

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

आयकर अपील सं./ I.T.A. No.113/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Anuradha Vasireddy,
29-26-129, Jadagam Vari Street,
Suryaraopet, Vijayawada-520002,
Andhra Pradesh.

PAN: ACJPV6946M

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-2(2),
Vijayawada.

(प्रत्यार्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 22/07/2024

: 25/07/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1060614032(1), dated 07/02/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated relevant facts of the case are that the assessee, an individual, e-filed her return of income in ITR-3 for the AY 2017-18 on 18/12/2017 declaring a total income of Rs. 6,78,670/- which includes income from House Property of Rs. 74,222/-, business income U/s. 44AD of Rs. 5,05,107/- and income other sources of Rs. 2,71,800/-. The return was initially processed by the CPC on 24/12/2017. Thereafter, the case was selected for scrutiny through CASSS under the category of 'limited scrutiny' on the reason 'high value cash deposits in the bank deposits during the year'. Subsequently, notice U/s. 143(2), dated 08/08/2018 was sent to the assessee through e-mail and also served manually on the assessee on 23/08/2018. In response to the notice, the assessee submitted the information through e-filing portal. Thereafter, the Ld. AO issued a notice U/s. 142(1) of the Act and called for certain information viz., copies of the bank accounts, cash book, details of cash deposited into the bank, sources of cash deposits etc., in connection with the scrutiny proceedings. Meanwhile, the Ld. AO obtained the information with regard to the assessee's bank accounts from Federal Bank, Vijayawada; HDFC BaNK Labbipet and Syndicate Bank, Vijayawada U/s. 133(6) of the Act. However, the assessee did not respond to the notices issued. As per the material

available before the Ld. AO, the Ld. AO observed that the assessee has not maintained books of account for the AYs 2015-16 & 2016-17 also. In the absence of complete material and information, the Ld. AO issued a show cause notice on 14/12/2019 and the assessee was asked to show cause as to why the cash deposits during the year into the assessee's bank accounts should not be treated as unexplained U/s. 69A of the Act under the income from other sources. Further, the assessee was also asked to show cause as to why the remaining credit entries other than cash in the year 2016-17 of Rs. 1,64,22,189/- should not be treated as net turnover for the AY 2017-18 and income should not be estimated @ 8% on the said turnover as the assessee has adopted the presumptive taxation U/s. 44AD of the Act. In response, the assessee furnished the information on 19/12/2019 and stated that the assessee has availed loans from difference finance companies to the extent of Rs. 1,12,76,278/-. On perusal of the information submitted by the assessee, the Ld. AO observed that since the assessee has not furnished the information completely as called for by the Ld. AO vide the notices issued and in the absence of any proper explanation with respect to the sources of cash deposits made into the said bank accounts during the demonetization period, the Ld. AO observed

that he has left with no other option except to complete the assessment U/s. 144 of the Act ie., best judgment. Accordingly, the Ld. AO completed the assessment by determining the total income at Rs. 35,82,175/- which includes (i) income from house property – Rs.74,222/- and (ii) income from business – Rs. 32,36,153/- and (iii) income from other sources – Rs. 2,71,800/- and passed the assessment order U/s. 143(3) of the Act dated 23/12/2019. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, passed ex-parte order and dismissed the appeal of the assessee *in limine* as there was no response on behalf of the assessee with respect to the hearing notices issued from time to time and in the absence of any material evidence or documents furnished to support the claim of the assessee. 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. *That under the facts and circumstances of the case the order passed U/s. 143(3) of the Act dated 23/12/2019 that was upheld by the Ld. CIT(A)-NFAC vide order passed U/s. 250 of the Act dated 7/2/2014 is not in accordance with facts of the case and provisions of law.*

2. *The Ld. CIT(A) disposed of the appeal ex-parte without granting a reasonable opportunity to the assessee, thereby violating the principles of natural justice.*
3. *The disposal of the appeal in limine by the Ld. CIT(A) is against the provisions of section 250(6) of the Act.*
4. *The Ld. CIT(A) overlooked the assessee's explanation regarding the credits appearing in the bank account and wrongly applying the provisions of section 44AD of the Income Tax Act considering these as turnover.*
5. *The Assessing officer incorrectly treated the credits in the bank account amounting to Rs. 4,04,51,916/- as turnover for the relevant assessment year, leading to an erroneous estimation of business income.*
6. *For these and such other grounds, that may be urged at the time of hearing of subject appeal, the appellant prays that the order of the Ld. CIT(A) U/s. 250 of the Act are to be set aside."*

4. At the outset, the Ld. Authorized Representative ["Ld. AR"] submitted before me that the Ld. CIT (A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard.

Ld. Departmental Representative ["Ld. DR"], on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor her Representative has responded to the notices issued nor filed any details / submissions as called for by the Ld. CIT (A)-NFAC. It was further submitted that, 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 order passed by the Ld. CIT(A)-NFAC does not call for any interference.

5. I have heard the both the sides and carefully perused the materials on record. On examining the facts of the case, I find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, there was no response on behalf of the assessee before the CIT(A)-NFAC on the dates of hearing with regard to the details / submissions as called for by the Ld. CIT(A)-NFAC. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte and dismissed appeal in-limine. In this situation, considering the issues involved in the appeal, I am of the considered view that the Ld. CIT(A)-NFAC ought to have decided the case on merits instead of dismissing the appeal in-limine. However, considering the prayer of the Ld. AR, and in the interest of justice as well as strictly following the principles of natural justice, I hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC

in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

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

Pronounced in the open Court On 25th July, 2024.

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

Dated :25/07/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee– Anuradha Vasireddy, 29-26-129, Jadagam Vari Street, Suryaraopet, Vijayawada-520002, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(2), CR Building, 1st Floor, Annex, MG Road, Vijayawada, Andhra Pradesh-520002.
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