

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

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.112/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Dupaguntla Pullarao, Guntur. PAN: BHMPD9811Q (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1(1), Guntur. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri GVN Hari, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	23/07/2024
घोषणा की तारीख/Date of Pronouncement	:	29/07/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee 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/250/2023-24/1060141833(1), dated 25/01/2024 arising out of the order passed U/s. 144 of the Act for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual. In the case of the assessee certain information was received by the Department with regard to the cash transactions made during the demonetization period to the tune of Rs. 36,21,500/- and had not filed his return of income for the AY 2017-18. Accordingly, notice U/s. 142(1) of the Act dated 23/11/2017 was issued through ITBA portal and the assessee was requested to furnish the return of income for the AY on or before 23/12/2017. However, the assessee did not respond to the notice. Subsequently, show cause notice dated 24/09/2019 was also issued to the assessee calling for information with regard to the cash deposits made during the demonetization period along with evidence. But, the assessee did not respond to the show cause notice also. Therefore, the Ld. AO obtained the information U/s. 133(6) of the Act from the banks wherein the assessee made the cash deposits during the demonetization period to the tune of Rs. 43,68,500/- in the light of the ITS data verified and confirmed. Since the assessee did not comply to the notice U/s. 142(1) of the Act with regard to filing of the return for the AY 2017-18 on or before 23/12/2017, the Ld. AO proceeded to complete the assessment U/s. 144 as 'best judgment assessment' relying on the information available on ITBA portal. Accordingly,

the Ld. AO treated the entire cash deposits of Rs. 43,68,500/- as unexplained money U/s. 69A of the Act and invoked the provisions of section 115BBE of the Act. Thus, the Ld. AO completed the assessment U/s. 144 of the Act and determined the assessed income at Rs. 43,68,500/- and passed the assessment order dated 24/11/2019. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the assessee made various submissions before the Ld. CIT(A)-NFAC to substantiate its claim that the cash deposits are out of loans availed from Manappuram Finance against pledging of his family gold for running of business and also availed mortgage loan from Shriram City Union Finance Limited to increase the business volume. The assessee further submitted before the Ld. CIT(A)-NFAC that the cash deposits in the bank accounts were out of the cash balance outstanding in his books of accounts. Before the Ld. CIT(A)-NFAC, the assessee also pleaded to apply the peak credit theory. After considering the facts and circumstances of the case and on perusal of the submissions made by the assessee, the Ld. CIT(A)-NFAC called for a remand report from the Ld. AO. The Ld. CIT(A)-NFAC after

considering the submissions made by the assessee and on perusal of the material available before him, granted part relief to the assessee and confirmed the addition to the extent of Rs. 16,94,929/- out of the total addition of Rs. 43,68,500/- made by the Ld. AO. Thus, the Ld. CIT(A)-NFAC partly allowed the assessee's appeal. 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 applying the peak credit theory and in sustaining the addition to the extent of Rs. 16,94,929/- out of the total addition of Rs.43,68,500/- made by the AL U/s. 69A of the Act towards unexplained cash deposits during the demonetization period.*
3. *The Ld. CIT(A) ought to have estimated the profit on the cash deposits since these deposits were made from sale proceeds of the gold trading carried on by the appellant and the said fact was also confirmed by the Assessing Officer in the remand report.*
4. *Any other grounds may be urged at the time of hearing of the appeal.”*

4. At the outset, the Ld. AR submitted the Ld. CIT(A)-NFAC did not consider the peak credit theory while sustaining the addition made by the Ld. AO to the extent of 16,94,929/-. The Ld. AR further submitted that the Ld. CIT(A)-NFAC has not properly appreciated the remand report of the Ld.AO, wherein the Ld. AO

observed that the assessee was in the gold trading and the assessee had made cash deposits of Rs. 43,68,500/- during the FY 2016-17 out of his sales made to the customers on cash basis. The Ld. AR further submitted that considering the said fact that the assessee made the cash deposits out of the sale proceeds of the gold trading, the Ld. CIT(A)-NFAC ought to have estimated the profit on the cash deposits made by the assessee. Therefore, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. CIT(A)-NFAC in order to properly appreciate the facts of the case and to decide the case in accordance with law.

5. On the other hand, the Ld. DR vehemently opposed to the submissions of the Ld. AR and submitted that the Ld. CIT(A)-NFAC has thoroughly examined the facts of the case and submissions made by the assessee as well as the remand report submitted by the Ld. AO and then only granted part relief to the assessee. Therefore, the decision of the Ld. CIT(A)-NFAC need not be disturbed.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the remand report of the Ld. AO, dated 10/11/2023 placed at page 44 of the paper book,

as called for by the Ld. CIT(A)-NFAC. Further, on perusal of the Ld. CIT(A)-NFAC's order, I find that while passing the order and granting part relief to the assessee, the Ld. CIT(A)-NFAC has not properly appreciated the remand report submitted by the Ld. AO wherein the Ld.AO has clearly mentioned at page-2 of his remand report that *".....the assessee had furnished the cash book, bank account statements, details of sales and purchases, loans taken etc., and the same were verified. The assessee had made cash deposits of Rs. 43,68,500/- during the FY 2016-17 out of his sales made to the customers on cash basis"*. On perusal of the above observation of the Ld.AO in his remand report, I am of the considered view that the Ld. CIT(A)-NAFC had not gone through the Ld. AO's remand report in detail which the Ld.CIT(A)-NFAC ought to have been done before reaching a conclusion that the assessee is eligible for part relief with regard to the addition made by the Ld. AO. On this issue, I find merit in the argument of the Ld. AR. Therefore, considering the facts and circumstances of the case, I deem it fit to remit the matter back to the file of the Ld. CIT(A)-NFAC with a direction to consider the remand report of the Ld. AO and pass appropriate orders in accordance with law. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open Court on 29th July, 2024.

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

Dated :29/07/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Dupaguntla Pullarao, D.No. 4-6-58/2, Gujtur Mestri Bazar, SBI Back Side, Sattenapalli, Guntur, Andhra Pradesh – 522403.
2. राजस्व/The Revenue – The Income Tax Officer, CR Building, Kannavari Thota, Guntur, Andhra Pradesh – 522001.
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