

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
(Through Hybrid Hearing)

आयकर अपील सं./ I.T.A. No.170/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

Suryanarayana Reddy Tondapu, Kakinada. PAN: ADPPT 6393 K (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1, Kakinada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri DL Narasimha Rao, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	26/03/2024
घोषणा की तारीख/Date of Pronouncement	:	19/04/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1050283474(1), dated 01/03/2023 arising out of the order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 [in short 'the Act'] for the AY 2017-18.

2. At the outset, it is noticed from the appeal record that there is a delay of 38 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:

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It is further affirmed that I was confronted by ill health arising out of decease and I was under constant treatment since 20/04/2023 from the physician and medical certificate issued by him is submitted herewith.

.....

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR filed by the assessee, 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 38 days. Therefore, I hereby condone the delay of 38 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, filed declaration in Form-1 as per IDS-2016 before the Ld. Pr. CIT-2, Visakahaptnam and Form-2 was also issued to the assessee on 12/09/2019. It is observed by the Ld. AO that as per

the declaration under IDS-2016, the assessee has reported to have invested Rs. 20,00,000/- in the form of cash out of undisclosed income and the total tax liability of Rs. 9 lakhs being 45% of the undisclosed income was admitted. Since the assessee has not complied the provisions of section 187(1) of the IDS-2016 scheme, as per the provisions of section 197(b) of the Income Declaration Scheme-2016, the undisclosed income of Rs. 20 lakhs was proposed to brought to tax for the AY 2017-18. Accordingly, notice U/s. 148 of the Act was issued on 11/8/2018 and served on the assessee wherein the assessee was called for to file the return of income for the AY 2017-18. Since there was no response from the assessee, the Ld. AO called for the assessee's objection for completion of the assessment ex-parte in the absence of any information from the assessee. Further, the Ld. AO also issued a show cause notice on 21/11/2019 and the assessee was requested to furnish certain details viz., sources of income, books of account, bank account statement, details of immovable / movable properties purchased / sold during the FY 2016-17 and sources for the cash deposits, if any, during the demonetization period. In response, the assessee submitted the information and the statement of computation as per which the rental income was reported at Rs. 84,000/-; income from presumptive business U/s.

44AD at Rs. 10,27,443/- and income from catering services Rs. 9,50,000/-. Besides, the assessee has also worked out the income under the head "other sources" being the income offered under IDS at Rs. 20,00,000/- and thus worked out the total income at Rs. 40,61,443/-. Accordingly, the Ld. AO completed the assessment U/s. 143(3) r.w.s. 147 of the Act wherein the Ld. AO made an addition of Rs. 20 lakhs as undisclosed income (IDS-Scheme) U/s. 69 r.w.s 115BBE of the Act and determined the assessed income at Rs. 40,61,443/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. The Ld. CIT(A)-NFAC dismissed the appeal of the assessee ex-parte. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

"1. The order U/s. 250, dated 1/3/2023 passed by Ld. CIT(A) NFAC for the AY 2017-18 confirming the order of the Ld. AO under section 143(3) r.w.s 147 dated 11/12/2019 may be erroneous both in law and also on facts of the case.

2. Giving due weight to the submissions made, in the annexure notarized affidavit of even date, it is humbly requested that he marginal delay of 15 days may kindly be condoned and the appeal petition kindly be entered for adjudication on merits.

3. Taking cognizance of the fact that the assessee remain disenabled to remit the taxes etc., attributable to

the voluntary disclosure of Rs. 20,00,000 made by him under IDS scheme notified by the Government of India, due to the circumstances beyond his control as explained in the annexed statement of facts. It may not appear just, reasonable and / or lawful to quantify tax thereon at the special rates stipulated by section 115BBE of the Act.

4. The Ld. COT(A) ought to have notified that confirmation of various findings of the Ld. AO may not appear to be justifiable and / or lawful taking cognizance of the fact that failure to pay the tax attributable to the voluntary disclosure of Rs. 20 lakhs under IDS scheme notified by the Government may not tantamount to unexplained investment within the ambit of section 69 of the Act, particularly when there was no investment at all to the aforesaid extent, indulged in by the assessee.

5. As the voluntary disclosure made by the assessee under IDS scheme notified by the Government of India in the year 2016 was made by the assessee in a general way so as to cover any inherent defects in the accounting record and not towards any unexplained investment within the meaning of section 69 of the Act, formulation of addition U/s. 69 of the Act and charging the tax at the special rate stipulated by section 115BBE of the Act may not be valid in the eyes of law.

6. That in the facts and circumstances embedded in the annexed statement of facts, the raising of demand of Rs. 33,16,876/- U/s. 115BBE of the Act may not appear to be valid in the eyes of law and hence the aforesaid demand may be unsustainable.

7. In the absence of any incriminating material held by the Ld. AO to establish unexplained investment U/s. 69 of the Act and in the absence of any investment utilizing the aforesaid disclosure under IDS-2016 and also considering the fact that such disclosure which was made voluntarily, in a general way, the Ld. AO ought not have treated the same as undisclosed income under section 69 of the Act and thereby he ought not have

adopted the special rate of tax stipulated by section 115BBE of the Act the Ld. CIT(A) ought not have confirmed the raising of additional demand of Rs. 33,16,876/- and hence the same void in law.

8. For these reasons and other reasons which may be advanced at the time of hearing of appeal it is humbly requested that the appeal petition may be entertained as the reliefs sought for allowed.”

5. At the outset, the Ld. AR submitted before me that the Ld. CIT(A)-NFAC had passed ex-parte order without providing proper opportunity to the assessee of being heard. Ld. AR further submitted that while making the additions, the Ld. A.O. also did not consider the explanations and evidence submitted by the assessee and determined the total income of the assessee at Rs. 40,61,443/-. It was therefore pleaded that the assessee may be provided with one more opportunity to pursue his case before the Ld. AO.

6. Per contra, Ld. DR objected to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee, however, on the given dates of hearing, neither the assessee nor its Representative appeared before the Ld. CIT (A)-NFAC. Ld. DR further submitted that even before the Ld. A.O. though the assessee got sufficient opportunity to substantiate its case, the assessee failed to do so. Under these circumstances, the Ld. CIT (A)-NFAC had no other option but to pass

ex-parte order based on the materials available on record. Hence, it was pleaded that the orders passed by the Ld. Revenue Authorities do not call for any interference and appeal of the assessee may be dismissed.

7. I have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, I find that the Ld. CIT (A) had issued notices to the assessee and requested the assessee to file his submissions. However, none appeared on behalf of the assessee before the Ld. CIT(A)-NFAC on the given dates of hearing. Hence, the Ld. CIT(A) left with no other option except to pass ex-parte order based on the material available on record. In this situation, on perusal of the facts and circumstances of the case, I am of the view that the Ld. CIT(A)-NFAC ought to have considered the submissions made by the assessee before the Ld. AO which were stated to be not properly appreciated by the Ld. AO and pass a speaking order instead of passing ex-parte order. Under these circumstances, considering the prayer and the submissions of the Ld. AR and the nature of issues involved in the appeal, in the interest of justice, I hereby remit the matter back to the file of Ld. AO for de-novo consideration thereby providing one more opportunity to the assessee of being heard. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in

accordance with law and merits based on the materials on the record. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 19th April, 2024.

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

Dated : 19/04/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Suryanarayana Reddy Tondapu, 1-1, Hotel Bhimas, Main Road, Kakinada, Andhra Pradesh – 533001.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Kakinada, Andhra Pradesh – 533001.
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