

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.102/Viz/2023

(निर्धारण वर्ष / Assessment Year :2007-08)

Vijayratna veera Kumar
Eathalapaka,
D.No. 36-94-292, JJ Nagar,
Kancharapalem,
Visakhapatnam – 530008,
Andhra Pradesh.
PAN: AADPE 2666 D

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. Income Tax Officer,
Ward-2(2),
Infinity Towers,
Sankarmatham Road,
Visakhapatnam-530016.

(प्रत्यर्थी/ Respondent)

Sri Y. Surya Chandra Rao, AR

Sri Shri Madhukar Aves,
Sr. AR

08/11/2023

22/11/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [CIT(A)-NFAC] vide DIN & Order No.

ITBA/NFAC/S/250/2022-23/1049275577(1), dated 31/01/2023 arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 [the Act] dated 4/2/2022 for the AY 2007-08.

2. Brief facts of the case are that the assessee being an individual and working in Indian Railways has not filed any return of income disclosing the capital gains which was gathered by the Department. During the AY under consideration the assessee along with 14 others sold a property located in Survey No. 688/A, with D.No. 48-14-17/A, Allipuram, Visakhapatnam for a total consideration of Rs. 28 lakhs. The Ld. AO also noticed that the market value of the property as per the SRO records was Rs. 78,19,500/- and hence the provisions of section 50C of the Act are applicable. Thereafter, the Ld. AO issued a notice U/s. 148 of the Act dated 11/3/2014 requiring the assessee to file return of income within 30 days. The notice was served on 12/3/2014. Since the assessee did not comply with the notice, the Ld. AO has issued a notice U/s. 142(1) of the Act from time to time. Thereafter, the assessee's Representative appeared on 9/3/2015 wherein the Ld. AO explained the reasons for issuance of notice U/s. 148 of the Act. Subsequently, the assessee filed the return of income on 9/3/2015 after claiming Chapter-VIA

deductions admitting a total income of Rs. 1,95,510/-. The Ld. AO observed from the return of income that the assessee computed the capital gains without applying the provisions of section 50C of the Act and thereafter issued a notice U/s. 143(2) of the Act. The assessee submitted his response for adopting the actual sale consideration of Rs. 28 lakhs instead of the 50C value of Rs. 78,19,500/-. The Ld. AO did not accept the explanation of the assessee and proceeded to tax the Long Term Capital Gains at 1/7th share of the computed capital gains with respect to the assessee. The Ld.AO thereafter initiated the penalty proceedings U/s. 271(1)(c) of the Act. 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 holding that the assessee has not complied with the notices issued and therefore the assessee is not interested in prosecuting his appeal before the First Appellate Authority. 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. That under the facts and circumstances of the case, the orders passed U/s. 271(1)(c) of the Act dated 4/2/2022 and confirmed by the Ld. CIT(A), NFAC, Delhi vide his order dated 31/1/2023 are against the facts of the case and provisions of law.

2. *The Ld. CIT(A) erred in not adjudicating the Ground of Appeal filed and also erred in dismissing the appeal filed without giving ample opportunity, which is against the principles of Natural Justice.*
3. *The Ld. CIT(A) erred in not appreciating the fact that penalty imposed U/s. 271(1)(c) of the Act are not sustainable as the notice issued was vague and ambiguous.*
4. *The Ld. AO as well as the Ld. CIT(A) failed to consider and appreciate the fact that the addition to the returned income was made on account of invocation of provisions of section 50C and in such circumstances the penalty cannot be levied.*
5. *For these and such other grounds, that may be adduced at the time of hearing of the subject appeal, the appellant prays before the Hon'ble Tribunal that the order passed U/s. 271(1)(c) of the Act levying penalty of Rs. 1,96,076/- dated 4/2/2022 be quashed or granted such other relief as this authority may deem fit, in the interest of justice."*

4. The main contention of the Ld. AR is that in the notice issued U/s. 274 of the Act there is no 'Tick' mark on the appropriate limb (striking off of the inappropriate limb) as required U/s. 271(1)(c) of the Act and hence the penalty notice issued is invalid. The Ld. AR relied on the decision of the Hon'ble High Court of Telangana & Andhra Pradesh in the case of Principal Commissioner of Income Tax vs. Smt. Baisetty Revathi in I.T.T.A No. 684 of 2016, dated 13/07/2017. Further, the Ld.

AR also in his written submissions distinguished the case of Sundaram Finance Ltd vs. Assistant Commissioner of Income Tax, Co. Circle-VI(4), Chennai reported in [2018] 403 ITR 407 (Madras). The Ld. AR therefore pleaded that since the Ld. AO did not strike off the inappropriate limb in the notice issued to the assessee, the penalty notice issued shall be treated as invalid and the consequent order of penalty is not valid in law. The Ld. AR also submitted that the assessee has also objected before the Ld. AO during the penalty proceedings. He therefore pleaded that since the assessee has raised his objection as early as before the Ld. AO, the penalty order passed U/s. 271(1)(c) of the Act is non-est in the eyes of law.

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

5. We have heard the rival contentions and perused the material available on record as well as the orders of the Ld. Revenue Authorities. At the outset, the Ld. AR submitted that **Ground No.2 is not pressed** and hence the same dismissed as not pressed. The other Grounds (**Grounds No. 1, 3, 4 and 5**) pertain to validity of the order passed U/s. 271(1)(c) of the Act as the assessee considers the penalty notice as invalid. From the

order of the Ld. CIT(A)-NFAC, we find that the assessee has not appeared before the Ld. CIT(A)-NFAC with respect to the notices issued and served on the assessee and therefore the Ld. CIT(A)-NFAC has considered that the assessee is not interested in prosecuting the present appeal. In this connection, the pleadings of the Ld. AR that one more opportunity may please be provided to the assessee to represent the case before the Ld. CIT(A)-NFAC needs consideration. Accordingly, we are of the considered view that the assessee may be provided one more opportunity to represent his case before the Ld. CIT(A)-NFAC in order to follow the principles of natural justice and we thereby remit the matter back to the file of the Ld. CIT(A)-NFAC. It is ordered accordingly.

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

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 – Vijayratna Veera Kumar Eathlapaka, D.No. 36-94-292, JJ Nagar, Kancharapalem, Visakhapatnam, Andhra Pradesh – 530008.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(2), Infinity Towers, Sankaramatham Road, Visakhapatnam – 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