

आयकरअपीलीयअधिकरण, 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.197 /Viz/2023
(निर्धारण वर्ष / Assessment Year : 2014-15)**

Kalli Narayana Appa Rao
D.No.4-57-1, Bavi Veedhi,
Poola, Bhimadole Mandal
West Godavari

[PAN : ALPPK9004Q]

(अपीलार्थी/ Appellant)

Vs. Income Tax Officer
Ward-2
Eluru

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 28.02.2024

घोषणा की तारीख/Date of Pronouncement

: 29.02.2024

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order NO. ITBA/NFAC/S/250/2023-24/1053604158(1) dated 07.06.2023, arising out of order passed u/s 271(1)(c) dated 27.03.2019 for the Assessment Year (A.Y.) 2014-15.

2. Brief facts of the case are that the assessee, an individual, engaged in the business of purchase and sale of liquor and also pisciculture, filed his return of income for the A.Y.2014-15 on 30.09.2014, admitting total income

of Rs.9,36,450/-. The return was processed u/s 143(1) of the Act and selected for limited scrutiny under CASS. The Assessing Officer (AO) issued show cause letter to the assessee and after considering the assessee's explanation in reply to the show cause letter, the AO completed the assessment u/s 143(3) of the Act by assessing the total income at Rs.50,77,620/- and the AO also initiated penalty proceedings simultaneously by issuing notice u/s 271(1)(c) of the Act. The assessee preferred an appeal against the assessment order before the Ld.CIT(A)-12, Hyderabad and the Ld.CIT(A) passed an order dated 10.01.2018 by partly allowing the appeal of the assessee. Against which, the assessee preferred further appeal before the hon'ble ITAT, Visakhapatnam and therefore, pleaded the AO to keep the penalty proceedings in abeyance till the appeal is disposed by the hon'ble ITAT. However, without considering the plea of the assessee, the AO initiated penalty proceedings and passed order u/s 271(1)(c) of the Act dated 27.03.2019 and levied penalty of Rs.7,60,000/-. Meanwhile the ITAT passed order dated 22.03.2019, giving part relief to the assessee. Consequently, giving effect to the order passed by the ITAT, the AO passed modification order u/s 271(1)(c) dated 18.04.2019 and levied penalty of Rs.4,40,000/-.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the penalty levied by the Ld.CIT(A) and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. *The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*

2. *The learned Commissioner of Income Tax (Appeals) ought to have held that the notice issued u/s 271(1)(c) of the Act is invalid and ought to have quashed the penalty order as void ab initio.*

3. *The learned Commissioner of Income Tax (Appeals) is not justified in upholding the penalty of Rs.4,40,000/- levied by the assessing officer u/s 271(1)(c) of the Act.*

4. *The learned Commissioner of Income Tax (Appeals) ought to have considered that the penalty is not warranted as appellant neither concealed the particulars of income nor furnished inaccurate particulars of income.*

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

5. Subsequently, the assessee filed a petition seeking to substitute the grounds of appeal filed with revised grounds of appeal as follows as the assessee omitted to raise one ground while filing the Form No.36. The Ld.AR pleaded to admit the revised grounds for adjudication:

1. *The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*

2. *The learned Commissioner of Income Tax (Appeals) ought to have held that the assessing officer was not justified in not keeping the penalty proceedings in abeyance as requested by the appellant, till disposal of quantum appeal by the hon'ble ITAT.*

3. *The learned Commissioner of Income Tax (Appeals) ought to have held that the notice issued u/s 271(1)(c) of the Act is invalid and ought to have quashed the penalty order as void ab initio.*

4. *The learned Commissioner of Income Tax (Appeals) is not justified in upholding the penalty of Rs.4,40,000 levied by the assessing officer u/s 271(1)(c) of the Act.*

5. *The learned Commissioner of Income Tax (Appeals) ought to have considered that the penalty is not warranted as appellant neither concealed the particulars of income nor furnished inaccurate particulars of income.*

6. *Any other grounds may be urged at the time of appeal hearing.*

6. Considering the plea of the assessee in the petition filed before us to admit the revised grounds, the revised grounds filed are admitted for adjudication.

7. At the outset, the Ld.AR submitted that the Ld.CIT(A) is not justified in upholding the penalty order passed by the AO u/s 271(1)(c) of the Act as the assessee pleaded the AO to keep the penalty proceedings in abeyance till the disposal of the appeal by the hon'ble ITAT. The Ld.AR further submitted that the assessee was not given sufficient opportunity before passing the penalty order. Moreover, the order passed by the AO u/s 271(1)(c) is not valid as the assessee has neither concealed the particulars of income nor furnished inaccurate particulars of income. He, therefore

pleaded to set aside the order passed by the Ld.CIT(A) and remit the matter back to the file of the AO with a direction to afford one more opportunity of being heard before the AO to substantiate his case.

8. Per contra, the Ld.DR relied on the order passed by the Ld.CIT(A) and pleaded to uphold the order passed.

9. We have heard both the parties and perused the material placed on record. It is an undisputed fact that the AO passed the penalty order u/s 271(1)(c) of the Act, inspite of request made by the assessee to keep the penalty proceedings in abeyance till disposal of appeal by the Hon'ble ITAT. But the AO passed the penalty order u/s 271(1)(c) of the Act, without giving sufficient opportunity to prove that the assessee has neither concealed the particulars of income nor furnished inaccurate particulars of income. Therefore, we are of the firm view that the assessee was not given sufficient opportunity to prove that the assessee has neither concealed the particulars of income nor furnished inaccurate particulars of income. In view of the foregoing facts and circumstances of the case, keeping in view the principles of natural justice, we are inclined to remit the matter back to the file of the AO to afford one more opportunity of being heard to the assessee and pass appropriate order on merits. The assessee is also directed to adhere to the notices issued by the revenue authorities and

submit all material evidences to substantiate his case. Accordingly, the grounds raised by the assessee are allowed for statistical purpose.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29th February,2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 29.02.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee– Shri Kalli Narayana Appa Rao, D.No.4-57-1, Bavi Veedhi, Poola, Bhimadole Mandal, West Godavari
2. राजस्व/The Revenue –The Income Tax Officer, Ward-2, Income Tax Officer, KKS Towers, Peddada Vari Street, RR Pet, Eluru
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, Visakhapatnam