

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. 123/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

(Late) Malleswara Rao Alumuri,
Rep. by wife and L/R Alamuri
Lakshmi,
D.No. 10-14/2-32, Akulavari
Street, Mallikharjunapet, One
Town, Vijayawada,
Andhra Pradesh – 520001.
PAN: ALDPA 7438 G

(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-1(1),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Satyasai Rath, CIT-DR

08/02/2024

28/02/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the
Ld. Principal Commissioner of Income Tax, Vijayawada [Pr. CIT]

in DIN & Order No. ITBA/REV/F/REV5/2021-22/1040916107(1), dated 26/03/2022 for the AY 2017-18.

2. At the outset, it is observed from the record that there is a delay of 337 days in filing the appeal before the Tribunal. With respect to belated filing of the appeal, the assessee filed a petition for condonation of delay along with the affidavit and the relevant contents of affidavit are extracted herein below for reference:

"1. *The petitioner is the wife and legal representative of Late Sri Malleswara Rao Alumuri.*

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6. *In consequent to the order passed U/s. 263 of the Act, AO passed consequential order U/s. 143(3) r.w.s. 263 of the Act dated 31/3/2023 wherein income was estimated on the deposits made in the bank account.*

7. *Subsequently, the L/R of the assessee was advised by her regular Chartered Accountant that she may approach a senior Counsel to ascertain the further course of action, if required, to contest the order passed U/s. 143(3) r.w.s 263 of the Act.*

8. *Accordingly, the L/R of the assessee approached Sri C. Subrahmanyam, Chartered Accountant, for his advice and while discussing the issue an enquiry was made whether any appeal was preferred against order U/s. 263 of the Act.*

9. *As the assessee's L/R is not aware of this matter she made her regular Chartered Accountant to speak to the Sr. Counsel who informed that he is not aware of the order passed U/s. 263 of the Act is in appealable order and he was under the bonafide belief that since the matter was*

set-aside to the file of the Ld. AO, the same can be represented before the Lower Authorities.

10. *In this regard, the regular Chartered Accountant and assessee's L/R requested the Sr. Counsel to prefer an appeal against the order passed U/s. 263 of the Act if required and if it is an appealable order to contest such order both legally and factually by explaining the delay under which appeal could not be filed within the due date.*
11. *The regular Chartered Accountant of the assessee has also given his consent that he would give an affidavit in this regard to say that he was not aware of the fact that order passed U/s. 263 of the Act is an appealable order before ITAT and missed the opportunity.*
12. *With this background the appeal against the impugned order passed U/s. 263 of the Act was filed on 17/4/2023 as against the due date of 15/03/2022 thus causing a delay of 337 days. Further, the affidavit of the regular Chartered Accountant is also enclosed which is self explanatory.*
13. *....."*

3. On perusal of the explanation given by the assessee for filing the appeal before the Tribunal beyond the prescribed time limit, we find that the assessee was prevented by a reasonable and sufficient cause to file the appeal within the stipulated time. Therefore, we hereby condone the delay of 337 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

4. Briefly stated the facts of the case are that the assessee is an individual engaged in the business of perishable vegetable i.e., Tomatoes on commission basis. The assessee filed his e-return of income for AY 2017-18 on 17/12/2017 admitting a total income of Rs. 3,20,860/-. The case was selected for limited

scrutiny under CASS to verify "cash deposit during the year". Accordingly, notice U/s. 143(2) was issued on 05/09/2018 and duly served on the assessee. Further, during the e-assessment proceedings, the Ld. AO issued notice U/s. 142(1) of the Act and the assessee was asked to produce copy of return of income, statement of total income, certified copies of all the bank accounts in relation to credits appearing in bank accounts with details of sources and evidences there for. Further, the Ld. AO also issued notice U/s. 133(6) of the Act to the Branch Manager, State Bank of India, VMC Campus, Vijayawada and called for the statement of account of the assessee. However, the assessee expired on 05/08/2018 and therefore his son / Legal Representative Shi Chinna Rao has responded to the notices issued by the Ld. AO and explained the sources along with the supporting documentary evidences with regard to the business activities of the assessee as well as the cash deposits made during the FY 2016-17. After verifying the information submitted by the son / L/R of the assessee as well as the supporting documentary evidences, the Ld. AO completed the assessment U/s. 143(3) of the Act accepting the income returned by the assessee at Rs. 3,20,860/-. Later on, the Ld. Pr. CIT, Vijayawada by exercising his powers vested U/s. 263 of the Act and on

verification of the assessment record, it was held that the assessment order was passed without making enquiries or verification which should have been made by the Ld. AO and thereby treated the assessment order as erroneous insofar as it is prejudicial to the interests of the Revenue. Accordingly, the Ld. Pr. CIT issued show-cause notice U/s. 263 of the Act on 22/12/2021 and was served on the same date wherein the assessee was called for certain information and his objections, if any, against the proposed revision of the assessment. Since there is no response, the Ld. Pr. CIT issued another notice on 7/1/2022 and in response the assessee filed his written submissions. On verification of the submissions and the material before him, the Ld. Pr. CIT held that there is no evidence brought on record to prove that the entire cash deposits of Rs. 1,86,15,610/- were out of the business receipts. Further, the Ld. Pr. CIT observed that the assessee has not furnished the details of farmers from whom the amount was claimed to have transferred after holding commission. Thus, the Ld. Pr. CIT concluded that the assessment order passed U/s. 143(3), dated 17/12/2019 is required to be treated as an order which is prejudicial to the interests of the revenue and accordingly, directed the Ld. AO to re-do the assessment in accordance with

law after making necessary enquiries and verification of the issues discussed in his order. Aggrieved by the order of the Ld. Pr. CIT, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. That under the facts and circumstances of the case, the order passed by the Ld. Pr. CIT U/s. 263 of the Act is bad in law.*
- 2. The order passed by the Ld. Pr. CIT U/s. 263 of the Act is not a valid order in the eyes of law as inasmuch as the order U/s. 143(3) of the Act that was subjected to review, is by itself is an invalid order since it was passed by the Ld. AO in the name of the deceased assessee.*
- 3. The Ld. Pr. CIT is not correct in setting aside the order passed U/s. 143(3) inasmuch as such order is neither erroneous nor prejudicial to the interests of Revenue, in this view of the matter, the order passed U/s. 263 of the Act is liable to be set-aside.*
- 4. For these and other grounds that are to be urged at the time of hearing of the case, the appellant prays that the revision order passed by Ld. Pr. CIT U/s. 263 be set-aside, in the interest of justice."*

5. At the outset, the Ld. AR submitted that the revision order passed by the Ld. Pr. CIT U/s. 263 of the Act is not in accordance with law inasmuch as the order passed by the Ld. AO is neither erroneous nor prejudicial to the interests of the Revenue. The Ld. AR further submitted that the Ld. AO while passing the assessment order has considered the submissions of the Legal Representative of the assessee who has filed the evidences in support of the cash deposits and has also explained

the sources for the cash deposits made by the assessee. The Ld. AR further submitted that the Ld. AO has verified the information furnished by the assessee's son and the supporting evidences in respect of the transactions entered into by the assessee and then only the Ld. AO opined and found that the submissions of the LR of the assessee are correct. However, the Ld. Pr. CIT by invoking the provisions of section 263 of the Act considered the order of the Ld. AO is erroneous and prejudicial to the interests of the Revenue. Therefore, the Ld. AR pleaded that the order of the Ld. Pr. CIT is bad in law as the Ld. AO has made enquiries as evidences by the order of the Ld. AO. He therefore pleaded that the order of the Ld. Pr. CIT be set-aside. Further, the Ld. AR also argued that since the assessment order passed by the Ld. AO is in the name of the deceased person, the assessment order itself is not valid in the eyes of law and required to be quashed.

6. Per contra, the Ld. Departmental Representative at the outset strongly relied on the order of the Ld. Pr. CIT and supported the decision taken by the Ld. Pr. CIT. The Ld. DR further submitted that during the course of scrutiny proceedings, Sri Chinna Rao, son of the assessee (expired on 5/8/2018) has explained that the entire cash deposits amounting to Rs.

1,86,15,610/- were out of the trading receipts and the Ld. AO simply accepted the submission / explanation of the assessee and treated the cash deposits as explained without causing any enquiries. However, the Ld. Pr. CIT on verification of the return of income filed by the assessee it is noticed that the gross receipts were shown at Rs. 57,48,000/- only and also there is no evidence on record to prove that the entire cash deposits of Rs. 1,86,15,610/- were made out of the business receipts. The Ld. DR also submitted that during the revision proceedings, the contention of the assessee is that the cash was received from various parties towards sale proceeds and deposited in the bank account and the assessee gets only commission. However, before the Ld. Pr. CIT the assessee did not furnish any details of persons to whom he sold Tomotos and received cash as well as the details of the farmers to whom the amount was claimed to have been transferred after holding the commission. Considering all these facts, the Ld. Pr. CIT came to a conclusion that the Ld. AO neither obtained & examined the primary evidences to prove the genuineness of the sources for cash deposits nor the assessee furnished the same in support of his claim. Even before the Ld. Pr. CIT the assessee has not produced any documentary evidence in support of his claim. The Ld. DR therefore pleaded that the

order passed by the Ld. Pr. CIT is in accordance with law and prayed to uphold the same.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The only issue involved in this appeal is whether the order passed by the Ld. Pr. CIT U/s. 263 of the Act is bad in law or not? It is noticed from the material before us that during the previous year relevant to the assessment year 2017-18, the assessee made cash deposits amounting to Rs.1,86,15,610/- in his SBI bank account. On being asked, since the assessee expired on 5/8/2018, the assessee's son Mr. Chinna Rao explained that the entire cash deposits were out of trading receipts. On careful perusal of the assessment order, we find that the Ld. AO has simply accepted the explanation of the assessee without bringing any evidence on record to prove that the entire cash deposits were out of the business receipts as explained by the assessee's son Mr. Chinna Rao. However, it is apparent from the return of income filed by the assessee, the assessee has disclosed turnover of Rs. 57,48,000/- and admitted total income @ 8% of the turnover. It is also noticed from the order of the Ld. Pr. CIT that though the assessee claimed that the assessee had

received cash from various parties towards sale proceeds of Tomotos and deposited the cash in the bank account, the assessee did not produce any details of purchasers of Tomotos and transactions made with them. The onus is on the assessee to prove the genuineness of source for cash deposits along with the documentary evidence. It is also apparent from the order of the Ld. AO that the Ld. AO had not thoroughly examined the above details nor obtained the relevant details / information / evidence from the assessee before accepting the explanation of Mr. Chinna Rao as well as the claim made by the assessee. We also observed that even before the revisionary proceedings, the assessee did not furnish any documentary evidence in support of his claim. Under these circumstances, we find merit in the observation of the Ld. Pr. CIT that the Ld. AO has passed the assessment order without making inquiries or verification which should have been done when the case is selected for scrutiny on the issue. Hence, in our considered opinion the Ld. Pr. CIT has rightly invoked the provisions of section 263 of the Act and thereby setting aside the assessment order passed by the Ld. AO with a direction to re-do the assessment in accordance with law after making all enquiries and verification of the issues mentioned in his order passed U/s. 263 of the Act after providing a reasonable opportunity of being

heard to the assessee. Accordingly, we hereby sustain the order passed by the Ld. Pr. CIT. With respect to the Ld. AR's contention that the order of the Ld. AO itself is not valid in the eyes of law because it is passed in the name of the deceased person, we find that while invoking the revisionary powers, the Ld. Pr. CIT has rightly issued the notices to the Legal Representative of the assessee and also passed the order accordingly. Therefore, in our considered opinion, by simply mentioning the deceased assessee's name in the assessment order which is merely a clerical error cannot invalidate the total assessment proceedings and on this issue we rely on the decision of the Hon'ble Supreme Court on this issue in the case of Sky Light Hospitality LLP vs. ACIT reported in [2018] 254 Taxman 390 (SC). Thus, we hereby dismiss all the grounds raised by the assessee.

8. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on 28th February, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 28.02.2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – (Late) Malleswara Rao Alumuri, Rep. by wife and L/R Alamuri Lakshmi, D.No. 10-14/2-32, Akulavari Street, Mallikharjunapet, One Town, Vijayawada, Andhra Pradesh – 520001.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), Revenue Colony, Siddhartha Public School Road, Moglarajapuram, Vijayawada, Andhra Pradesh-533401.
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