

आयकर अपीलिय अधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No. 108/Viz/2023

(निर्धारण वर्ष / Assessment Year :2017-18)

Sobha Devi Dilipkumar,
Vijayawada.

PAN: ABYPD 3389 E

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

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

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

31/01/2024

31/01/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. CIT(A)-NFAC, Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1049442170(1), dated 6/2/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual filed her return of income for the AY 2017-18 electronically on 1/2/2018 admitting a total income of Rs. 7,84,640/-. The return was processed U/s. 143(1) of the Act. Later on, the case was selected for 'limited scrutiny' under CASS for the reason to verify 'cash deposits during the demonetization period'. Thereafter, notice U/s. 143(2) of the Act was issued on 17/08/2018 and the same was served on the assessee through email. Notice U/s. 142(1) of the Act was issued on various dates calling for certain information through email and in reply, the assessee furnished the information called for. On perusal of the submissions made by the assessee, it was noted by the Ld. AO that the assessee has deposited an amount of Rs. 29,75,000/- in Lakshmi Vilas Bank during the demonetization period on various dates. On being asked, the assessee explained that the said cash deposits are out of the realization of advances of Rs. 23,03,474/- as well as advance receipts of Rs. 4,50,000/-. But the Ld. AO did not accept the explanation given by the assessee. Further, the Ld. AO observed that as per the books of account of the assessee which was furnished during the assessment proceedings, the closing cash balance as on 09/11/2016 was Rs. 23,26,440/-. Therefore, the Ld. AO opined that the made the assessee ought to

have deposited the said amount of cash atleast before 20/11/2016 as they are in the form of SBNs. However, the Ld. AO considered the cash deposit of Rs. 2,25,000/- as explained and the other cash deposits aggregating to Rs. 27,50,000/- were treated as unexplained money in the hands of the assessee as per the provisions of section 69A of the Act and brought to tax U/s. 115BBE of the Act. Thus, the Ld. AO completed the assessment U/s. 143(3) of the Act and determined the total income at Rs. 35,34,640/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, dismissed the appeal of the assessee by holding that the availability of so called cash balance in the books of account is only evidence on paper and the said amount must have been utilized for some other purposes which are not brought on record (para 6.6 of the CIT(A)'s order). Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A)-NFAC is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A)-NFAC is not justified in sustaining the addition of Rs. 27,50,000/- made by the Assessing*

Officer U/s. 69A of the Act towards unexplained cash deposits in the bank account.

3. *Any other grounds may be urged at the time of hearing."*

4. At the outset, the Ld. Authorized Representative submitted that the assessee being involved in money lending business, on the monies lent, the assessee has received an amount of Rs. 3,63,609/- as interest income and the principal amount was given as loan during the previous year relevant to the assessment year 2017-18 to various persons and the same fact was recorded in the books of account which has been furnished before the Ld. Revenue Authorities. However, the assessee made cash deposits during the demonetization period and therefore the Ld. AO treated the amount of cash deposits as unexplained money U/s. 69A of the Act. The Ld. AR further submitted that the assessee has disclosed the investments in the books of accounts and the computation of income which was offered for taxation and therefore the question of invoking the provisions of section 69A does not arise. The Ld. AR relied on the decision of this Bench of the Tribunal in the case of ITO vs. Sri Tatiparti Satyanarayana in ITA No. 76/Viz/2021, dated 16/03/2023 to state that when the investments are disclosed by the assessee in the books of

accounts, there is no application of the provisions of section 69A of the Act. The Ld. AR further submitted that the Ld. CIT(A)-NFAC, on similar set of facts, considered the assessee's son's case (Ankit Dilip Jain) but the Ld. CIT(A)-NFAC has not considered the assessee's case. Therefore, the Ld. AR pleaded that the addition made by the Ld. AO and confirmed by the Ld. CIT(A)-NFAC may be deleted.

5. On the other hand, the Ld. Departmental Representative submitted that the assessee has not filed any details before the Ld. AO and even before the Ld. CIT(A)-NFAC and therefore there is no infirmity in the orders of the Ld. Revenue Authorities and the same may be sustained.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee has disclosed the investment in his books of account and also shown the same in the computation of income which was offered for taxation. Therefore, the Ld. AR's contention that the provisions of section 69A are not applicable in the present case of the assessee as the cash deposits during the demonetization period are duly recorded in the assessee's books of accounts holds good.

I have also considered the decision of the Division Bench of this Tribunal in the case of ITO vs. Sri Tatiparti Satyanarayana [ITA No.76/Viz/2021], dated 16/03/2021 wherein the Tribunal held that *the provisions of section 69 cannot be invoked when the assessee has disclosed investment in the books of account and in the computation of income which was offered for taxation.* Considering the above facts and circumstances of the case, I find force in the arguments of the Ld. AR and accordingly I direct the Ld. AO to delete the addition made on account of unexplained money amounting to Rs.27,50,000/- since the provisions of section 69A are not applicable in the case of the assessee. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 31st January, 2024.

Sd/-
(दुव्वूरु आर. एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 31/01/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee- Sobha Devi Dilipkumar, Shop No.82, Swarna Complex, Rajagopalachari Street, Governorpet, Vijayawada, Andhra Pradesh – 520002.
2. राजस्व/The Revenue – the Income Tax Officer, Ward-2(1), CR Building, 1st Floor, Annex, MG Road, Vijayawada, Andhra Pradesh – 520002.
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