

आयकर अपीलीयअधिकरण, 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.251/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2016-17)

Margani Govinda Raju,
Kadiyapulanka,
East Godavari Dist.
PAN: AOCPM 3465 K

(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(3),
Rajahmundry.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

18/03/2024

20/03/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NAFC/S/250/2023-25/1053349827(1), dated 31/5/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2016-17.

2. At the outset, it is noticed from the appeal record that there is a delay of 72 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drawn my attention to the affidavit filed by the assessee along with petition seeking for condonation of delay and read out the contents of the affidavit which is as under:

“1

2. *The appellant suffered from severe back pain and sciatica and was under treatment and bed rest as advised by the Doctor during the period from 20/07/2023 to 30/09/2023 (copy of medical certificate is enclosed). As such, the appellant could not attend to any other affairs during this period. As soon as the condition improved, the appellant took necessary steps for filing the appeal and filed the appeal on 10/10/2023.*

3. *Thus, the delay was on account of reasons beyond the control of the appellant. The delay was neither intentional nor deliberate. Therefore, the appellant prays the Hon’ble ITAT to kindly condone the said delay of 72 days in filing the appeal and to pass appropriate orders in the interest of rendering substantial justice.”*

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, I find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed limit with a delay of 72 days. Therefore, I hereby condone the delay of 72 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Briefly stated the facts of the case are that the assessee is an individual deriving income from nursery in the name and style of M/s. Sri Sainath Nursery, filed his return of income for the AY 2016-17 on 9/6/2016 declaring a total income of Rs. 2,69,350/- after claiming net agricultural income of Rs. 31,00,000/- as exempt. Thereafter, the case was selected for scrutiny and a notice U/s. 143(2) dated 23/6/2017 was served on the assessee on 3/7/2017. Further, notice U/s. 142(1), dated 8/3/2018 was also issued on the assessee along with questionnaire calling for certain information. In response to the notices, the assessee submitted his explanation and submitted particulars of land holding of the assessee along with Pattadar Pass Books, Adangal etc. On perusal of the assessee's submissions and particulars submitted before him, the Ld. AO observed that the assessee has claimed net agricultural income from nursery at Rs. 31,00,000/- as exempt which appears abnormal when compared to the normal agriculturist, whose produce from agriculture is seasonal and mainly dependent on weather conditions. Therefore, the Ld. AO issued summons U/s. 131(1) of the Act dated 19/12/2018 for personal appearance. A sworn in statement of the assessee was also recorded on 20/12/2018 wherein the assessee stated that the

extent of nursery is in 36½ acres, out of which 15.32 acres pertaining to the assessee and his family members and 21.28 acres are taken for lease. The assessee also explained that the varieties of plants grown mainly are fruit plants grown in his nursery, and the sales and supply of different varieties of plants to different states viz., Maharashtra, Rajasthan, Gujarat, Utter Pradesh Madhya Pradesh and to some extent in local market. In the sworn statement, the assessee also stated that he has not maintained any books or bills/vouchers and admitted that the agricultural income was arrived at on assumption basis after expenditure. Thereafter, the Ld. AO concluded the assessment and estimated the income of the assessee at Rs. 60,000/- per acre from nursery and an amount of Rs. 20,10,000/- for 33 ½ acres was attributed towards agricultural income from nursery and accordingly the balance of Rs. 10,90,000/- was disallowed and added to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, after considering the facts and circumstances of the case, the Ld. CIT(A)-NFAC issued notice to the assessee for enhancement of assessment and finally enhanced the agricultural income at Rs. 31,00,000/- against Rs. 10,90,000/- disallowed by the Ld. AO. On being aggrieved, the

assessee preferred the present appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 10,90,000/- made by the Assessing Officer by estimating the agricultural income at Rs. 20,10,000/- as against agricultural income of Rs. 31,00,000/- admitted by the assessing officer.*
3. *The Ld. CIT(A) is not justified in enhancing the addition made by the Assessing Officer by an amount of Rs. 20,10,000/- by treating the agricultural income at Rs. NIL.*
4. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 3,00,000/- made by the Assessing Officer by estimating the business income at Rs. 5,69,350/- as against actual income of Rs. 2,69,350/- admitted by appellant.*
5. *Any other grounds may be urged at the time of hearing.”*

5. **Ground No.4 is not pressed** by the Ld. AR and therefore the same is dismissed as not pressed. **Grounds No. 1 & 5 is general** in nature and therefore they need no adjudication.

6. With regard to **Grounds No. 2 & 3**, it is the submission of the Ld. AR that the assessee is doing nursery business and also doing agriculture. It was further submitted that the sworn statement of the assessee was also recorded by the Ld. AO wherein the assessee has categorically mentioned that he is having an extent of 33 ½ acres of agricultural land and produced Pattadar Pass Books etc., evidencing the same. The Ld. AR further submitted that the Ld.

AO has not doubted the nursery activities of the assessee but only allowed an amount of Rs. 60,000/- per acre as income of the assessee and the balance amount was added back to the total income of the assessee which is not correct since the assessee has explained the source for his agricultural income by producing the Revenue Records of his agricultural land holdings and other agricultural activities. The Ld. AR also submitted that during the First Appellate Proceedings, the Ld. CIT(A)-NFAC issued enhancement of assessment notice and wrongly enhanced the assessment to Rs. 31 lakhs. The Ld. AR further submitted that when once the Ld. AO physically verified the agricultural activities of the assessee and allowed the exemption of agricultural income to the extent of Rs. 20,10,000/- and only denied the balance amount of Rs. 10,90,000/- since the assessee has not produced vouchers, bills etc., it does not mean that the entire agricultural income of the assessee can be taxed by way of enhanced assessment. The Ld. AR therefore pleaded to delete the addition made by the Ld. Revenue Authorities.

7. On the other hand, the Ld. DR strongly relied on the orders of the Ld. Revenue Authorities and supported the decision taken

by them. The Ld. DR pleaded to confirm the decision taken by the Ld. CIT(A)-NFAC.

8. 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 is having an agricultural land to an extent of 33 ½ Acres and he did agricultural activities. The only contention of the Ld. AO is that the assessee has not produced the bills / vouchers and therefore he disallowed Rs. 10,90,000/- and added the same to the total income of the assessee for want of evidence. At the same time, the assessee has also failed to produce bills / vouchers or any other evidence to establish that the assessee has received the agricultural income of Rs. 31,00,000/-. However, the Ld. AO has not compared the income of the assessee with that of the other farmers but simply mentioned that there is a huge difference between the assessee's agricultural income and the income of other farmers but he has not given any details of other farmers whose income was compared with that of the assessee's agricultural income. The Ld. CIT(A)-NFAC also has not given any valid reason for enhancement of the assessed income nor the Ld. CIT(A)-NFAC has considered the view taken by the Ld. AO that the assessee is having agricultural land

and he cultivated the land for the purpose of doing agricultural activities. Therefore, considering the facts and circumstances of the case, I hereby set-aside the enhancement order passed by the Ld. CIT(A)-NFAC and the disallowance of agricultural income made by the Ld. AO to the tune of Rs. 10,90,000/- is hereby sustained. It is ordered accordingly.

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

Pronounced in the open Court on 20th March, 2024.

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

Dated :20/03/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Margani Govind Raju, D.No. 7-123, Kadiyapulanka, East Godavari District, Andhra Pradesh – 533126.
2. राजस्व/The Revenue – the Income Tax Officer, O/o. Income Tax Office, Aayakar Bhavan, Veerabhadrapuram, Rajamahendravaram, Andhra Pradesh – 533105.
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