

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.55/Viz/2022

(निर्धारण वर्ष / Assessment Year :2018-19)

Lakshmaiah Gunuputi,
Bhimavaram, W.G. Dist,
Andhra Pradesh.
PAN: ABKPG 1084 H

(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. Asst. Commissioner of
Income Tax,
Central Circle-2
Rajahmundry, E.G. Dist.,
Andhra Pradesh.

(प्रत्यर्थी/ Respondent)

None

Dr. Aparna Villuri, Sr. AR

26/02/2024

28/02/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in DIN & Order No. ITBA/APL/S/250/2021-

22/1039669126(1), dated 11/2/2022 arising out of the order passed U/s. 153A r.w.s 143(3) of the Act for the AY 2018-19.

2. Briefly stated facts of the case are that the assessee is an individual engaged in the business of Prawn commission and Fish culture and is a partner in M/s. Dhanlakshmi Rice & Flour Mill and M/s. Yerrayya Raw and Boiled Rice Mill. The assessee filed his return of his return of income admitted a total income of Rs. 3,10,000/- for the AY 2018-19 on 22/10/2018. Initially, the return was processed U/s. 143(1) of the Act. A search and seizure operation u/s. 132 of the Act was conducted on 2/11/2017 in the case of the assessee at his residential premises. A search warrant was executed in the name of the assessee and various incriminating material was found and seized. Subsequently, an order U/s. 127 of the Act for centralization of the case was passed by the Principal Commissioner of Income Tax, Rajahmundry vide order in F.No. 62, Juris/Pr.CIT/RJY/2017-18, dated 13/3/2018 and notified the assessee's case to Central Circle-2, Rajahmundry. Accordingly, notice U/s. 143(2) of the Act was issued on 29/9/2018 and served on the assessee on 02/11/2018. Further, a detailed questionnaire u/s. 142(1) of the Act was issued on 11/6/2019 and was served on the assessee on

13/6/2019 and the assessee submitted its reply on 14/11/2019. Thereafter, certain questionnaire calling for the information were issued on 11/6/2019; 9/9/2019; 18/10/2019; 2/12/2019 and 16/12/2019 and duly served on the assessee. In reply the assessee's representative appeared before the Ld. AO and furnished the relevant information. After duly considering and examining the various information furnished by the assessee's representative, the Ld. AO completed the assessment U/s. 143(3) of the Act on 27/12/2019 and passed the assessment order wherein the Ld. AO made certain additions viz., (i) Unexplained investment in personal jewellery (Gold jewellery Rs.23,55,600 + Rs. 1,66,400/- Silver Jewellery) aggregating to Rs. 25,22,000/- (ii) Deficit cash balance at Residence of the assessee Rs. 78,163/- and made addition U/s. 69 r.w.s 115BBE of the Act and (iii) Disallowance U/s. 40A(3) of the Act Rs.58,26,321/- and determined the assessed income at Rs. 87,36,584/- against the returned income of Rs. 3,10,000/-. In the assessment the Ld.AO also determined the agricultural income of the assessee at Rs. 4,47,592/- and brought to tax. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld.CIT (A). Before the Ld. CIT(A), the assessee has filed written submissions through online. On appeal, the Ld. CIT(A) considered the written

submissions made by the assessee and granted part relief to the assessee with respect to the addition of Rs. 25,22,000/- on account of unexplained investments in personal jewellery and confirmed the addition of deficit cash amounting to Rs. 78,163/- made U/s. 69 r.w.s 115BBE of the Act as well as the addition of Rs. 58,26,321/- made towards disallowance of cash expenditure beyond the specified limit made u/s. 40A(3) of the Act. Thus, the Ld. CIT(A) partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT (A), the assessee filed an appeal before the Tribunal. On assessee's appeal, the Tribunal partly allowed the assessee's appeal vide its order dated 28/02/2023. Thereafter, the assessee filed Miscellaneous Application seeking rectification of an inadvertent error crept in the original order of the Tribunal dated 28/02/2023. Accordingly, the Tribunal partly allowed the MA filed by the assessee vide its order dated 15/02/2024 and recalled the order of the Tribunal dated 28/02/2024.

3. At outset, we find from the order passed by the Tribunal dated 28/02/2023 that there is an inadvertent error in the order of the Tribunal dated 28/02/2023 with respect to Ground No.3 of the original grounds of appeal while considering the amount of Rs. 78,163/-

as unexplained investment U/s. 69 r.w.s 115BBE of the Act. It is the case of the assessee that since this amount has been recorded in the books of account as detailed in para-2 of the Assessment Order, no addition can be made U/s. 69 of the Act. It was also the submission of the assessee that the Ld. AO has erroneously made an addition U/s. 69 which deserves to be deleted.

4. At the time of hearing of this appeal, none appeared on behalf of the assessee. However, considering the miniscule rectification issue involved in this appeal we proceed to adjudicate the appeal to the extent of the issue recalled.

5. We have heard the Ld. DR and perused the material available on record as well as the order of the Tribunal. We find from the assessment order vide para 2 the Ld. AO has mentioned the availability of cash balance as per the books of account as on 2/11/2017 amounting to Rs. 1,02,886/- whereas the physical cash balance was Rs. 24,723/-. Since this amount has been recorded in the books of account, no addition can be made U/s. 69 of the Act. Therefore, we are of the view that no addition can be made U/s. 69 of the Act when the amount have been recorded in the books of account of the assessee which was also not disputed by the Ld. Revenue Authorities. We therefore direct the Ld. AO

to delete the addition of Rs. 78,163/- made U/s. 69 of the Act. Accordingly, this ground raised by the assessee is allowed.

6. In the result, the appeal of the assessee is partly allowed.

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 – Lakshmaiah Gnuputi, 19-9-3/3, Bank Colony, Near Water Tank, Bhimavaram-534201, WG Dist, Andhra Pradesh – 534201.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Central Circle-2, Aayakar Bhavan, Rajahmundry, EG Dist., Andhra Pradesh-533101.
3. The Principal Commissioner of Income Tax (Central), Visakhapatnam.
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