

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.220/Viz/2023

(निर्धारण वर्ष / Assessment Year :2021-22)

Refratechnik (India) Private
Limited,
Visakhapatnam.
PAN: AAICR 4011 M
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer,
Ward-2(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 06/11/2023

घोषणा की तारीख/Date of

: 22/11/2023

Pronouncement

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal is filed by the assessee against the order of the
Ld. Commissioner of Income Tax (Appeals)-National Faceless
Appeal Centre, Delhi [NFAC] in DIN & Order No.
ITBA/NFAC/S/250/2023-24/1054657034(1), dated 27/07/2023

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 for the AY 2021-22.

2. Briefly stated the facts of the case are that the assessee, a Private Limited Company, e-filed its return of income for the AY 2021-22 on 15/02/2022 U/s. 139(1) of the Act declaring a total income of Rs. 92,31,020/-. The case of the assessee was selected for scrutiny under CASS for the reason *the assessee had made large contractual payments U/s. 194C of the Act to the persons who have not filed their returns of income during the relevant AY.* Subsequently, to verify the identity of the persons to whom the payments were made by the assessee, the Ld. AO issued notices U/s. 143(2) and 142(1) of the Act along with a questionnaire. In response, the assessee had filed computation of income, financial statements, ledger accounts, bank statements and other details / documentary evidence as called for by the Ld. AO. Thereafter, Ld. AO issued another notice to the assessee U/s. 142(1) of the Act and also issued notices U/s. 133(6) of the Act to the parties who received the money from the assessee to establish the genuinity and credibility of the contractual payments. But, considering the non-compliance of the assessee as well as the parties, and in the absence of any documentary evidence such as bills, copy of MoU

/ Agreement etc., the Ld. AO issued a show cause notice to the assessee as to why the amount of Rs. 5,38,12,731/- cannot be added back to the income of the assessee as these amounts are unexplained. Another opportunity was also provided to the parties U/s. 133(6) of the Act and accordingly some of the parties as listed out by the Ld. AO in his order at page 5 & 6 have made their submissions before the Ld. AO. On perusal of the same, the Ld. AO found that there is a difference in the submission made by the assessee with respect to M/s. AAA Infra and the information available with the Department. Accordingly, considering the assessee's non-compliance to the show cause notice and in the absence of any proper explanation by the assessee with regard to payments made to M/s. AAA Infra, the Ld. AO made an addition of Rs. 3,40,76,403/- and the assessed income was determined at Rs. 4,33,07,423/- and passed the assessment order U/s. 143(3) r.w.s. 144B of the Act, dated 21/12/2022. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee *ex-parte* and passed the order U/s. 250 of the Act dated 27/07/2023 by holding that the assessee did not comply with

the notices issued on various dates and the assessee had nothing more to submit except for raising the grounds. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee filed the present appeal before us by raising the following grounds of appeal:

- "1. The order of the Hon'ble CIT(A)-NFAC is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The order of the Hon'ble CIT(A)-NFAC is against the principles of natural justice as time was granted till 03/08/2023 vide hearing notice dated 19/07/2023 however the order U/s. 250 was passed on 27/07/2023.*
- 3. The Hon'ble CIT(A)-NFAC erred in confirming the disallowance of expenditure as the amounts were paid through banking channels and after deducting TDS and is clearly verifiable from the additional evidence furnished.*
- 4. Hon'ble CIT(A)-NFAC is wrong on facts and in law in confirming the addition made by the Assessing Officer as unexplained expenditure U/s. 69C of the Act as the source of the expenditure stood clearly established by the appellant which is from regular business income, more so all these receipts were through banking channels.*
- 5. Appellant craves leave to add amend / or alter the stands as the occasions may warrant."*

4. At the outset, the Ld. AR vehemently argued that the Ld. CIT(A)-NFAC passed the order ex-parte without providing proper opportunity to the assessee of being heard. In this regard, the Ld. AR drawn our attention to the notice U/s. 250 of the Income Tax Act, 1961 dated 19/07/2023 issued by the Ld. CIT(A)-NFAC,

Delhi and read out the relevant contents of the said notice which is as follows:

Is there any time limit involved?

The above written submissions may please be furnished on or before 03/08/2023.

The Ld. AR further submitted that though the Ld. CIT(A)-NFAC had given time to furnish the details and submissions on or before 03/08/2023, passed the order on 27/07/2023 whereby the assessee has not been given proper opportunity in accordance with the principles of natural justice and passed the order ex-parte which is not sustainable in law. Therefore, the Ld. AR pleaded that the case may be remitted back to the file of the Ld. CIT(A)-NFAC in order to provide one more opportunity to the assessee.

5. On the other hand, the Ld. DR relied on the orders of the Ld. Revenue Authorities and argued in support of the decisions taken by the Ld. AO as well as the Ld. CIT(A)-NFAC.

6. We have heard both the parties and perused the material available on record as well as the orders of the Ld. Revenue Authorities. On perusal of the order of the Ld. CIT(A)-NFAC, vide para 4, the Ld. CIT(A)-NFAC mentioned that *vide notices dated*

1/3/2023; 12/7/2023 and the final opportunity was given on 19/07/2023 and requested the appellant to file the submission by 26/07/2023. However, no submissions were made during the entire appellate proceedings. Whereas, it is apparent from the notice dated 19/07/2023 issued by the Ld. CIT(A)-NFAC, the assessee was given time till 03/08/2023 to furnish the written submissions, if any. In the meanwhile, ignoring his own directions, the Ld. CIT(A)-NFAC hurriedly passed the ex-parte order U/s. 250 of the Act, dated 27/07/2023, which is against the principles of natural justice. In our considered view, the Ld. CIT(A)-NFAC ought to have waited till 3/8/2023 to adjudicate the appeal and pass the order as the same date 3/8/2023 is mentioned in his notice U/s. 250 of the Act. Therefore, considering the above facts and circumstances of the case, we find merit in the argument of the Ld. AR and remit the matter back to the file of the Ld. CIT(A)-NFAC in order to provide one more opportunity to the assessee strictly following the principles of natural justice. The assessee is also hereby cautioned to cooperate before the Ld. CIT(A)-NFAC in their proceedings otherwise the Ld. CIT(A)-NFAC can pass the orders as per the material available on record. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes as mentioned herein above.

Pronounced in the open Court on the 22nd November, 2023

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 22/11/2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Refratechnik (India) Private Limited, Plot No. 14 & 17A, JN Pharmacy, Phase-3, Parawada, Valluru B.O., Rajupalem, Visakhapatnam – 531019.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(1), Infinity Towers, Shankaramatham, Visakhapatnam, Andhra Pradesh-530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam