

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**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.65/Viz/2021 & 66/Viz/2021  
(निर्धारण वर्ष / Assessment Year : 2014-15 & 2015-16)**

Asst.Commissioner of Income Tax  
Circle-1(1)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

Vs. Mattapalli Ramgopal  
25-8-246, Main Road  
Kurupam Market  
Visakhapatnam  
**[PAN : AARPW2133K]**  
**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से / Revenue by : Shri O.N.Hari Prasada Rao, DR  
निर्धारिती की ओर से/ Assessee by : Shri I.Kama Sastry, AR  
सुनवाई की तारीख / Date of Hearing : 21.03.2023  
घोषणा की तारीख/Date of Pronouncement : 29.03.2023

**आदेश /O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

These appeals are filed by the revenue against the orders of Commissioner of Income Tax (Appeals) [CIT(A)]-1, Visakhapatnam dated 31.08.2020 for the Assessment Year (A.Y.) 2014-15 & 2015-16. These appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under. The facts are extracted from I.T.A.No.65/Viz/2021, A.Y.2014-15.

2. Brief facts of the case are that the assessee is a proprietor of M/s Sri Seetharama Jewellers, engaged in the business of retail trading in purchase and sale of gold jewellery and silverware. The assessee filed his return of income for the A.Y.2014-15 on 18.09.2014, declaring total income at Rs.61,58,100/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (in short "Act"). Subsequently, the case was selected for scrutiny under CASS and accordingly, statutory notice u/s 143(2) of the Act was issued and served on the assessee. A survey operation u/s 133A of the Act was conducted in the business premises of the assessee on 09.01.2013. Accordingly, the AO has completed the assessment by determining the total income at Rs.1,24,35,852/- by making addition of Rs.58,47,609/- towards unexplained cash credit u/s 68 of the Act and Rs.4,30,143/- towards interest on housing loan.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee.

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

*1. The order of the Ld.CIT(A)-1, Visakhapatnam is erroneous on facts and in law.*

2. *The Ld.CIT(A)-1, Visakhapatnam has also erred both in law and on facts in deleting the addition of Rs.58,47,609/- being the Long Term Capital Gains on sale of shares of M/s G.F.L.Financial India Limited which is declared a penny scrip by Directorate of Investigation, Income Tax Department and in whose case the market regulator SEBI imposed penalties for violating capital market norms.*
3. *The Ld.CIT(A) failed to appreciate the material evidence such as poor financials of the scrip M/s G.F.L.Financials India Limited, unsatisfactory explanation of the assessee about the reasons for investment made in the GLF, Financials.*
4. *The Ld.CIT(A) has failed to appreciate the circumstantial evidences and facts relating to the assessee's case.*
5. *The Ld.CIT(A) ought to have considered various judicial pronouncements, including the recent judgements like Hon'ble Supreme Court's and Hon'ble Delhi High Court judgement in the case of Suman Poddar Vs. Income Tax Officer [2019] 112 taxmann.com 330 (SC)[2020] / 268 Taxman 320 (SC) / [2019] 112 taxmann.com 329 (Delhi) that have confirmed the additions based on bogus LTCC before deleting the addition of Rs.58,47,609/- in the instant case.*
6. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal.*

*For these and other grounds that may be urged at the time of appeal hearing, it is prayed that all these above additions made on bogus LTCC be restored.*

3. At the outset, the Ld.Counsel for the assessee has brought to our notice that the appeal filed by the revenue was below the prescribed tax effect of Rs.50 lakhs. As per the latest circular No.17/2019, dated 08.08.2019 of CBDT, which is in supersession of its Circular No.3/2018

dated 11.07.2018, in relation to filing of appeals before the Income Tax Appellate Tribunal, the appeals filed by the revenue are not maintainable.

4. On the other hand, the Ld.DR submitted that the circular of CBDT ibid is not applicable in the penny stock cases, therefore, this circular is not applicable in the instant case and the question of monetary limit does not arise, since it is in exceptional category.

5. We have heard both the parties and perused the material available on record. The Ld.AR brought to our notice that on similar circumstances, the Hon'ble High Court of Chhattisgarh has held that if the CBDT has not specifically passed any order regarding the appeal, a general exception does not serve any purpose, even if it is penny stock case. He further submitted that the order of the Hon'ble High Court of Chhattisgarh was challenged before the Hon'ble Supreme Court, but the Apex Court dismissed the revenue's appeal. For the sake of clarity and convenience, we extract relevant part of the order of the Hon'ble High Court of Chhattisgarh, which reads as under :

*"3. This Court observed that, as per paragraph 3 of the Circular No.23 of 2019 dated 06.09.2019, the Board observed that appeals could be filed, notwithstanding the pecuniary limits as mentioned in the earlier Circulars where the Board, by way of Special Order directed filing of appeal on merit, in cases involving organized Tax Evasion Activity. It was with reference to the said specific rider, that*

*we made an observation, that the way in which matter was sought to be pursued as instructed by the Principal Chief Commissioner of Income Tax, Bhopal as per order dated 11.09.2019 prima facie appeared to be incorrect and hence we required the Appellants to produce the "Special Order" from the Board, as per which direction, if any, was given to file appeal on merit, holding that the present cases were of such nature as involving organized Tax Evasion Activity, notwithstanding the pecuniary limit.*

4. *Today, when the matters are taken up for further consideration, an office Memorandum bearing No.F.No.279/Misc./M-93/2018-ITJ(Pt.) dated 16.09.2019 is placed before this Court, which reads as given below :*

*"Subject :- Special order of Board exempting cases involving bogus Long Term Capital Gains (LTCG/Short Terms Capital Loss) through penny stocks from monetary limits specified in any Circular issued under section 268A of the Income Tax Act, 1961- reg.*

*The undersigned is directed to refer to Circular No.23 of 2019 dated 16<sup>th</sup> September, 2019 and to say that by virtue of powers of the Central Board of Direct Taxes u/s 268A of Income TAX Act, 1961, the monetary limits fixed for filing appeals before ITAT / HC and SLPs / appeals before Supreme Court shall not apply in case of assessee claiming bogus LTCG/STCL through penny stocks and appeals / SLPs in such cases shall be filed on merits."*

5. *The above OM is only with reference to the decision already taken by the Board and notified as well by Circular No.23 of 2019 (paragraph 3 of which has already been extracted in the order dated 11.11.2019). After hearing the learned Standing Counsel for the Appellants, we are of the view that as per the decision taken by the Board and the instructions given thereby, which forms the crux of the Circular No.23 of 2019 dated 06.09.2019; that in order to pursue an appeal notwithstanding pecuniary limit mentioned in the earlier Circulars, it has to be as an exception, where the Board by way of "Special Order" directs to file appeal on merit, in cases involving organized Tax Evasion Activity.*

6. *In so far as no such "Special Order" passed by the Board has been produced before this Court, we find it difficult to entertain these*

*appeals; in view of the contents of the relevant Circulars issued as above. Accordingly, the appeals are dismissed, however, without prejudice to rights and liberties of the Appellants to approach this court afresh in appropriate cases wherever "Special Orders" have been issued by the Board, as an exception to the Circular Nos.17 of 2019 and 23 of 2019, where organized Tax Evasion Activity is noted."*

In the instant case also, no special order for these two cases was passed by the CBDT as per circular No.17/2019, dated 08.08.2019. Therefore, in the absence of any special order and since these two cases are below monetary limit prescribed as per the CBDT, the appeals filed by the revenue are not maintainable in view of the decision of the Hon'ble Supreme Court and Hon'ble High Court of Chhatisgarh.

13. In the result, appeals of the revenue are dismissed.

Order pronounced in the open court on 29<sup>th</sup> March, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 29 .03.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

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

1. राजस्व/The Revenue – The Asst.Commissioner of Income Tax, Circle-1(1), Prathyakshakar Bhavan, Sector-8, MVP Double Road, Visakhapatnam
2. निर्धारिती/ The Assessee– Mattapalli Ramgopal, 25-8-246, Main Road, Kurupam Market, Visakhapatnam
3. The Principal Commissioner of Income-Tax-1, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam