

**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.74/Viz/2024

(निर्धारण वर्ष / Assessment Year : 2015-16)

Chodisetty Hemashankar,  
Tuni.

PAN: AKUPC 0617 K

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. The Income Tax Officer,  
Ward-1,

Tuni.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

: 01/04/2024

: 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 short 'Ld. CIT(A)-NFAC'] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1059279429(1), dated 02/01/2024 arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 [in short 'the Act'] for the AY 2015-16.

2. Briefly stated the facts of the case are that the assessee, an individual, has not filed his return of income for the AY 2015-16 U/s. 139(1) of the Act. Based on the information available with the Department, it is noticed by the Ld. AO that the assessee made cash deposits of more than Rs. 10 lakhs and above aggregating to Rs. 50,37,900/- and more than Rs. 2 lakhs and above aggregating to Rs. 8,16,000/- in his Bank account at ICICI Bank, Hyderabad and State Bank of India, Tuni. Accordingly, the case was reopened with the approval of the Pr. CIT, Notice and notice U/s. 148 of the Act was issued on 25/01/2021. Further, notice U/s. 142(1) of the Act was also issued to the assessee whereby the assessee was requested to furnish certain information. Considering the assessee's none compliance to the notice issued, the Ld. AO issued another notices U/s. 143(2) and 142(1) of the Act on various dates as mentioned in the assessment order. However, assessee did not respond to the notices issued and therefore the Ld. AO resorted to complete the assessment to the best of his judgment based on the material available on record and the information gathered from the banks, U/s. 133(6) of the Act, wherein the assessee maintains his bank accounts which involved in the alleged cash deposits. Thus, the Ld. AO completed the assessment U/s. 144 of the Act and brought to tax the total cash deposits of Rs. 83,90,900/- as

unexplained money of the assessee U/s. 69A of the Act. Accordingly, the assessed income was determined at Rs. 83,90,900/- and the Ld. AO passed the assessment order U/s. 147 r.w.s 144 r.w.s 144B of the Act, dated 25/03/2022. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee *in limine* by invoking the provisions of section 249(4)(b) of the Act by observing as under:

*“3. Decision*

*As per the provisions of the section 249(4)(b) of the Act, the appeal shall not be admitted\, unless the appellant has paid an amount equal to the amount of advance tax which was payable by him if no return of income has been filed.*

*In the present case, the appellant did not file return of income. On or before filing the present appeal, the appellant has failed to make the required payment of the amount equal to the amount of advance tax which was payable by him. Further, the appellant neither provided any satisfactory clarification / explanation in response to the deficiency letter issued by this office nor did he offer any reason, leave alone any good and sufficient reasons, for seeking exemption from the operation of the section 249(4)(b) even though sufficient opportunities were provided to him*

*On careful consideration of the above facts and circumstances, as the appellant has failed to fulfill the necessary conditions for admission of appeal before the Ld. CIT (A) as per section 249(4)(b), the present appeal is liable to be held as not eligible for admission and hence, the appeal is not admitted.*

*.....”*

3. 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 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 dismissing the appeal in limine by invoking section 249(4) of the Act.*
3. *Without prejudice to the above, the Ld. Cit(a) ought to have held that the notice issued U/s. 148 of the Act is invalid and ought to have quashed the consequent reassessment proceedings as void ab initio.*
4. *Without prejudice to Ground No.2 and Ground No.3, the Ld. CIT(A) ought to have directed the AO to estimate reasonable percentage of profit in respect of cash deposits of Rs. 83,90,900/- in the bank account as against addition made by the AO U/s. 69A of the Act.*
5. *Any other grounds may be urged at the time of hearing.”*

4. At the outset, the Ld. Authorized Representative [AR] submitted that the assessee has not filed his return of income U/s. 139(1) of the Act and therefore, the question of payment of advance tax does not arise as observed by the Ld. CIT(A)-NFAC. The Ld. AR further submitted that before the Ld. CIT(A)-NFAC, the assessee has challenged the entire addition made by the Ld. AO however, the Ld. CIT (A)-NFAC neither considered the submissions of the assessee nor directed the Ld. AO to estimate a reasonable percentage of profit in respect of cash deposits of Rs. 83,90,900/- in the bank account as against addition made by the AO U/s. 69A of the Act. Besides, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee in limine. Therefore, the Ld. AR pleaded that the assessee may be provided one more opportunity before the Ld.

CIT(A)-NFAC in order to present the case effectively and the Ld. CIT(A)-NFAC may also be directed to decide the case on merits.

5. Per contra, the Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and argued in support of the same. The Ld. DR further submitted that as per the provisions of section 249(4)(b) of the Act, it is mandatory that the assessee has to pay the tax equivalent to the advance tax payable by the assessee in order to admit the appeal before the Ld. CIT(A)-NFAC since the assessee did not file the return of income. Further, the assessee has not filed any application as per the proviso to section 249(4) of the Act seeking exemption from operation of the provisions of section 249(4)(b) of the Act. Under these circumstances, the decision of the Ld. CIT(A)-NFAC cannot be faulted with and pleaded to confirm the orders of the Ld. Revenue Authorities.

6. 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 the Ld. CIT(A)-NFAC has not looked into the merits of the case and dismissed the appeal of the assessee *in limine* by stating that the assessee has not complied with the provisions of section 249(4)(b) of the Act. We have also

noticed from the assessment order that the Ld. AO has also not considered the submissions of the assessee and passed the ex-parte order U/s. 147 r.w.s 144 r.w.s 144B of the Act. In our considered opinion, both the Ld. Revenue Authorities ought to have considered the submissions of the assessee and pass the orders on merits and in accordance with law instead of passing the orders ex-parte and in limine. Considering the above facts and circumstances of the case, we are of the view that the question of admitted tax does not arise in the case of the assessee since the assessee has challenged the entire addition made by the Ld. AO before the Ld. CIT(A)-NFAC. Therefore, we find force in the argument of the Ld. AR. Accordingly, we hereby set-aside the order passed by the Ld. CIT(A)-NFAC and remit the matter back to the file of the Ld. CIT(A)-NFAC with a direction to decide the case on merits after affording a reasonable opportunity of being heard to the assessee in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly cooperate 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.

7. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 19<sup>th</sup> April, 2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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 – Chodisetty Hemashankar, D.No. 3-26/1, S. Annaram, Swamigari Street, Tuni, East Godavari District, Andhra Pradesh – 533401.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, O/o. ITO, Bank Colony, Kothapet, Tuni, Andhra Pradesh – 530016.
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