

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

Sri Mandava Naresh
D.No.14/9, Korukollu
Kaikalur
[PAN : AHMPN2074J]

Vs. Principal Commissioner of
Income Tax
Vijayawada Charge
Vijayawada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri M.V.Prasad, AR
: Shri M.N.Murthy Naik, CIT(DR)

सुनवाई की तारीख / Date of Hearing

: 27.03.2023

घोषणा की तारीख/Date of Pronouncement

: 28.04.2023

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

Condonation of Delay :

This appeal is filed by the assessee against the order of Principal Commissioner of Income Tax (Pr.CIT), vide DIN & Order No.ITBA/REV/F/REV5/2021-22/1041046029(1) dated 19.03.2022 arising out of the assessment order passed u/s 143(3) of the Income Tax Act, 1961 (in short "Act") by the Assessing Officer (AO) for the Assessment Year (A.Y.) 2017-18 with the delay of 69 days. The assessee filed petition for condonation of delay, submitting that he resides in a

village, which is remotely located at Korukollu, Krishna District. He is not well educated and his main activity is to act as commission agent in procuring the fish from various farmers and lift such fish and send them to various places. Therefore, his job revolves around various farmers residing in remote villages of Krishna District. He further submitted that since he is not educated, he does not know the provisions of law and hence he is not aware of the proceedings / orders passed by the Pr.Commissioner of Income Tax and could not approach the auditors in time. He finally approached auditors who had advised him to prefer an appeal on the order of the Ld.Pr.CIT. He pleaded that the delay is not intentional, therefore, the delay of 69 days may be condoned and the appeal may be admitted for adjudication.

2. We have heard the Ld.AR and find that the reasons mentioned in the petition for condonation of delay are reasonable and convincing, therefore, the delay of 69 days is condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee is an individual, deriving commission from trading in fish, filed his return of income for the A.Y.2017-18 on 21.10.2017, admitting total income of Rs.8,54,750/-. The

case has been selected for complete scrutiny under CASS in order to examine the cash deposits made during the demonetisation period and also for low net profit on abnormal increase in turnover when compared to preceding year. Notice u/s 143(2) and 142(1) of the Act were issued by the AO and the assessment was completed u/s 143(3) of the Act on 23.12.2019, determining taxable income of the assessee at Rs.12,79,720/-. After completion of the verification of the books of accounts, not being satisfied with the low profit admitted by the assessee, the AO estimated the profit at 0.75% against the profit declared by the assessee at 0.5% and concluded the assessment. The Ld.Pr.CIT, by virtue of powers vested u/s 263 of the Act, examined assessment record of the assessee for the A.Y.2017-18 and noticed that the assessment order passed u/s 143(3) on 23.12.2019 is prima facie, erroneous and prejudicial to the interest of the revenue. The Ld.Pr.CIT has mentioned that “ *though the case was selected for complete scrutiny, the Assessing Officer did not verify either the CASS reason in terms of sources of cash deposits and also failed to call for details of decrease in GP / NP of current previous year when compared to preceding previous year. Hence, the assessment completed in this case u/s 143(3) of the Act on estimate basis for the Asst.Year 2017-18 needs to be revised u/s 263 of the I.T.Act.*” A

show cause notice was issued on 09.02.2022 and on receipt of the same, the assessee has given his reply, stating that, he has explained the source for cash deposits made in the bank account of the assessee. Since the assessee is engaged in the business of fish trading in the name and style of M/s Sri Vishnu Fish Packers, all the deposits pertained to sale of fish. The AO called for the details and examined the same and estimated the profit @0.75% of the turnover, therefore, it is not prejudicial to the interest of the revenue. After considering the submissions of the assessee, the Ld.Pr.CIT did not satisfy with the submissions made by the assessee and stated that as per assessment record, copies of cash book, sales books and stock register are not found and in the absence of proper verification of business, there is no justification of the AO for accepting the sale and further opined that the estimation of profit made by the AO is without any basis. Based on the said observation, the Ld.Pr.CIT set aside the assessment order passed by the AO, with a direction to redo the assessment, in accordance with law, after making necessary enquiries and verification.

4. On being aggrieved, the assessee preferred an appeal before the Tribunal, by raising the following grounds :

1. *On the facts and circumstances of the case and in law, Ld.Pr.CIT, Vijayawada erred in passing the order under Section 263 of the Income Tax Act, 1961 which in contrary to the material on record and provisions of the Act, unjust and bad in law.*
2. *On the facts and circumstances of the case, the order passed by the LdPr.CIT is not valid as per the Explanation 2 (a) of Section 263 of the Act since the Assessing Officer has passed the order only after due inquiry and verification. Hence the observation of the Learned PCIT that the order passed by the AO dated 23-12-2019 has been completed without any inquiry is not correct.*
3. *On the facts and circumstances of the case, the Ld.Pr.CIT ought to have appreciated that appellant is depositing the cash sales arised out of the fish trading in the bank account regularly every year which is evident from the returns of income filed for the previous years and also in subsequent years and same were accepted by the revenue. Hence there is no new pattern of cash deposits in the present assessment year and therefore would have accepted that the cash deposits are nothing but cash sales of fish.*
4. *On the facts and circumstances of the case, the Ld.Pr.CIT ought to have appreciated that the appellant while furnishing online response to the Cash Transactions 2016 replied that the assessee is engaged in business of fish trading and the deposits pertain to fish sales and the Assessing Officer called for justification about the large deposits made into the bank account in the notice issued u/s.142(1) of the Act and the appellant accordingly furnished the details of reasons for such deposits. Therefore, the observation Of the Ld.Pr.CIT that the appellant has not examined the cash deposits made into the bank account is not correct and acceptable.*
5. *On the facts and circumstances of the case, the Ld.PR CIT erred in arriving that the AO has not made proper verification with regard to low admittance of GP/NP and estimation of profit by the AO is without any basis and on wrong footing. In fact the AO has called for the reasons for low admittance of profit and verified the explanation of AO and also verified the profit estimated by the other similar comparable cases and then only estimated the profit which clearly shows that proper verification has been made by the AO.*
6. *On the facts and circumstance of the case, Invoking Section 263 is bad in law as the Assessing Officer has taken a plausible view while completing the Assessment and hence the Assessment order cannot be treated as erroneous which is prejudicial to the interest of revenue.*

7. *On the facts and circumstances of the case, the Learned PUT is not having jurisdiction to invoke provisions of Section 263 of the I.T.Act, 1961*

8. *Any other ground or grounds that may be urged at the time of hearing.*

5. Now the question before us is whether the proceedings initiated u/s 263 is valid in the eyes of law. The Ld.Counsel for the assessee has submitted that the AO has passed assessment order after due enquiries and estimated the profit. Therefore, the order passed by the Ld.PCIT u/s 263 is not valid. He further submitted that the assessee had deposited the cash out of cash sales of fish trading and the same was also accepted in the previous year. Hence, there is no new apportion of cash deposits in the present assessment year and there is no prejudice to the interest of the revenue. He further submitted that the AO has compared with similar comparable cases and estimated the profit @0.75%. Hence, the order passed by the AO is not erroneous or prejudicial to the interest of the revenue. He, therefore, pleaded to set aside the order passed u/s 263.

6. Per contra, the Ld.counsel for the revenue submitted that the AO has not properly examined the cash deposits made by the assessee during the demonetisation period. He further submitted that as per the submissions of the assessee, all the cash deposits are out of the cash sales of fish in the various parts of the country and he is only commission

agent, but the assessee failed to produce any invoices for fish trading and to whom he transported the fish. All these details were not furnished by the assessee, therefore, the AO has not properly examined and simply estimated the profit at 0.75% without any basis. Therefore, the Ld.Counsel for the revenue pleaded to uphold the order of the Ld.Pr.CIT passed u/s 263 of the Act.

7. We have heard both the parties, perused the material available on record and gone through the assessment order, wherein, the AO has mentioned that the sale consideration of fish sold through him is received through his bank account from the traders which are withdrawn and paid to fish farmers. Since the fish farmers have no bank account and prefer to receive the sale price in cash, as and when the fish are sold at the tanks to the trader through the assessee. The assessee has not furnished any books of accounts, proof / evidence in the form of bills / vouchers for the total quantity of fish sold to the traders through his mediation during the year to ascertain the actual quantity of fish sold, price per kg. of fish, commission derived etc. The AO issued notices and in response to the said show cause notice, he explained that since the fish is highly perishable commodity, it has to be marketed as quickly as possible and that the commission changes from person to person depending upon the

bargain and therefore requested to accept the commission admitted in the return filed taking into account the expenses to be incurred in deriving the commission. Based on these findings, the AO estimated the net profit at 0.75% of gross receipts at Rs.17,06,29,327/- which amounts to Rs.12,79,720/-. After perusal of the assessment order, the assessing officer himself admitted that the assessee has not furnished any books of accounts, proof of evidence in the form of bills /vouchers for total quantity of fish sold to the traders through mediation during the year to ascertain actual quantity of fish sold and also price per kg. and commission derived etc. Therefore, in the absence of such bills, the AO has estimated the profit @0.75%, but he has not verified the sources for cash deposits. Therefore, we are of the view that the Ld.Pr.CIT has rightly set aside the order passed by the AO, saying that it is erroneous and prejudicial to the interest of the revenue. Therefore, we uphold the order passed by the Ld.Pr.CIT u/s 263, hence, the grounds raised by the assessee are dismissed.

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

Order pronounced in the open court on 28th April 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 28.04.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee- Sri Mandava Naresh, D.No.14/9, Korukollu, Kaikalur
2. राजस्व/The Revenue - The Principal Commissioner of Income Tax, Vijayawada Charge, Vijayawada
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 4..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam