

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.241 & 242/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2007-08 & 2012-13)

Potluri Phanendra Babu,
Visakhapatnam.
PAN: AGSPP 7638 K
(अपीलार्थी/ Appellant)

Vs. The Income Tax Officer,
Ward-3(2),
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Sri ON Hari Prasada Rao,
Sr. AR

सुनवाई की तारीख / Date of Hearing

: 15/06/2023

घोषणा की तारीख/Date of

: 10/08/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned two appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [Ld. CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1046470694(1), dated 26/10/2022 and ITBA/NFAC/S/250/2022-23/1046470778(1), dated 26/10/2022 arising out of the orders passed U/s. 271(1)(c)

of the Income Tax Act, 1961 [the Act] dated 9/9/2021 & 12/9/2021 for the AY 2007-08 and 2012-13 respectively. Since the assessee has raised identical grounds of appeal in both the cases, these appeals are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

2. Brief facts of the case pertaining to the appeal for the AY 2007-08 (**ITA No. 241/Viz/2022**) are that the assessee filed his return of income for the AY 2007-08 on 31/3/2009 admitting a total income of Rs. 4,44,490/-. Subsequently, survey U/s. 133A was conducted in the case of the assessee on 5/11/2013 wherein huge investment was found which was not disclosed by the assessee while filing the return of income. The case was then reopened U/s. 147 of the Act and the assessment order was passed on 31/3/2015 u/s. 143(3) r.w.s 147 of the Act determining the total income at Rs. 56,39,640/-. The Ld. AO also initiated the penalty proceedings U/s. 271(1)(c) of the Act on 30/03/2015. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A) wherein the Ld. CIT(A) deleted certain additions made by the Ld. AO vide order dated 23/4/2019. The Ld. AO subsequently issued show cause notice

dated 27/7/2021 and in response the assessee furnished a reply on 5/8/2021. After considering the replies of the assessee, the Ld. AO levied penalty of Rs. 4,45,924/- U/s. 271(1)(c) of the Act citing that the Ld. CIT(A) has sustained the addition of Rs. 13,24,790/- as unexplained investment in property. The Ld. AO considered that the assessee has concealed the income and therefore it is justified in levying of penalty U/s. 271(1)(c) of the Act. Aggrieved by the order of the Ld. AO on the penalty proceedings, the assessee filed an appeal before the Ld. CIT(A)-NFAC. The Ld. CIT(A)-NFAC considering that the assessee has not disclosed his true income in the return of income, confirmed the penalty levied by the Ld. AO and thereby dismissed the appeal filed by the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us by raising the following 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) ought to have held that the notice issued U/s. 271(1)(c) of the Act is invalid and ought to have quashed the penalty order as void ab initio.*
- 3. The Ld. CIT(A) ought to have quashed the penalty order as barred by limitation.*
- 4. The Ld. CIT(A) is not justified in upholding the penalty of Rs. 4,45,924/- levied by the Assessing Officer U/s. 271(1)(c) of the Act.*

5. *The Ld. CIT(A) ought to have considered that the penalty is not warranted as appellant neither concealed the particulars of income nor furnished inaccurate particulars of income.*
6. *Any other grounds may be urged at the time of hearing."*

3. The only issue involved in the grounds raised by the assessee is with respect to levy of penalty U/s. 271(1)(c) of the Act.

4. Before us, at the outset, the Ld. AR argued that the assessee has not concealed any particulars of income and therefore the levy of penalty U/s. 271(1)(c) of the Act is not justified. The Ld. AR further submitted that the Ld. CIT(A) while adjudicating the quantum appeal has given the relief and has only estimated the disallowance by sustaining the additions to the extent of Rs. 13,24,790/-. The Ld. AR further submitted that since the Ld. CIT(A) has estimated the sources of funds, it cannot be a ground to levy penalty U/s. 271(1)(c) of the Act when the assessee has not concealed any particulars of income or furnished inaccurate particulars warranting levy of penalty U/s. 271(1)(c) of the Act. The Ld. AR submitted that since the assessee could not explain the investment to the satisfaction of the Ld. CIT(A), it shall not be

a ground for levy of penalty. He therefore pleaded that the penalty levied shall be quashed.

Per contra, the Ld. DR submitted that the assessee initially did not disclose the true particulars while filing the return of income while it was unearthed during the survey proceedings. The Ld. DR further submitted that since the assessee has not disclosed his investment in the return of income it amounts to concealment of particulars of income and hence the levy of penalty by the Ld. AO is fully justified. He therefore pleaded that the order of the Ld. Revenue Authorities be upheld.

5. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly the assessee has not furnished the investments details while filing the return of income. However, the assessee, only after the survey operation U/s. 133A of the Act, admitted the income wherein he admitted that he has made investment in the properties. It is also found that the Ld. CIT(A) during the First Appellate Proceedings has accepted the claim of the assessee regarding the sources of income for the assessee as well as his wife and has estimated that it would be reasonable to consider Rs. 10 lakhs as available with the assessee for the

purpose of investment. We also find that the Ld. CIT(A) has also allowed the unexplained cash deposits in the bank account to the extent of Rs. 28 lakhs as the assessee has satisfactorily explained the sources for deposits in the bank account. Further, with respect to the investment in the property to the extent of Rs. 23,24,790/- the Ld. CIT(A) has considered an amount of Rs. 10 lakhs and held it reasonable as it was made from the accumulated savings of the assessee and his wife, who are the income tax assesseees and regular filers of the return of income. The Ld. CIT(A) therefore concluded that the assessee has sufficient sources of income for the purpose of investment in the properties to the extent of Rs. 10 lakhs and has disallowed an amount of Rs. 13,24,790/- [Rs. 23,24,790 – Rs. 10,00,000] as undisclosed. It was also explained by the Ld. AR that the assessee did not maintain any books of account during the impugned assessment year as there was no business carried on by the assessee. It was also explained by the Ld. AR that the assessee did not contest the various additions with respect to excess claim of interest on housing loan etc., before the Ld. CIT(A). The only addition made by the Ld. CIT(A) is with respect to investment in the property to the extent of Rs. 13,24,790/- wherein the Ld. CIT (A) has estimated that the assessee has

sufficient sources for an amount of Rs. 10 lakhs based on the income tax returns filed by the assessee and his wife. Since the addition is made on estimate basis, various judicial pronouncements have held that penalty cannot be levied when the addition is estimated. We therefore find that the levy of penalty based on the addition made by an estimate cannot be a valid ground and hence it should be deleted. It is ordered accordingly.

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

7. With regard to **ITA No.242/Viz/2022** (AY 2012-13), since the assessee has raised the similar grounds of appeal to that of the grounds of appeal raised in his appeal in ITA No. 241/Viz/2022 (AY 2007-08), the only difference is in figures, which is adjudicated on merits in the above paragraphs of this order, our decision given on the assessee's appeal for the AY 2007-08 *mutatis mutandis* applies to the appeal of the assessee for the AY 2012-13 also. Accordingly, the grounds raised by the assessee in his appeal for the AY 2012-13 are allowed.

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

9. Conclusively, both the appeals of the assessee are allowed.

Pronounced in the open Court on 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 – Potluri Phanendra Babu, D.No.2-43-1/2, Sector-11, MVP Colony, Double Road, Visakhapatnam, Andhra Pradesh – 530017.
2. राजस्व/The Revenue – Income Tax Officer, Ward-3(2), Infinity Towers, Sankaramatam Road, Visakhapatnam, Andhra Pradesh-530016.
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