORDER

PER SHRI DUVVURU RL REDDY, JUDICIAL 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)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1047331575(1), dated 15/11/2022

arising out of the order passed U/s. 144 of the Income Tax Act, 1961 [the Act] for the AY: 2017-18.

2. 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 deciding the appeal ex-parte.*
- 3. The Ld. CIT(A) is not justified in sustaining the addition of Rs. 21,17,600/- made by the Assessing Officer U/s. 69A of the Act towards alleged unexplained cash deposits in the bank account of the appellant.*
- 4. The Ld. CIT(A) ought to have appreciated that the Assessing Officer having considered the cash deposits as turnover of the appellant and estimated the profit @ 8% ought not to have treated the very same cash deposits as unexplained.*
- 5. Any other grounds may be urged at the time of hearing."*

3. Briefly stated the facts of the case are that the assessee is an individual and carrying on wholesale trade in Cement. The assessee filed his return of income regularly up to the AY 2016-17. Subsequently, owing to losses in the business and family disputes, the assessee did not file his return of income. Thereafter, the assessee discontinued the business slowly in a phased manner and the business was totally stopped during the

FY 2018-19. During the FYs 2016-17 to 2018-19, the assessee sustained losses and hence the assessee furnish the return of income for the AY 2017-18. Notices U/s. 142(1) of the Act were issued on 29/1/2018; 19/06/2018; 04/09/2019. On 25/11/2019 show cause notice was also issued to the assessee but there was no reply from the assessee. Thereafter, the Ld. AO passed *ex-parte* order u/s. 144 of the Act and determined the total income at Rs. 24,92,280/- which includes two additions viz., (i) deposits in SBI, Kotapadu during demonetization period and treated the same as unexplained money U/s. 69A of the Act and charged the tax as per section 115BBE of the Act for Rs. 21,17,600/- and (ii) total deposits in CC Account and Current Account amounting to Rs.46,83,500/- treated as 'turnover of the assessee' and estimated the income thereon @ 8% ie., 3,74,640/-.

The deposits in the bank account represent the realization of the amounts partly from sundry debtors of earlier years and partly from the current year sale proceeds. Considering the above stated facts, the Ld. AO estimated the income before the demonetization period and after demonetization period and brought to tax the entire deposits during the demonetization period U/s. 115BBE of the Act which works out to Rs. 21,17,000/- and passed the assessment order on 29/11/2019. On being aggrieved by the

order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal before the Ld. CIT(A)-NFAC, inspite of issuance of notice, the assessee did not respond and therefore the Ld. CIT(A)-NFAC passed the order confirming the order of the Ld. AO. On being aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the above mentioned grounds of appeal.

4. Before me, it is the contention of the Ld. AR that the Ld. AO has failed to consider the cash deposits during the demonetization period as the assessee's business turnover and considered them only as cash deposits and estimated the income @ 8% ie., before demonetization. The Ld. AR further submitted that the Ld. AO has treated the entire cash deposits made during the demonetization period as unexplained cash deposits and made an addition u/s. 68 of the Act and U/s. 115BBE of the Act. But the said amount pertains to the sale proceeds of the assessee. This fact was not considered by the Ld. AO and the Ld. CIT(A)-NFAC and erred in invoking the provisions of section 115BBE of the Act against the deposits made by the assessee during the demonetization period. Therefore, the Ld. AR pleaded

for estimation of income @ 8% on the deposits made during the demonetization period also.

Per contra, the Ld. DR submitted that the assessee has not furnished any details regarding the cash deposits and therefore, the Ld. AO as well as the Ld. CIT(A)-NFAC have rightly invoked the provisions of section 115BBE of the Act and pleaded for confirming the orders of the Ld. Revenue Authorities.

5. I have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. During the course of arguments, it is the submission of the assessee that this Tribunal may be pleased to estimate the profit of the assessee @ 8% on the deposits made by the assessee during the demonetization period but the Ld. DR requested that in the absence of any details, the estimation @ 12.5% is justifiable. Considering the peculiar facts and circumstances of the case as well as considering the nature of business of the assessee and accepting the contention of the Ld. DR, I find it reasonable to estimate the profit of the assessee @ 12.5% on the cash deposits made by the assessee during the demonetization period considering the said deposits are his business income/turnover. Accordingly, I direct the Ld. AO to consider the

profit of the assessee @ 12.5% on the deposits made by the assessee during the demonetization period. It is ordered accordingly. Thus, the grounds raised by the assessee are partly allowed.

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

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

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 28.02.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Peela Govind Apparao, Prop. Govind Enterprises, D.No. 27-9, 9th Ward, Gavarapeta, Gondupalem Vilalge, K. Kotapadu Mandal, Visakhapatnam.
2. राजस्व/The Revenue – Income Tax Officer, Ward-4(3), Pratyakshakar Bhavan, MVP Double Road, Visakhapatnam.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam