

आयकर अपीलियअधिकरण, 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.73/Viz/2024  
(निर्धारण वर्ष / Assessment Year : 2017-18)

Kammela Srinivasara Rao, D.No. 7-14-9, Harikrishna Medical Agencies, Battavari Street, Ganganammamet, Tenali, Andhra Pradesh. PAN: AKZPK3519M (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-1, Tenali.
अपीलार्थी की ओर से/ Appellant by	:	Sri GVN Hari, AR
प्रत्यार्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	04/06/2024
घोषणा की तारीख/Date of Pronouncement	:	31/07/2024

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/250/2023-24/1059164706(1), dated 28/12/2023 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual engaged in the business of retail trade in pharmaceuticals and also commissioning activity in medicines under the name and style of 'Mohan Harikrishna Medical Agencies' as sole proprietor. As per the information available with the Department, it was observed by the Ld. AO that the assessee had deposited amounts in cash aggregating to Rs. 1,38,20,604/- during the period of demonetization in various banks. Further, the Ld. AO also observed that the assessee did not file the return of income for the AY 2017-18 and therefore, the Ld. AO issued a notice U/s. 142(1) of the Act and served on the assessee on 23/11/2017 wherein the assessee was requested to furnish the return of income on or before 23/12/2017. However, the assessee did not file the return of income for the AY 2017-18 and thus failed to comply with the notice U/s. 142(1) of the Act. Further, the Ld. AO also observed that as per the provisions of section 139(4) of the Act, the return of income is required to be filed by 31/3/2018 for the AY 2017-18. But the assessee filed the return of income on 03/04/2018 for the AY 2017-18 which was beyond the prescribed due date specified as per the provisions of the Act and therefore, the Ld. AO considered the said return as invalid and treated the same as non-est. Therefore the Ld AO taken up

the case for scrutiny as per the provisions of section 144 of the Act and issued notice U/s. 142(1) of the Act on 30/08/2019 and called for the information in support of the sources for the cash deposits reflected in the assessee's bank accounts. Thereafter, the assessee vide reply dated 29/10/2019 confirmed the depositing of amounts in cash during the demonetization in his bank accounts aggregating to Rs. 1,38,20,104/-. During the proceedings U/s. 144 of the Act, the Ld. AO also observed that in the case of the assessee a survey operation was conducted U/s. 133A of the Act on 03/03/2017 in the assessee's business premises and observed that the assessee was stop-filer and the last return filed by the assessee was for the AY 2013-14 for which the assessee has admitted total income of Rs. 2,46,000/- and agricultural income of Rs. 80,000/-. Before the Ld. AO, the assessee made various submissions with regard to the cash deposits. On perusal of the submissions of the assessee on various occasions during the assessment proceedings as well as the material available before him, the Ld. AO observed that the assessee has already offered to tax Rs. 92,52,500/- under PMGKY scheme which included in the aggregating cash deposits of Rs. 1,38,20,104/-. In the absence of any proper explanation with respect to the balance of cash deposits of Rs. 45,68,004/-, the

Ld. AO treated it as unexplained money and brought to tax under the provisions of section 69A r.w.s 115BBE of the Act and raised a demand of Rs.57,71,647/-. Thus, the Ld. AO also initiated the proceedings U/s. 271AAC of the Act and passed the assessment order U/s. 144, dated 31/12/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NAFC.

3. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee *in limine* by invoking the provisions of section 249(4)(b) of the Act by observing as under:

*“3.2. As per the provisions of section 249(4)(b) of the Act, where no return has been filed by the assessee, the assessee has to pay an amount equal to the amount of advance tax which was payable by him otherwise appeal shall not be admitted.....*

*3.3. As per the provisions of section 234B(1), read with provisions of section 208 of the Act, the liability to pay advance, in case where return of income is less than the assessed income, is calculated on the basis of assessed income.....*

*3.4 .....*

*3.5. Though the appellant has not offered YES comments at Sl No.9 of form 35, it was asked vide DIN & letter No. ITBA/NFAC/F/APL\_1/2023-24/1058496210(1), dated 06/12/2023 to intimate whether it has made payment of tax – which includes element of advance tax also – in compliance to notice of demand U/s. 156 of the Act and date of compliance was fixed for 13/12/2023 but the appellant failed to contradict the information given at Sl No.9 of Form-35 and to prove that it has made payment of*

*amount equal to the advance tax which was due on its income.*

4. *Since the appellant has not filed the return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is therefore dismissed.”*

Aggrieved by the above stated decision of the Ld. CIT(A)-NFAC, the assessee filed the present 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 erroneously dismissing the appeal in terms of section 249(4) of the Act for alleged non-payment of advance tax.*
3. *Any other grounds may be urged at the time of hearing.”*

4. At the outset, the Learned Authorized Representative [“Ld.AR”] submitted that the Ld. CIT(A)-NFAC has dismissed the appeal in limine U/s. 249(4) of the Act since the assessee has not paid the advance tax. Ld. AR further submitted that while applying the provisions of section 249(4) of the Act, the Ld. CIT(A)-NFAC has ignored the fact that the assessee has filed the return of income on 03/04/2018 and paid the taxes thereon. The Ld. AR further submitted that even before the Ld. CIT(A)-NFAC, the assessee has offered explanation with regard to the addition made by the Ld. AO on account of unexplained money. However,

the Ld. CIT(A)-NFAC ignored all the submissions made before him and facts available on record, and dismissed the appeal in limine. Therefore, the Ld. AR 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 and with a direction to the Ld. CIT(A)-NFAC to dispose of the appeal on merits.

5. Per contra, the Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and argued in support of the same. The Ld. DR further submitted that as per the provisions of section 249(4)(b) of the Act, it is mandatory that the assessee has to pay the tax equivalent to the advance tax payable by the assessee in order to admit the appeal before the Ld.CIT(A)-NFAC since the assessee did not file the return of income. Further, the assessee has not filed any application as per the proviso to section 249(4) of the Act seeking exemption from operation of the provisions of section 249(4)(b) of the Act. Under these circumstances, the decision of the Ld. CIT(A)-NFAC cannot be faulted with and pleaded to confirm the orders of the Ld. Revenue Authorities.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue

Authorities. It is an admitted fact that the Ld. CIT(A)-NFAC has not looked into the merits of the case and dismissed the appeal of the assessee *in limine* by stating that the assessee has not complied with the provisions of section 249(4)(b) of the Act. I have also noticed from the assessment order that the Ld. AO has also not properly appreciated the submissions of the assessee and passed the ex-parte order U/s. 144 of the Act. In my considered opinion, both the Ld. Revenue Authorities ought to have considered the submissions of the assessee and pass the orders on merits and in accordance with law instead of passing the orders ex-parte and in limine. It is apparent from the appeal record that the assessee has filed the return of income on 03/04/2018 for the AY 2017-18 admitting a total income of Rs.3,60,000/- and also paid taxes thereon. In this regard, the Ld. AR also placed the acknowledgement of the assessee's return of income for the AY 2017-18 before the Tribunal. Considering the above facts and circumstances of the case, I find force in the argument of the Ld. AR. Accordingly, I hereby set-aside the order passed by the Ld. CIT(A)-NFAC and remit the matter back to the file of the Ld.CIT(A)-NFAC with a direction to decide the case on merits after affording a reasonable opportunity of being heard to the assessee in accordance with the principles of natural justice.

At the same breath, I also hereby caution the assessee to promptly cooperate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 31<sup>ST</sup> July, 2024.

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

Dated :31/07/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee – Kammela Srinivasara Rao, D.No. 7-14-9, Harikrishna Medical Agencies, Battavari Street, Ganganammamet, Tenali, Andhra Pradesh.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, Tenali.
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