

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बाला कृष्णन, 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.126/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2011-12)**

R.Subba Raju
D.No.79-2-1
Prashanthi Estates
Tilak Road, V.L.Puram
Rajahmundry
[PAN : AAGFR9133F]

Vs. Asst. Commissioner of
Income Tax
Circle-1
Rajahmundry

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 30.04.2024

घोषणा की तारीख/Date of Pronouncement

: 28.05.2024

आदेश /ORDER

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)]-2, Gurugram vide DIN & Order No. ITBA/APL/S/250/2023-24/1060352765(1) dated 31.01.2024, arising out of order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 27.03.2014 for the Assessment Year (A.Y.) 2011-12.

2. Brief facts of the case are that the assessee firm engaged in the business of execution of civil contract works, e-filed it's return of income

for the A.Y.2011-12 on 29.09.2011, declaring total income at Rs.Nil. The case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) of the Act were issued. The assessee firm submitted information as directed by the Assessing Officer (AO). The AO estimated net profit @8% on total contract receipts including sub contracts also @8%. In computing the income, the AO did not allow deduction for remuneration to partners and interest on partners capitals.

3. Against the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the order of the AO and dismissed the appeal of the assessee ex-parte.

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) is not justified in deciding the appeal ex-parte.

3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) ought to have held that the assessing officer is not justified in estimating the net profit @8% which is on a higher side.

4. The learned Commissioner of Income Tax (Appeals) ought to have held that the Assessing Officer erred in estimating the profit on 'mobilisation advance' which is not a turnover.

5. The learned Commissioner of Income Tax (Appeals) ought to have considered the mistakes in allowing credit for TDS and computing the interest u/s 234B.

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

5. The only contention of the assessee is that the Ld.CIT(A) is not justified in dismissing the appeal of the assessee ex-parte and upholding the estimation of net profit @8% which is on higher side. He further submitted that the Ld.AO is not correct in estimating the profit on mobilisation advance, which is not a turnover and the Ld.CIT(A) erred in upholding the same. He further submitted that the Ld.AO has not considered the entire TDS amount claimed and charging of interest while computing the tax is also not correct and the Ld.CIT(A) ought to have considered the mistakes in allowing credit for TDS and computing the interest u/s 234B. He further submitted that the reason for non compliance to the notices before the Ld.CIT(A) was due to unavoidable reasons and therefore pleaded for an opportunity of being heard before the Ld.CIT(A) to substantiate it's case 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 to controvert the findings of the revenue authorities. 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. We have heard both the parties and perused the material available on record. In the instant case, it is evident that the net profit of the assessee was estimated @8% on total contract receipts including sub contracts by the Ld.AO and the appeal of the assessee was dismissed ex-parte by the Ld.CIT(A). As submitted by the Ld.AR, the reasons for non prosecution of the appeal before the Ld.CIT(A) was due to the unavoidable reasons, which were neither intentional nor deliberate. The Ld.AR pleaded for an opportunity before the Ld.CIT(A) to substantiate it's case with evidences. Keeping in view the aforesaid facts and circumstances of the case and in order to meet the principles of natural justice, we are 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 28th May, 2024.

Sd/-

(एस बाला कृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 28.05.2024

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- R.Subba Raju, D.No.79-2-1, Prashanthi Estates Tilak Road, V.L.Puram, Rajahmundry
2. राजस्व/The Revenue – The Asst. Commissioner of Income Tax , Circle-1 Rajahmundry
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