

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.188/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

Venkata Satyanarayana Dasari,
Visakhapatnam.
PAN: AUAPD 7443 C
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer,
Ward-2(5),
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri I. Kamaj Sastry, AR

प्रत्यर्थी की ओर से / Revenue by

: Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 08/11/2023

घोषणा की तारीख/Date of

: 22/11/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal is filed by the assessee against the order of the Ld. Principal Commissioner of Income Tax, Visakhapatnam-1 [Ld. Pr. CIT] in DIN & Order No. ITBA/REV/F/REV5/2021-22/1042311006(1), 31/3/2022 arising out of the order passed

U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Brief facts of the case are that the assessee is an individual engaged in the business of wholesale trade in poultry birds, filed his return of income for the AY 2017-18 on 17/10/2017 admitting a total income of Rs. 7,77,380/-. Subsequently, the case was selected for complete scrutiny for the reason that "abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period". Thereafter, statutory notice U/s. 143(2) dated 14/8/2018 and notice U/s. 142(1) dated 9/9/2019 were issued to the assessee. In response, the assessee vide letter dated 29/11/2019 submitted that the assessee mainly makes supplies to retailers and chicken centers and hence transactions are in cash. The assessee also further submitted that the entire cash deposits are nothing but receipts out of the cash sales. Considering the above explanation of the assessee, the Ld. AO accepted the same. Further, the Ld. AO also observed that the assessee has introduced additional capital of Rs. 32,58,940/- and sought explanation from the assessee. The assessee explained that these amounts were receipts out of earlier advances given to various suppliers and receipt of hand

loans given earlier to his friends and relatives. Rejecting the explanation of the assessee, the Ld. AO sought to tax the entire amount of Rs. 32,58,940/-. However, the assessee offered an estimate @ 4% of profit on the said amount. The Ld. AO did not accept the offer and deem it fit to tax @ 8% on the said amount of Rs. 32,58,940/-. The Ld. Pr. CIT by invoking the powers vested on him U/s. 263 of the Act considered the order of the Ld. AO as erroneous and prejudicial to the interests of the Revenue. Therefore, the Ld. Pr. CIT issued a show cause notice dated 16/3/2022 and again on 24/3/2022 through ITBA calling for objections from the assessee. Since the assessee did not respond to the show cause notices, the Ld. Pr. CIT directed the Ld. AO to make additions for the cash deposits during the demonetization period and for introduction of additional capital of Rs. 32,58,940/- after providing a reasonable opportunity of being heard to the assessee before passing the consequential order. Aggrieved by the order of the Ld. Pr. CIT, the assessee is in appeal before us by raising the following Grounds of Appeal:

- "1. On the facts and in the circumstances of the case and in law the assumption of jurisdiction by the Ld AO is bad in law as notice U/s. 143(2) was issued by Income Tax Officer, Ward-5(1), Visakhapatnam and not by the Income Tax Officer, Ward-4(3), Visakhapatnam who passed by the order U/s. 143(3). Therefore, the order passed by him U/s. 143(3) is null and void being*

without jurisdiction consequently the order U/s. 263 passed by the Pr. CIT directing the Assessing Officer to revise an invalid order is also ab initio void.

2. *The Ld. Pr. CIT is not justified in giving direction to the Assessing Officer to re-do the assessment by verifying the cash deposits in bank amounting to Rs. 66,79,000/- when the same have been recorded in the books of account as sales and offered to tax and the Ld. AO has taken a possible view.*
3. *The Ld. Pr. CIT is not justified in giving direction to the AO to re-do the assessment by verifying the fresh capital of Rs. 32,58,940/- introduced by the Assessee during the previous year relevant to the assessment year when the Assessing Officer after considering the reply furnished by the assessee estimated the income at 8% of the fresh capital introduced and enhanced the income returned.*
4. *The appellant craves leave to add to, amend, alter, delete all or any of the above grounds of appeal."*

3. **Ground No.1** is with respect to assumption of jurisdiction by the Ld. AO without issuing proper notice U/s. 143(2) of the Act. At the outset, the Ld. AR argued that the Income Tax Officer, Ward-5(1), Visakhapatnam has issued a notice U/s. 143(2) whereas the Income Tax Officer, Ward-4(3), Visakhapatnam has passed an order U/s. 143(3) and therefore the Ld.AR pleaded that the assessment order is passed without proper jurisdiction and consequently the order passed U/s. 263 by the Ld. Pr. CIT is also void-ab-initio.

Per contra, the Ld. DR objected to the arguments of the Ld. AR and submitted that the assessee has participated in the proceedings before the Ld. ITO, Ward-4(3), Visakhapatnam and has not raised any objection at the earliest. The Ld. DR also relied on the decision of the Hon'ble Supreme Court of India in the case of Deputy Commissioner of Income Tax (Exemption) vs. Kalinga Institute of Industrial Technology reported in [2023] 151 taxmann.com 434 (SC).

4. We have heard the rival contentions and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly, the assessee has participated in the proceedings before the ITO, Ward-4(3), Visakhapatnam and has not raised any objection before ITO, Ward-4(3), Visakhapatnam as mandated U/s. 124(3)(a) of the Act. In the judgment of the Hon'ble Supreme Court in the case of DCIT vs. Kalinga Institute of Industrial Technology (supra) relied on by the Ld. DR, the Hon'ble Apex Court has held as follows:

"1. The impugned order set aside the assessment for AY 2014-15 the ground that the jurisdictional officer had not adjudicated upon the returns. The jurisdiction had been changed after the returns were filed. However, the records also reveals that the assessee had participated pursuant to the notice issued U/s. 142(1) and had not questioned the jurisdiction of the Assessing Officer.

Section 124(3)(a) of the Income Tax Act precludes the assessee from questioning the jurisdiction of the Assessing Officer, if he does not do so within 30 days of receipt of notice U/s. 142(1)."

5. Respectfully following the decision of the Hon'ble Supreme Court in the case of DCIT (E) vs. Kalinga Institute of Industrial Technology (supra), the **Ground No.1** raised by the assessee is hereby **dismissed**.

6. With respect to **Grounds No. 2 & 3** raised by the assessee, we find from the order of the Ld. Pr. CIT that the assessee has not responded to the show cause notices before the Ld. Pr. CIT. Before us, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. Pr. CIT for fresh consideration and requested to provide one more opportunity to the assessee following the principles of natural justice.

Per contra, the Ld. DR relied on the order of the Ld. Pr. CIT.

7. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. We find from the order of the Ld. Pr. CIT that the assessee has been provided various opportunities with respect to the show cause notice dated 16/3/2022. However, the assessee

has failed to appear before the Ld. Pr. CIT. The Ld. AR while arguing the matter has submitted that these notices were sent to the email Id "sivarishik200@gmail.com". Subsequent notice was also sent to the same email Id. The submission of the Ld. AR is that the assessee was aware of the proceedings U/s. 263 of the Act only when the notice for recovery of demand dated 3/5/2023 was sent to the email Id "purushottamchintala@gmail.com" and hence could not participate in the proceedings before the Ld. Pr. CIT. Considering the above facts, we are of the opinion that the assessee should be provided one more opportunity to represent his case before the Ld. Pr. CIT and we deem it fit to remit the matter back to the file of the Ld. Pr. CIT for fresh consideration. Accordingly, **Grounds No. 2 and 3** raised by the assessee are disposed off and allowed for **statistical purposes**.

8. **Ground No.4** raised by the assessee is general in nature and therefore needs no adjudication.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

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

Sd/-

(दुव्वूरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :22.11.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Venkata Satyanarayana Dasari, Gullepalli Village, Sabbavaram Mandal, Visakhapatnam, Andhra Pradesh – 531035.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(5), 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