

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. Nos. 260 to 267/Viz/2023
(निर्धारण वर्ष / Assessment Years: 2013-14 to 2020-21)

Shyam Sundar Polisetty,
D.No. 8-24-31, Mangalagiri Road,
Guntur - 522001.
PAN: AEQPP 7790 G
(अपीलार्थी/ Appellant)

Vs. The Deputy Commissioner of
Income Tax,
Central Circle-1,
Guntur.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri M.V. Prasad, AR

प्रत्यर्थी की ओर से / Revenue by

: Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 13/02/2024

घोषणा की तारीख/Date of

: 28/02/2024

Pronouncement

ORDER

PER BENCH:

All the captioned appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals)-3, Visakhapatnam [Ld. CIT(A)] in the following DIN & Order Nos.

Sl No	DIN & Order No.	Date of order	AY
1	ITBA/APL/S/250/2023-24/1054062901(1)	30/6/2023	2013-14
2	ITBA/APL/S/250/2023-24/1054063437(1)	30/6/2023	2014-15
3	ITBA/APL/S/250/2023-24/1054063740(1)	30/6/2023	2015-16
4	ITBA/APL/S/250/2023-24/1054064028(1)	30/6/2023	2016-17
5	ITBA/APL/S/250/2023-24/1054064681(1)	30/6/2023	2017-18
6	ITBA/APL/S/250/2023-24/1054064911(1)	30/6/2023	2018-19
7	ITBA/APL/S/250/2023-24/1054065097(1)	30/6/2023	2019-20
8	ITBA/APL/S/250/2023-24/1054065249(1)	30/6/2023	2020-21

All these orders are arisen out of the orders passed U/s. 143(3) of the Income Tax Act, 1961 [the Act]. Since the assessee has raised identical grounds in all these appeals involving the similar issues, these appeals are clubbed, heard together and disposed of in this consolidated order.

2. At the outset, we noticed that there is a delay of 58 days in filing these appeals before the Tribunal. With respect to belated filing of the appeals, the assessee filed petitions for condonation of delay along with the affidavits in all the appeals under consideration and the relevant portion of the affidavits which is identical is extracted herein below for reference:

- "A. The appellant is unaware about the receipt of order since no SMS message has been received to his mobile stating that the appellate order has been uploaded.*
- B. Later on, our Authorized Representative has obtained the appeal order in the month of September and advised us about necessity of filing of further appeal.*
- C. As the September month is the last date for filing the returns of income, we along with our finance team were engaged in finalizing the accounts of the group. In this process we inadvertently missed the due date for filing the*

appeal before Hon'ble ITAT. Later upon enquiry of our auditor, we realized the mistake and immediately preferred the appeal with delay of 50 days.

- D. Since this being an inadvertent mistake for which we profusely request your Honours to excuse the appellant for filing the appeal with delay and admit such appeal.*
- E. Therefore it is earnestly submitted that the delay occurred is neither intentional nor deliberate.*
- F."*

3. On perusal of the explanation given by the assessee for filing the appeals before the Tribunal beyond the prescribed time limit, we find that the assessee was prevented by a reasonable and sufficient cause to file the appeals within the stipulated time. Therefore, we hereby condone the delay of 58 days in filing all the present appeals of the assessee before the Tribunal and proceed to adjudicate the appeals on merits.

4. Firstly, we shall take up the appeal **ITA No.260/Viz/2023 for the AY 2013-14 as a lead appeal.**

5. Briefly stated the facts of the case relevant to the AY 2013-14 are that the assessee, an individual, is a managing partner of flagship firm M/s. Polisetty Somasundaram and the main person of the Polisetty Somasundaram Business Group has filed his return of income for the AY 2013-14 on 06/03/2016 declaring an amount of Rs. 7,00,000/- as total income. A search and seizure operation U/s. 132 / 133A of the Act was conducted on the

tobacco exporting group based in Guntur, Andhra Pradesh ie., Polisetty Somasundaram Group on 28/01/2020. As a part of search operations conducted U/s. 132 of the Act in the group case of M/s. Polisetty Somasundaram, a search operation U/s. 132 of the Act was conducted at the business premises at D.No. 8-24-31, Mangalagiri Road, Guntur and residence of Sri Polisetty Shyam Sundar. The case was centralized to ACIT / DCIT vide order U/s. 127 of the Act vide F.No. 127/Pr.CIT/VJA/2020-21 issued by the Ld. Pr. CIT, Vijayawada on 16/02/2021. Subsequently, a notice U/s. 153A was issued to the assessee on 27/11/2021 and in response, the assessee filed a return of income on 04/12/2021 declaring a total income of Rs. 7 lakhs as admitted in the original return of income filed on 6/3/2016. During the course of search proceedings, in the case of M/s. Polisetty Somasundaram Group, it was found by the Revenue that Sri Shyam Sundar was involved in huge cash transactions with M/s. Polisetty Somasundaram and the details of which are not recorded in his regular books of account. It was further observed from the unaccounted cash book maintained by M/s. Polisetty Somasundaram, Mr. Polisetty Sham Sundar was received Rs. 23,72,49,340/- from M/s. Polisetty Somasundaram outside his books over the period from AY 2012-13 to 2019-20.

However, it was also observed by the Revenue that the assessee has not admitted any of the above receipts in the return of income filed in response to the notice U/s. 153A of the Act. Hence, a notice U/s. 143(2) was issued on 17/03/2022. Further, notice U/s. 142(1) was also issued on 3/2/2022 and the assessee was asked to furnish the details. Since there was no response from the assessee, the Ld. AO issued another notice U/s. 142(1) of the Act on 18/2/2022 requesting the assessee to explain as to why the unaccounted transactions done by Sri Polisetty Shyam Sundar with M/s. Polisetty Somasundaram were not admitted as additional income by Sri Shyam Sundar in his return filed U/s. 153A of the Act. In reply vide letter dated 27/03/2022, the assessee stated that the unaccounted cash receipts by Sri Polisetty Sham Sundar from M/s. Polisetty Somasundaram were not his income. Later on the Ld. AO, asked the assessee to furnish the details of foreign investments made by him and to explain as to why the provisions of Black Money Act should not be invoked in his case. In reply, the assessee submitted that the assessee had made the investments amounting to US \$ 102000 through his HUF status and routed through his bank account maintaining with Indian Overseas Bank, Guntur Main Branch. The assessee also submitted that the investment made in the

foreign company was also disclosed in his income tax returns for the year under consideration. The assessee further submitted that the foreign exchange remittances were made as per the limit prescribed by the Reserve Bank of India and they were duly reflected in the books of accounts. The assessee also submitted before the Ld. AO that in his case the provisions of Black Money Act are not applicable considering the facts and circumstances of the case. The Ld. AO did not agree with the submissions of the assessee and came to the conclusion that during the course and search scrutiny proceedings it was revealed that most of the expenses were cash expenses which are in violation of the provisions of section 40A(3) of the Act, section 269SS and 269T of the Act. Hence, the Ld. AO held that the cash expenses are not allowable expenditure which were disallowed in the hands of M/s. Polisetty Somasundaram firm and since the impugned expenditure is not allowable in the hands of the firm, taxing the same in the hands of the partner would amount to double addition and therefore, the Ld.AO made an addition of Rs. 2,25,13,508/- on protective basis towards withdrawal from M/s. Polisetty Somasundaram treating as income in the hands of the assessee. The Ld. AO also made an addition of Rs. 11,48,96,159/- on substantive basis and determined the

assessed income at Rs. 13,81,09,667/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A) with regard to the addition of Rs.2,25,13,508/- sustained the addition of 20% of the impugned expenses in the hands of the assessee, while observing that in the case of M/s. Polisetty Somasundaram Firm a similar addition of 20% was sustained in the hands of the firm and thereby to maintain consistency, the Ld. CIT(A) has sustained 20% of the impugned expenditure in the hands of the assessee on protective basis. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The Ld. CIT(A) erred in both law and facts.*
- 2. On the facts and circumstances of the case, Ld. CIT(A) erred in the addition of Rs. 45,02,702/- made towards withdrawals from M/s. Polisetty Somasundaram treating it as income in the hands of the assessee is against the law and liable to be deleted.*
- 3. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition of 20% of the withdrawals as there is no substantive addition in the hands of firm M/s. Polisetty Somasundaram and there is no dispute with regard to the receipts.*
- 4. On the facts and circumstances of the case, Ld. CIT(A) erred in confirming the addition of Rs. 20% of the withdrawals as the amount is withdrawn after admitting the income.*
- 5. On the facts and circumstances of the case, Ld. CIT(A) erred in confirming the addition of 20% of withdrawals*

based on the seized annexure A/PSS/CORP/18 which was not valid evidence as finding was given by Hon'ble ITAT, Visakhapatnam in the case of M/s. Polisetty Somasundaram.

6. *Any other ground that may be urged at the time of hearing of the appeal."*

6. The only issue emanating from the grounds of appeal filed by the assessee is to tax 20% of the withdrawals by the assessee from the firm M/s. Polisetty Somasundaram on protective basis. At the outset, the Ld. Authorized Representative [AR] argued that the assessee has withdrawn these amounts from the capital account maintained with the firm M/s. Polisetty Somasundaram. However, in the case of the firm M/s. Polisetty Somasundaram, the income has been taxed based on the seized material. The same amounts have been withdrawn by the assessee and the Ld. AO proposed to tax the assessee on protective basis. Further, the Ld. AR argued that the Ld. CIT(A) has granted relief to the extent of 80% by confirming 20% of Rs.2,25,13,508/- as income of the assessee. On this issue, the Ld. AR further submitted that the same amount has been taxed @ 20% in the hands of the firm and therefore it cannot be subjected to tax on protective basis in the hands of the assessee based on the withdrawals from the firm M/s. Polisetty Somasundaram. The Ld. AR therefore pleaded that

the addition made by the Ld. AO and confirmed by the Ld. CIT(A) be deleted.

7. Per contra, the Ld. Departmental Representative [DR] placed heavy reliance on the order of the Ld. CIT(A) and pleaded to uphold the same.

8. We 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 admitted fact that 20% of the amount of Rs.2,25,13,508/- has been subjected to tax in the hands of the firm M/s. Polisetty Somasundaram. It was also confirmed by the order of this Bench of the Tribunal in ITA No.173/Viz/2023 (AY: 2013-14). Therefore, the same amount cannot be taxed in the hands of the assessee on protective basis. It is a trite law that any income shall be subjected to tax only once in the hands of the assessee. On this issue, we find that the Ld. CIT(A) has subjected another 20% in the hands of the assessee wherein the same amount has already been subjected to tax in the hands of the firm M/s. Polisetty Somasundaram on substantive basis which was also confirmed by the order of this Bench of the Tribunal in ITA No. 173/Viz/2023 (supra). We extract below the

relevant paras from the Tribunal's order dated 18/8/2023 for reference:

*"52. **Ground Nos. 5 and 6** raised by the assessee on merits and they are extracted herein below:*

"5. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction of expenditure towards purchases of tobacco as reflected in the seized material to the extent of 80% of such expenditure only instead of allowing the entire expenditure though the sales admitted in the books could not have been made without effecting such purchases and though the said sales have not been disputed by the Revenue.

6. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in allowing deduction towards the expenditure represented by the debit entries without narration in the seized material to the extent of 40% of such expenditure only without providing any justified for limiting the deduction to the said extent instead of allowing the entire expenditure any by disregarding the provisions of section 132(4A) that deem that the contents of the seized material are true."

53. On the above grounds, the Ld. AR argued that the assessee has purchased tobacco from grey market by cash which was already included in the purchases while admitting the gross profit during the filing of return of income. The Ld. AR admitted that this grey market purchases are shown in the books of accounts under different creditors instead of the original creditors. Therefore the Ld. AR pleaded that the Ld. CIT(A) has estimated a profit of 20% on unaccounted purchases is not valid as the assessee has declared the profit while filing the return of income is after considering the entire purchases. The Ld. AR therefore also submitted that various High Courts as relied by the Ld. CIT (A) has estimated the profit at 12.5% on the bogus purchases and therefore prayed that the profit may be restricted to 12.5%. Per contra, the Ld. DR submitted that the Ld. CIT(A) has already granted substantial relief by estimating the profit @ 20% on bogus purchases by placing reliance on the decision of the Hon'ble Bombay High Court in the case of ITO-12(3)(3), Mumbai vs. Matcon Engineers India Pvt Ltd and hence pleaded that the order of the Ld. CIT(A) may be upheld.

54. We have heard both the sides and perused the material available on record. We find from the order of the Ld. CIT(A) has estimated the profit @ 20% on the bogus purchases by relying on the High Court decisions. No doubt, various High Courts have supported the decision of estimating the profit @ 5% to 12.5% only on bogus purchases. Now the question before us is whether the Ld. CIT(A) is right in estimating the profit @ 20% on bogus purchases. The contention of the assessee on this aspect is that it has already shown in its books of accounts about the grey market purchases

and it is included in the gross profit. Hence, the Ld. AR pleaded to restrict the estimation to 12.5% instead of 20%. However, since the legal grounds raised by the assessee have been adjudicated in favour of the assessee, as per the foregoing paragraphs and hence adjudication of the grounds raised vide Ground No. 5 and 6 on merits needs no separate adjudication."

9. No material has been placed before us that the above decision of allowing the grounds raised by the assessee in ITA No. 173/Viz/2023 (supra) in the case of the firm M/s. Polisetty Somasundaram was contested by the Revenue in any higher judicial forums. We therefore find no merit in the argument of the Ld. Revenue Authorities and thereby direct the Ld. AO to delete the addition made on protective basis in the hands of the assessee. Accordingly, we are inclined to allow the grounds No.1 to 4 and 6 raised by the assessee. Ground No.5 is a legal ground and the same is not adjudicated as the other grounds raised by the assessee are allowed in favour of the assessee. It is ordered accordingly.

10. In the result, appeal filed by the assessee for the AY 2013-14 is allowed.

11. With respect to the assessee's appeals for the AYs 2014-15 to 2020-21, the assessee has raised identical grounds involving the similar issues. Therefore, our decision given while

adjudicating the assessee's appeal for the AY 2013-14 *mutatis mutandis* applies to the appeals filed by the assessee for the AYs 2014-15 to 2020-21 also. Accordingly, the appeals filed by the assessee for the AYs 2014-15 to 2020-21 are allowed.

12. Ex-consequenti, all the appeals filed by the assessee are allowed.

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

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :28.02.2024

OKK - SPS

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee – Sham Sundar Polisetty C/o. CA M V Prasad, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh – 520010.
2. राजस्व/The Revenue – The Deputy Commissioner of Income Tax, Central Circle-1, 3rd Floor, Raj Kamal Complex, Lakshmipuram Main Road, Guntur, Andhra Pradesh – 520002.
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