

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
(Through Hybrid Hearing)

आयकर अपील सं./ I.T.A. No.237/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

Madina Rasool,
Guntur.
PAN: AHFPR 3787 D
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer,
Narasaraopet,
Andhra Pradesh – 522601.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Smt. Sandhya, AR

प्रत्यर्थी की ओर से / Revenue by

: Sri Madhukar Aves, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 28/11/2023

घोषणा की तारीख/Date of

: 29/11/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1054476867(1), dated 20/07/2023 arising

out of the order passed U/s. 144 of the Income Tax Act, 1961 [the Act], dated 21/06/2019 for the AY 2017-18.

2. Brief facts of the case are that the assessee is an individual. On verification of the data relating to 'cash deposits during the demonetization period' available in AIMS module of ITBA, the Ld. AO noticed that the assessee had made substantial cash deposits into the bank account(s) during the demonetization period but not filed the return of income within the due date specified U/s. 139 of the Act. Hence, the Ld. AO issued a notice U/s. 142(1) of the Act dated 23/11/2017. Since there was no response from the assessee, the Ld. AO issued a show cause letter dated 6/6/2019 which was served on the assessee on 7/6/2019 and called for certain information regarding the cash transactions made during the demonetization period and was asked to furnish the evidences. However, there was no response from the assessee. On perusal of the ITS data of the assessee on ITBA Portal for the AY 2017-18 as well as the bank account statements obtained from the concerned banks wherein the assessee is maintaining the bank accounts, the Ld. AO observed that the assessee has cash credits worth Rs. 98,90,900/- in his bank account out of which, an amount of Rs. 92,01,400/- was deposited during the demonetization period and whereas the balance amount of Rs. 6,89,500/- has been deposited in pre

and post demonetization period. In connection with the above cash deposits, the Ld. AO issued a show cause notice and the assessee was asked to furnish the explanation on or before 21/6/2019. Since there was no reply from the assessee, the Ld. AO came to a conclusion that the assessee is not willing to cooperate with the Department and therefore proceeded to complete the assessment in accordance with the provisions of section 144 of the Act based on the material available on record. Thus, the Ld. AO completed the best judgment assessment U/s. 144 of the Act determining the assessed income at Rs. 98,90,900/- and thereby made an addition of Rs. 98,90,000/- U/s. 69A of the Act as unexplained cash deposits during the year and passed the assessment order on 21/6/2019. 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 dismissed the appeal of the assessee ex-parte as there was no compliance to the notices issued to the assessee nor the assessee filed any written submissions. While dismissing the assessee's case, the Ld. CIT(A)-NFAC relied on the judgments of various High Courts. 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 learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*

2. *The learned Commissioner of Income-Tax (Appeals) erred in deciding the appeal without providing proper opportunity.*
3. *The learned Commissioner of Income-Tax (Appeals) erred in not deciding the grounds on merit and further erred in confirming the action of the Assessing officer in completing the assessment u/s 144 and in determining the total income at Rs.98,90,900/-.*
4. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in treating the aggregate of the deposits made into SBI as the income of the appellant assessable u/s 69A of the I.T. Act and in taxing the addition by applying the provisions of Sec.115BBE of the I.T. Act. The Assessing officer ought to have seen that the deposits represent business receipts and neither the provisions of Sec.69A nor Sec. 115BBE are applicable.*
5. *Any other ground that may be urged at the time of hearing."*

3. At the outset, the Ld. AR submitted that the appeal of the assessee may be remitted back to the file of the Ld. CIT(A)-NFAC because the Ld. Revenue Authorities did not provide proper opportunity to the assessee of being heard. The Ld.AR further submitted that Ld. AO did not consider the submissions made by the assessee in his statement recorded before the Ld. AO in response to the notice U/s. 131 of the Act wherein the assessee had explained the sources of cash deposits in the bank account to the tune of Rs. 98,90,000/- in the AY 2017-18 and passed the exparte order. Therefore, the Ld. AR pleaded that one more opportunity may be provided to the assessee of being heard before the

Ld. CIT(A)-NFAC to substantiate the claim of the assessee with evidence following the principles of natural justice.

The Ld. DR on the other hand argued by stating that proper opportunity was given to the assessee but neither the assessee nor the assessee's Counsel failed to appear / made submissions before the Ld. Revenue Authorities due to which the Ld. Revenue Authorities did not have any other option but to pass orders based on the materials available on record. Therefore, the Ld. DR prayed that the order of the Ld. AO and the Ld. CIT (A)-NFAC need no interference.

4. After hearing both the sides and on perusal of the orders of the Ld. Revenue Authorities as well as the material available on record, we find that though the orders passed by the Ld. Revenue Authorities are ex-parte, it is apparent that the assessee had not cooperated with the Ld. Revenue Authorities at the time of hearing. Therefore, the Ld. Revenue Authorities have no option except to pass the ex-parte orders. However, considering nature of issue involved in the appeal as well as the prayer of the Ld. AR, and in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the issue on merits by providing one more opportunity to the assessee of being heard. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. Revenue Authorities in

their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

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

Pronounced in the open Court on 29th November, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 29.11.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Madina Rasool, 6-1-165-7, Main Road, Krishna Reddy Complex, Narasaraopet, Andhra Pradesh – 522601.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Narasaraopet, Andhra Pradesh.
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