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 &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.180/Viz/2022
(निर्धारण वर्ष / Assessment Year :2019-20)

Siva Rama Krishna Rao Nutakki, Visakhapatnam. PAN: BSHPN 4634 F	Vs.	Income Tax Officer, Ward-2(1), Visakhapatnam.
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Sri GVN Hari, Advocate
प्रत्यार्थी की ओर से / Respondent by	:	Sri ON Hari Prasada Rao, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	09/03/2023
घोषणा की तारीख / Date of Pronouncement	:	31/03/2023

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1044260444(1), dated 29/07/2022 arising out of the order passed

U/s. 143(3) of the Income Tax Act, 1961 [the Act], dated 26/05/2020 for the AY 2019-20.

2. Brief facts of the case are that the assessee is an individual and a Non-Resident Indian. During the FY 2018-19 relevant to the AY 2019-20, the assessee sold an immovable property situated at Visakhapatnam for a total consideration of Rs. 8,37,50,000/-. During the year, the assessee admitted capital gain of Rs. 6,68,93,262/- after claiming brokerage, indexed cost of acquisition and the cost of improvements on the said sale of immovable property and filed the return of income on 29/02/2020 admitting income of Rs. 6,72,20,240/- which includes interest income of Rs. 3,26,988/-. The return was processed by the CPC on 26/5/2020 and the assessee paid taxes. It is the claim of the assessee that the interest U/s. 234B and 234C is not chargeable in the case of the assessee as the purchase of the property ought to have deducted the tax payable on the capital gain arising on transfer of the property. The CPC did not agree with the contention of the assessee and charged interest U/s. 234B and 234C of the Act amounting to Rs.16,93,406/- and Rs. 1,50,659/- respectively. Aggrieved by the order of the CPC, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC considered the submissions of the assessee, granted part relief to the assessee to the extent of interest

levied U/s. 234C of the Act and confirmed the interest levied U/s. 234B of the Act. Thus, the Ld. CIT(A)-NFAC partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

> *"1. The order of the Ld. CIT(A) is erroneous to the extent it is prejudicial to the appellant.*
>
> *2. The Ld. CIT(A) erred in confirming the action of the AO in charging interest U/s. 234B of the Act. The Ld. CIT (A) ought to have considered the fact that for the purpose of working out Advance Tax payable, the Tax deductible has to be reduced and according to the said provision no Advance Tax need to be paid.*
>
> *3. Any other ground that may be urged at the time of hearing."*

4. Before us, at the outset, the Ld. AR argued that the Ld. Revenue Authorities are erred in charging interest U/s. 234B of the Act and ought to have considered the fact that the purchaser of the property should have deducted the entire tax payable by the assessee in view of the provisions of section 195 of the Act. Therefore, the Ld. AR pleaded that the assessee may be granted relief in this regard.

Per contra, the Ld. DR relied on the order of the Ld. CIT(A)-NFAC and submitted that the assessee was aware of the fact that the tax has not been deducted U/s. 195 of the Act and he was required to deposit the Advance Tax by 31st March of the previous year. The assessee was aware about the delay in deposit of tax and filing of return and therefore the onus cannot be shifted to the buyer. Under these circumstances, the action of the Ld. Revenue

Authorities cannot be at fault and therefore the Ld. DR pleaded to confirm the order of the Ld. CIT (A)-NFAC.

5. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. From the order of the Ld. CIT(A)-NFACT, it is apparent that the Ld. CIT(A)-NFAC has discussed the issued at length at para 5.3 of his order before deciding the issue against the assessee. For the sake of reference, relevant para 5.3 of the Ld. CIT(A)-NFAC is reproduced herein below:

> "*5.3. Interest under section 234B is charged from 1st April of the following the Financial Year. The appellant had sold the property and had received the full consideration. He was aware that the tax had not been deducted U/s. 195 of the Income Tax Act. So, he was required to deposit the Advance Tax by the 31st March of the previous year. In such a case, there would not have been any interest liability U/s. 234B, which is charged from 1st April till the date of assessment / determination of tax. The appellant was aware about the delay in deposit of tax and filing of return. This cannot be shifted to the buyer / deductor. The language of section 234B states that interest is chargeable on the shortfall in Advance Tax payment, as reduced by the Tax Deducted (and not tax deductible). Hence, the onus was on the appellant to have paid the full amount of tax on or before 31st March."*

6. From the above it is clear that the Ld. CIT(A)-NFAC has rightly appreciated the facts of the case as well as the provisions of the IT Act, 1961 before deciding the issue on hand against the assessee. Therefore, we are of the considered opinion that there is no infirmity in the order of the Ld. CIT(A)-NFAC and no interference is required in the order of the Ld. CIT (A)-NFAC on this issue. It is ordered accordingly.

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

Pronounced in the open Court on the 31st March, 2023.

Sd/-	Sd/-
(**दुव्वूरु आर.एल रेड्डी**)	(**एस बालाकृष्णन**)
(DUVVURU RL REDDY)	(S.BALAKRISHNAN)
न्यायिकसदस्य/JUDICIAL MEMBER	**लेखा सदस्य**/ACCOUNTANT MEMBER

Dated : 31.03.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Siva Rama Krishna Rao Nutakki, Flat No. 102, Door No. 6-22-1/1/1, Rajyalakshmi Residency, East Point Colony, Visakhapatnam.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(1), 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