

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**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.181/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2018-19)**

Sri Keerthi Projects
D.No.3-20-14, Near Recruiting Office
Pattabhipuram
Guntur
[PAN : ABJFS1107Q]

Vs. Asst.Commissioner of
Income Tax
Circle-1(1)
Guntur

(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

: 27.05.2024

घोषणा की तारीख/Date of Pronouncement

: 31.05.2024

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)], National Faceless Appeal Centre (NFAC), Delhi, vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1061713926(1) dated 29.02.2024, arising out of order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 09.03.2021 for the Assessment Year (A.Y.) 2018-19.

2. Brief facts of the case by the assessee are that the assessee is a partnership firm, deriving income from contracts, e-filed its return of income for the A.Y.2018-19 on 29.10.2018, admitting an income of Rs.15,25,100/-. The assessment is completed by adding Rs.23,49,302/- for excess payment of statutory provident fund gross profit of Rs.57,70,407/-, estimating at 34.75% on unraised bills for contracts of Rs.1,66,05,488/- and Rs.1,61,015/- u/s 40(a)(ia) on non-deduction of TDS on interest paid on loans. During the course of assessment proceedings, the assessee submitted required information in support of statutory provident fund payments, reasons for non-deduction of tax at source and requested to estimate net income on contract. The Assessing Officer (AO) has not considered the assessee's plea and completed the assessment and passed order by disallowing expenditure towards statutory payments estimating profit applying GP rate instead of NP rate and making addition u/s 40(a)(ia) of the Act.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the addition made by the AO and dismissed the appeal of the assessee.

3. On being aggrieved, 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. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.23,49,302 made by the assessing officer u/s 36 of the Act towards disallowance of excess contribution to Employees Provident Fund.*
 4. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.57,70,407 made by the assessing officer by estimating the gross profit @34.75% on the difference between the receipts as per Form 26AS and receipts admitted in the income tax return instead of estimating the net profit.*
 5. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.1,61,015 made by the assessing officer towards disallowance of interest paid to HDB Finance Services u/s 40(a)(ia) of the Act.*
 6. *Any other grounds may be urged at the time of hearing.*
4. The only contention of the Ld.AR is that the Ld.CIT(A) is not justified in dismissing the appeal of the assessee ex-parte by sustaining the additions made by the AO of Rs.23,49,302/- u/s 36 of the Act towards disallowance of excess contribution to employees provident fund, Rs.57,70,407/- by estimating the gross profit @34.75% on the difference between the receipts as per Form 26AS and receipts admitted in the income tax return instead of estimating the net profit and Rs.1,61,015/- towards disallowance of interest paid to HDB Finance Services u/s

40(a)(ia) of the Act, without giving sufficient opportunity of being heard to the assessee. He, therefore, pleaded for an opportunity of being heard before the Ld.CIT(A) in the interest of justice, otherwise, the assessee would suffer great financial loss.

5. Per contra, the Ld.DR submitted that the assessee was given sufficient opportunities before the Ld.CIT(A), but the assessee failed to avail the same. Hence, the Ld.CIT(A) is justified in dismissing the appeal of the assessee. The Ld.DR therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

6. We have heard both the parties and perused the material available on record. In the instant case, assessment in the case of the assessee was completed u/s 143(3) of the Act and the total income of the assessee was assessed at Rs.86,40,720/- by making additions. On appeal before the CIT(A), the Ld.CIT(A) sustained the additions made by the AO and dismissed the appeal of the assessee. As contended by the Ld.AR that the assessee was not given proper opportunity of being heard before the Ld.CIT(A) to controvert the findings of the revenue authorities, pleaded for an opportunity of being heard before the Ld.CIT(A) in the interest of justice. 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) with a direction to afford an opportunity of being heard to the assessee. The assessee is also directed to adhere to the notices issued by the revenue authorities and cooperate during the proceedings.

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

Order pronounced in the open court on 31st May, 2024.

Sd/-

(एस बाला कृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 31.05.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee- Sri Keerthi Projects, D.No.3-20-14, Near Recruiting Office, Pattabhipuram, Guntur
2. राजस्व/The Revenue – The Asst.Commissioner of Income Tax, Circle-1(1), Income Tax Office, CR Buildings, Kannavari Thota, Guntur
3. The Principal Commissioner of Income Tax, Guntur
4. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam

I.T.A. No.181/Viz/2024, A.Y.2018-19
Sri Keerthi Projects, Guntur 