आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM
(through Hybrid Hearing)

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.133/Viz/2023**
(निर्धारण वर्ष **/ Assessment Year : 2017-18)**

Mudu Gopa Raju Prop. Royal Wines 2-78, Sivalayam Veedhi Tempalli, Krishna Dist. **[PAN : BOYPG1989P]**	Vs.	Income Tax Officer Ward-1 Gudivada
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri K.Siva Ram Kumar, AR
प्रत्यार्थी की ओर से / Respondent by	:	Dr.Aparna Villuri, DR
सुनवाई की तारीख / Date of Hearing	:	16.04.2024
घोषणा की तारीख/Date of Pronouncement	:	19.04.2024

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 vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1049294063(1) dated 31.03.2023, arising out of order passed u/s 144 of the Income Tax Act, 1961 (in short 'Act') dated 30.12.2019 for the Assessment Year (A.Y.) 2017-18.

2. Brief facts of the case are that the assessee is an individual. As per the information available with the department, the assessee has made cash deposits of Rs.44,51,620/- during demonetization period, but the assessee has not filed the return of income for the A.Y.2017-18. The assessee was issued notice u/s 142(1)(i) electronically, to file return of income for the A.Y.2017-18 by 31.03.2018. Since the assessee has not filed any return of income till the end of the assessment year, another notice u/s 142(1) dated 16.08.2019 was issued and served on the assessee to furnish information regarding the sources of cash deposits made during the F.Y.2016-17 and also to explain the reasons for non-filing of return of income. Since there was no response, the assessee was issued show cause dated 25.11.2019 and 10.12.19 to show cause on or before 13.12.2019 as to why cash deposits made in the bank during the demonetization period at Rs.44,51,620/- should not be treated as unexplained income u/s 69A of the Act. The AO observed that out of the cash deposits, since the assessee has not proved with evidence the cash on hand availability in the business to the tune of Rs.9,57,000/- to make cash deposit in SBNs in the bank Rs.9,57,500, SBNs were treated as undisclosed income of the assessee for the A.Y.2017-18 u/s 69 A of the

Act and estimated the business income on the sale of Rs.2,35,84,314/- at Rs.11,79,220/-, assessing the total income at Rs.21,36,720/-.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee ex-parte due to non-prosecution of the appeal by the assessee, despite giving multiple opportunities.

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 CIT(Appeals) is erroneous on facts of the case and in law.*
>
> *2. Learned CIT(Appeals) erred in Law by confirming the addition made u/s 69A in respect of the cash deposits made by the appellant out of the cash sales made of wine, though the sales were accepted by the learned AO and also the learned CIT(Appeals)*
>
> *3. Learned CIT(Appeals) erred in confirming the addition made towards cash deposits (the amount of SBNs deposited in Bank were reported by the Bank at Rs.9,57,500/- and the appellant submitted that they were made out of sales in November and December, 2016, recorded in the books of account; Form 26AS shows purchases from APBCL at Rs.64,28,337/- for the months of September, October and November, 2016 and the sales for the said three months were more than Rs.69 lakhs) although the said books of account were rejected by the learned AO, but still the amounts recorded in the rejected books were taken and were subjected to addition, which was bad in law.*

4. Learned AO estimated the Net profit @5% of the stocks put to sale, which comes to Rs.11,79,220, but took the income from business in the computation sheet at Rs.21,55,726/-, which was erroneous.

5. Ld.CIT(Appeals) erred in Law in confirming the addition made u/s 69A towards the cash deposits in the demonetisation period, though learned AO observed in the assessment order that 'the appellant discharged his primary onus of proving his sources' (per para 5 of the assessment order), in which case, it was incumbent on the learned AO to demonstrate as to how the case before him fell within the periphery of Sec.679A and he was legally obliged to prove his (learned AO's) case before making the addition.

6. Learned CIT(Appeals) erred in confirming the addition u/ s69A in respect of the cash deposits in demonetisation period on the facts of the case and also in view of the trite law that when books of account were rejected and income from business was estimated, learned AO shall not pick up figures from the rejected books to make further additions.

7. The Appellant craves leave to add or amend any Ground of Appeal.

5. The only contention of the Ld.AR is that the Ld.AO is not justified in making addition u/s 69A of the Act in respect of cash deposits made by the assessee, although the books of account were rejected by the Ld.AO and the Ld.CIT(A) erred in confirming the addition made by the AO. The Ld.AR further submitted that the cash deposits were made out of sales made of wine in November and December 2016, which was not disputed by the Ld.AO as well as the Ld.CIT(A). The Ld.AR further submitted that the assessee has sources for the cash deposits made and pleaded that the assessee may be provided an opportunity of being heard before the

Ld.CIT(A) to substantiate it's claim with material evidences, in the interest of justice.

6. Per contra, the Ld.DR submitted that the assessee was given sufficient opportunities to prosecute it's case, but the assessee never complied with the notices issued and served. Hence, the revenue authorities are justified in dismissing the appeal of the assessee for non prosecution. The Ld.DR, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material available on record. In the instant case, it is evident that the assessee had made cash deposits of Rs.44,51,620/- during the demonetisation period, out of which Rs.9,57,500/- was treated as unexplained income u/s 69A and Rs.11,79,220/- was treated as undisclosed income from liquor business, totalling to Rs.21,36,720/-. The assessee's appeal before the revenue authorities was dismissed. The only contention of the assessee is the assessee has sources for the cash deposits made in the bank account and pleaded for one more opportunity of being heard before the Ld.CIT(A) to substantiate it's case with material evidences. Keeping in view the aforesaid facts and circumstances of the case and in order to meet the

principles of natural justice, I am inclined to remit the matter back to the file of the Ld.CIT(A) to afford an opportunity of being heard to the assessee and direct the Ld.CIT(A) to pass order after verification. The assessee is also directed to adhere to the notices issued by the revenue authorities and cooperate with the department during the proceedings.

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

Order pronounced in the open court on 19th April, 2024.

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

Dated : 19.04.2024
L.Rama, SPS

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

1. निर्धारिती/ The Assessee– Mudu Gopa Raju, Prop. Royal Wines, 2-78, Sivalayam Veedhi, Tempalli, Krishna Dist.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, Gudiwada, Krishna Dist.
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam