

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

M.A. No. 69/Viz/2023

(आयकर अपील सं./ I.T.A. No.97/Viz/2020)

(निर्धारण वर्ष / Assessment Year : 2014-15)

A. Harshitha,
D.No. 11-8-34, Daspalla Hills,
Visakhapatnam, Andhra Pradesh.
PAN: ACAPH 3599 M
(अपीलार्थी/ Appellant)

Vs. DCIT,
Central Circle-2,
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by :

Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by :

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing :

19/01/2024

घोषणा की तारीख/Date of

:

30/01/2024

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This Miscellaneous Application is filed by the assessee seeking recalling of the Tribunal order passed in ITA No.97/Viz/2020 (AY

2014-15) and ITA No.98/Viz/2020 (AY 2014-15), dated 15/12/2023 in the case of Smt. A. Harshitha and Smt. A. Ammaji.

2. At the outset, the Ld. AR drawn our attention to the order of the Tribunal dated 15/12/2023 and submitted that vide Para-8 at page No. 12 to 17 of the said Tribunal (supra), the Hon'ble ITAT has held that the assessee is not involved in any manipulation of stock prices for the purpose of earning bogus LTCG and thereby allowed the Ground No.2 raised by the assessee in ITA No. 97/Viz/2020 and ITA No.98/Viz/2020. The Ld. AR further mentioned that vide Para-9, page No. 17 of the order, the Tribunal has allowed the Ground No.3 raised by the assessee. However, while adjudicating the Ground No.3, an inadvertent mistake was crept in the Tribunal's order i.e., once the Tribunal has come to a conclusion that the assessee is not involved in obtaining any accommodation entries for earning LTCG, the question of payment of commission for obtaining such accommodation entries does not arise and therefore the question of application of the provisions of section 69C also does not arise. Hence, the Ld. AR submitted there is a mistake apparent on record from the order of the Tribunal while giving

conclusion with regard to Ground No.3 which is contradicting the finding of the Tribunal with respect to Ground No.2. Therefore, the Ld. AR pleaded that for this limited purpose, the order of the Tribunal dated 15/12/2023 may be recalled and pass the order as the Tribunal deems fit.

3. After hearing the Ld. AR and the Ld. DR, we find that there is a mistake apparent on record while adjudicating the Ground No.3 of the assessee's appeal in ITA No. 97/Viz/2020 and 98/Viz/2020. Since the mistake has crept in the Tribunal's order inadvertently, we hereby allow the MA filed by the assessee and recall the Tribunal's order for the limited purpose of avoiding contradictory conclusions with respect to Ground No.2 and Ground No.3 of the assessee's appeals in ITA No.97 & 98/Viz/2020. It is ordered accordingly.

4. Now, with respect to Ground No.3 (ITA No. 97/Viz/2020 in the case of A. Harshitha), it is the submission of the Ld. AR that once the Tribunal has come to a conclusion that the assessee is not involved in obtaining any accommodation entries for earning LTCG, the question of payment of commission for obtaining such

accommodation entries does not arise and therefore the question of application of the provisions of section 69C also does not arise as the commission expenditure itself does not exist. The Ld. AR further submitted that since the Tribunal has found that the assessee was not involved in obtaining accommodation entries and having deleted the addition U/s. 68 of the Act, the addition made U/s. 69C of the Act by the Ld. AO treating the commission expenditure as unexplained ought to have been deleted. Instead, the Hon'ble Tribunal has held that the commission expenditure shall be allowed as deduction from LTCG. Thus, the Ld. AR submitted that it is contradicting the finding of the Tribunal with respect to Ground No.2 and that of the finding in Ground No.3.

5. However, the Ld. DR has contended that based on the seized materials, the assessee has incurred commission expenditure amounting to Rs. 28,03,781/-.

6. We have heard both the sides and perused the material available on record as well as the order of the Tribunal dated 15/12/2023. On careful perusal of the Tribunal's order, we find that Tribunal has inadvertently erred in adjudicating the

commission expenditure as deduction from LTCG. While adjudicating the Ground No.2 (ITA No.97/Viz/2020) with respect to treatment of LTCG as unexplained cash credit U/s. 68 of the Act, this Bench has found that the assessee is not involved in the manipulation of stock prices for the purpose of earning bogus capital gains placing reliance on the order of the Hon'ble Securities Appellate Tribunal, Mumbai wherein the assessee has been exonerated with reference to the manipulation of stock prices. Accordingly, Ground No.2 raised by the assessee was allowed by the Tribunal in the original appeal. Since, this Ground No.2 raised by the assessee is adjudicated in favour of the assessee, the Ground No.3 raised by the assessee with respect to commission expenditure as unexplained expenditure U/s. 69C of the Act deserves to be deleted. Accordingly, we hereby delete the addition made towards payment of commission expenditure by the Ld. AO U/s. 69C of the Act and also allow the Ground No.3 in favour of the assessee in ITA No.97/Viz/2020 in the case of Smt. A. Harshitha. It is ordered accordingly.

7. Similarly, in ITA No.98/Viz/2020, the assessee (Smt. A. Ammaji) has raised an identical issues vide Ground No.2 and 3 of her original appeal. Since, we have taken ITA No.97/Viz/2020 as a lead appeal for adjudicating the issues involved therein at the time of passing the order dated 15/12/2023, now the decision taken by us with respect to Ground No.3 in ITA No.97/Viz/2020 in the preceding paras of this order mutatis mutandis applies to the Ground No.3 of the assessee's appeal in the case of A. Ammaji in ITA No.98/Viz/2020. It is ordered accordingly.

8. In the result, MA filed assessee is allowed and the appeals of the assessees in the case of A. Harshitha and A. Ammaji (ITA No. 97/Viz/2020 and 98/Viz/2020) are also allowed as indicated herein above.

9. Pronounced in the open Court on 30th January, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :30/01/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – **(i)** A. Harshitha, D.No. 11-8-34, Daspalla Hills, Visakhapatnam, Andhra Pradesh-530003. **(ii)** A. Ammaji, D.No. 11-8-34, Daspalla Hills, Visakhapatnam, Andhra Pradesh – 530003.
2. राजस्व/The Revenue – DCIT, Central Circle-2, MVP Colony, Sector-8, Pratyakshakar Bhavan, Beside Post Office, Visakhapatnam, Andhra Pradesh-530017.
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