

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.138/Viz/2022

(निर्धारण वर्ष / Assessment Year: 2017-18)

Jiyyana Venkatrayudu,
Kakinada.

PAN: AXPPJ 2351 K

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

Vs. Asst. Commissioner of
Income Tax,
Circle-1, Kakinada.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Sri ON Hari Prasada Rao,
Sr. AR

14/06/2023

10/08/2023

ORDER

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 [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1042955077(1), dated 5/5/2022 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 [the Act] for the AY: 2017-18.

2. Brief facts of the case are that the assessee has filed Form-1 under Income Declaration Scheme, 2016 before the Ld. Pr. CIT-2, Visakhapatnam on 28/09/2016 by disclosing an amount of Rs. 50,59,580/- in the form of cash for the AY 2015-16. However, the assessee failed to pay the taxes payable as per the provisions of the Income Declaration Scheme, 2016 [IDS]. The Ld. AO invoked the provisions of section 197(b) of the IDS, 2016 and concluded that the income declared shall be treated as income of the assessee in the year of declaration and brought the amount of Rs.50,59,580/- to tax U/s. 68 r.w.s 115BBE of the Act. However, the Ld. AO also issued a show cause notice dated 2/12/2019 as to why the undisclosed income declared in IDS, 2016 should not be taxed and the assessment be completed U/s. 144 of the Act? In response, the assessee filed its reply through ITBA on 9/12/2019 stating that since the taxes could not be paid it was not possible to upload the return. Further, in his reply, the assessee also stated that the assessee "derived capital gains and has claimed deduction U/s. 54F of the Act". The Ld. AO therefore completed the assessment based on his best judgment U/s. 144 of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC upheld the order of the Ld. AO and

dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us by raising the following six 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 upholding the action of the Assessing officer in assessing U/s. 68 of the Act, the income of Rs. 50,59,580/- admitted by the appellant for AY 2015-16 towards capital gains in the declaration filed under IDS-2016.*
- 3. The Ld. CIT(A) ought to have appreciated that the provisions of section 68 are not applicable to the case of the appellant.*
- 4. Without prejudice to the above, the Ld. CIT(A) erred in upholding the action of the Assessing Officer in invoking the provisions of section 115BBE of the Act and levying tax at higher rate of 60%.*
- 5. The Ld. CIT(A) is not justified in upholding the levy of interest of Rs. 7,73,888/- U/s. 234A, Rs. 8,51,277/- U/s. 234B and Rs. 1,44,614/- U/s. 234C of the Act.*
- 6. Any other grounds may be urged at the time of hearing."*

3. The only issue contested by the assessee is with respect to treatment of the capital gains as undisclosed U/s. 68 r.w.s 115BBE of the Act and levying a higher tax rate of 60%. The assessee also raised the ground regarding the levy of interest U/s. 234A, B and C of the Act.

4. With respect to the first issue, the Ld. AR submitted that the assessee has filed a declaration under IDS-2016 on 28/09/2016 and in Annexure to Form-1 "Statement of undisclosed income" the assessee has declared an amount of Rs. 50,59,580/- as income from capital gains. Further, the assessee could not pay the taxes as admitted. The Id. AR further submitted that the amount declared in IDS, 2016 shall be eligible to tax under the Income Act, 1961 in the previous year in which such declaration is made. The Ld. AR further submitted that the IDS, 2016 is silent on the nature of the income declared in the IDS, 2016 which could partake the character of undisclosed income U/s. 68 of the Act. He therefore pleaded that the income declared as capital gains shall be taxed under the provisions of capital gains in the hands of the assessee. Further, the Ld. AR also submitted that the assessee has also claimed deduction U/s. 54F of the Act which was disputed by the Ld. Revenue Authorities. He therefore pleaded that the orders of the Ld. Revenue Authorities be set aside.

Per contra, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. As per section 197(b) of IDS, 2016 where the assessee fails to pay the tax as per the income declared under IDS, 2016 the undisclosed income shall be chargeable to tax in the previous year in which such declaration is made. We find force in the argument made by the Ld. AR that non-payment of tax under the IDS, 2016 against the income declared cannot change the character of the income declared under IDS, 2016 with respect to character of income assessable in the previous year in which such declaration was made under the Income Tax Act, 1961. Further, in response to the show cause notice dated 2/12/2019, the assessee has submitted its reply stating that it was the capital gains which was declared under the IDS, 2016 after availing the deduction U/s. 54F of the Act. These facts were not disputed by the Ld. Revenue Authorities. However, we find that the Ld. AO while framing the assessment has stated the same as undisclosed income U/s. 68 r.w.s 115BBE of the Act instead of taxing the same under capital gains. Merely because the assessee failed to discharge the tax liability under IDS-2016 as declared cannot change the character of the income under which it was declared under the IDS-2016. Further, IDS-2016 is

also silent on the nature of income to be taxed in the event of failure by the declarant to pay the taxes. In these circumstances, we are of the considered view that the income of the assessee shall be taxed as capital gains in the hands of the assessee we therefore direct the Ld.AO to compute the taxes applicable with respect to capital gains disclosed by the assessee.

6. The other issue regarding the interest U/s. 234A, B and C is consequential in nature and needs no adjudication.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 10TH August, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :10.08.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Jiyyana Venkatrayudu, D.No. 2-113, Main Road, Thimmapuram Village, Kakinada, Andhra Pradesh – 533005.

2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-1, Sri Deepthi Towers, Main Road, Kakinada, Andhra Pradesh - 533001.
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