

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणमIN 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 MEMBERआयकर अपील सं./ I.T.A. No.173/Viz/2022
(निर्धारण वर्ष / Assessment Year :2017-18)Gopu Neelima,
Nandigama.
PAN: AUFGP 3781 R
(अपीलार्थी/ Appellant)Vs. Income Tax Officer,
Ward-1(2),
Vijayawada.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Sri G.V.N. Hari, Advocate

प्रत्यर्थी की ओर से / Respondent by

: Sri ON Hari Prasada Rao, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 21/02/2023

घोषणा की तारीख/Date of

: 06/03/2023

Pronouncement

ORDER**PER S. BALAKRISHNAN, Accountant Member :**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1043829396(1), dated 13/7/2022 arising out of the order passed U/s. 270A of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Briefly stated the facts are that the assessee is an individual filed her return of income on 7/11/2017 admitting a total income of Rs. 3,76,650/- for the AY 2017-18. Subsequently, the case was selected for scrutiny under CASS for the issue of "cash deposits during the year". Subsequently notice U/s. 143(2) of the Act dated 24/9/2018 was issued and served on the assessee. Subsequently, the notice U/s. 142(1) dated 23/7/2019 and 9/10/2019 were issued and served on the assessee electronically. Due to change in the incumbent another notice U/s. 142(1) dated 21/10/2019 was issued and served on the assessee. Since the assessee did not comply with the notices, the Ld. AO initiated proceedings U/s. 272A(1)(d) dated 19/11/2019 and levied the penalty vide order dated 22/11/2019. Further, notice dated 31/10/2019 and 30/11/2019 and 6/12/2019 were issued and served on the assessee. In response, the assessee furnished copy of bank account statement and justified that she sold and purchased the goods as shown in the VAT return. The Ld. AO noticed that the assessee filed return of income U/s. 44AD of the Act by declaring income @ 8% on a turnover of Rs. 58,22,000/-. The Ld. AO on scrutinizing the VAT returns found that the assessee declared turnover of Rs.1,73,88,702/- and has paid VAT tax accordingly. The Ld. AO found that the sources for cash deposits is nothing but the turnover, which was also accepted by the assessee, and

estimated the income @ 8% on the turnover of Rs. 1,73,88,702/- as declared in VAT returns and framed the assessment by making an addition of Rs. 13,91,096/-. Subsequently, the Ld. AO also initiated the penalty proceedings U/s. 270A of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal before the Ld. CIT(A)-NFAC the Authorized Representative argued that it was the mistake of the Accountant by wrongly declaring the turnover at Rs. 58,22,000/- while filing the return of income. The Ld. CIT(A)-NFAC on perusal of the submissions of the assessee found the explanation offered by the assessee is not bonafide and confirmed the order of the Ld. AO. The Ld. CIT(A)-NFAC also dismissed the appeal of the assessee on the ground of penalty U/s. 270A raised by the assessee for Rs. 4,44,130/-. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal.

3. The assessee has raised the following grounds in her 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 penalty of Rs. 4,44,130/- levied by the assessing officer u/s. 270A of the Act.*
- 3. Any other grounds may be urged at the time of hearing."*

4. At the outset, the Ld. AR submitted before us the same argument as it is a mistake done by the assessee's Accountant by wrongly declaring the turnover at Rs. 58,22,000/- while admitting the income U/s. 44AD of the Act. However, the Ld. AR submitted before us the Profit & Loss Account showing admitted profit as disclosed in the return of income. The Ld. AR further submitted that the turnover as per the VAT return has been considered in the P & L Account and hence there is no change in the profit as admitted but it is only a clerical mistake by the Accountant of the assessee while showing the turnover at Rs. 58,22,000/- in the return of income filed by the assessee. The Ld. AR further submitted that the Accountant has estimated the turnover on reverse basis without considering the VAT turnover. The Ld. AR further submitted that the assessee has accepted the estimated profit of 8% on the VAT turnover @ 13,91,000/- and pleaded that there is no misreporting in the return of income and hence the penalty levied U/s. 270A of the Act be quashed.

Per contra, the Ld. Sr. AR [Departmental Representative] submitted that the assessee has willfully underreported the turnover and has produced the Profit & Loss Account showing the same as profit as filed in in her return of income. The Ld. DR further submitted that the Profit & Loss Account is an afterthought by the assessee and the income is

declared under presumptive basis U/s. 44AD of the Act, where Turnover is the basis for estimating income on presumptive basis. Countering the arguments of the Ld. DR, the Ld. AR submitted that the assessee is an illiterate lady not having any knowledge in the accounting and heavily depended on the local Accountant at Nandigama. The Ld. AR also submitted that the Ld. CIT(A)-NFAC has not considered the above fact.

5. We have heard the rival contentions and perused the material available on record and the orders of the Authorities below. Admittedly, there is a suppression of turnover by the assessee while filing her return of income by declaring the income of Rs. 3,76,650/- U/s. 44AD of the Act. Section 44AD is a presumptive taxation where 8% of the turnover is taxed as income. It is not acceptable by us that the assessee's Accountant has mis-reported the turnover by reverse working. Further, we are also unable to understand when the profits are declared under presumptive basis, why the Profit & Loss Account was prepared showing the same profit as filed under the return of income. Further, the assessee has also not disputed the VAT turnover and the estimation of income on the VAT turnover by the Ld. AO. In the light of the above circumstances, the Ld. CIT(A)-NFAC has rightly determined that the assessee has mis-reported the turnover attracting the penal provisions u/s. 270A of the Act and hence confirmed the penalty of Rs. 4,44,130/- u/s. 270A of the

Act levied by the Ld. AO. We therefore find no infirmity in the order of the Ld. CIT(A)-NFAC and hence no interference is required. Accordingly, the grounds raised by the assessee in this regard are dismissed.

6. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open Court on the 06th March, 2023.

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 : 06.03.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Gopu Neelima, D.No.3-43, Opp. CI Office, Raitupeta, Nandigama, Krishna District, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(2), CR Bu8ilding, 1st Floor Annex, MG Road, Vijayawada.
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