

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, 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. 57/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2009-10)

Ajju Chakradhar, Visakhapatnam. PAN: AGLPC9710C (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-5(4), Visakhapatnam. (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	:	22/07/2024
घोषणा की तारीख/Date of Pronouncement	:	08/08/2024

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"], Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1059005461(1), dated 22/12/2023 arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 ["the Act"] for the AY 2009-10.

2. Briefly stated the facts of the case are that the assessee an individual filed his return of income for the AY 2009-10 on 29/06/2009 admitting a total income of Rs. 2,06,320/- and the same was processed U/s. 143(1) of the Act on 24/05/2010. Subsequently, the case was selected for scrutiny through CASS. In response to the notice issued U/s. 143(2) of the Act, the assessee's Representative appeared from time to time before the Ld. AO and furnished the information as called for by the Ld. AO. On verification and examination of the information furnished by the assessee, the Ld. AO observed that the assessee has admitted salary income of Rs. 72,000/-, Commission of Rs. 63,000/- from Chalapati Chit Fund Pvt Ltd, interest income of Rs. 32,520/- and net profit of Rs. 53,100/- from real estate transactions. Further, on verification of the assessee's bank account in Lakshmi Vilas Bank, Gajuwaka Branch, the Ld. AO observed that the assessee made several cash deposits in his bank account and made advances to two persons aggregating to Rs. 1,50,000/- and the assessee was asked to explain the source of the deposits made in Lakshmi Vias Bank. In the absence of any proper explanation, the Ld. AO treated the cash deposits aggregating to Rs. 8,75,000/- as unexplained cash deposits and determined the total income of the assessee at Rs. 10,81,320/- and passed the

assessment order U/s. 143(3) of the Act, dated 30/11/2011. Thus the Ld. AO raised a demand of Rs. 2,59,906/- and initiated the penalty proceedings U/s. 271(1)(c) of the Act. In view of the assessment made by the Ld. AO, a notice U/s. 274 r.w.s 271 of the Act was issued on 15/03/2012 and the same was served on 19/03/2012. In the meantime, the assessee filed an appeal before the Ld. CIT(A) against the assessment order passed by the Ld. AO. Further, in response to the penalty show cause notice, the assessee has requested the Ld. AO to keep the said penalty proceedings in abeyance till the disposal of the appeal filed before the Ld. CIT(A). On appeal, the Ld. CIT(A) upheld the addition made by the Ld. AO to the extent of Rs. 6,95,250/- by adopting the peak-credit concept. Accordingly, the assessee was issued a show cause notice wherein the assessee was asked as to why the penalty U/s. 271(1)(c) of the Act should not be levied? In the absence of any response from the assessee, the Ld. AO observed that it is a fit case for levy of penalty U/s. 271(1)(c) of the Act relating to the addition of Rs. 6,95,250/- upheld by the Ld. CIT(A). Thus, the Ld. AO completed the penalty proceedings and levied penalty of Rs. 1,74,934/- U/s. 271(1)(c) of the Act and passed the order dated 30/03/2018. Aggrieved by the penalty order of the Ld. AO, the assessee filed an appeal before the Ld.

CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), 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) ought to have quashed the notice issued U/s. 271(1)(c) of the Act as invalid on the ground of ambiguity and consequently ought to have quashed the penalty order as void ab initio.*
3. *The Ld. CIT(A) is not justified in upholding the penalty of Rs. 1,74,934/- levied by the Assessing Officer U/s. 271(1)(c) of the Act.*
4. *The Ld. CIT(A) ought to have held that the levy of penalty is not justified as the appellant neither concealed the particulars of income nor furnished in accurate particulars of income.*
5. *Any other ground may be urged at the time of hearing.”*

3. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted that the Ld. AO has not granted sufficient and proper opportunity to the assessee to reply to the show cause notice issued. The Ld. AR further submitted that the show cause notice for levy of penalty was dated 20/03/2018 and the same was served on the assessee on 24/03/2018 whereas the time given to the assessee to file his reply and submissions was 26/03/2018. The Ld. AR further submitted that the assessee was given hardly

07 days to submit his reply during which period the assessee could not comply with the notice as he was out of station. The Ld. AR further submitted that mere sustaining the addition by the Ld. CIT(A) does not automatically lead to the inference that there is a concealment of income. Therefore, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. AO in order to provide proper opportunity to the assessee before finalizing the penalty proceedings.

4. On the other hand, the Learned Departmental Representative ["Ld. DR"] heavily relied on the orders of the Ld. Revenue Authorities and supported their decision. Ld. DR objected to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee, however, before the Ld. A.O. though the assessee got sufficient opportunity to substantiate his case, the assessee has failed to do so. Hence, it was pleaded that the orders passed by the Ld. Revenue Authorities do not call for any interference and appeal of the assessee may be dismissed.

5. We have heard the rival submissions and carefully perused the materials on record as well as the orders of the Ld. Revenue Authorities. On examining the facts of the case, we find merit in the arguments of the

Ld. AR. On perusal of the orders of the Ld. Revenue Authorities, it is apparent that the show cause notice for levy of penalty was dated 20/03/2018 and the same was served on 24/03/2018 whereas the time given to the assessee to file his reply and submissions was 26/03/2018 which is hardly a week time. In this situation, on perusal of the facts and circumstances of the case, we are of the view that the Ld. CIT(A)-NFAC ought to have considered the submissions made by the assessee which were stated to be not properly appreciated by the Ld. AO and pass a speaking order while dismissing the assessee's appeal. Under these circumstances, considering the prayer and the submissions of the Ld. AR and the nature of issues involved in the appeal, in the interest of justice, we hereby remit the matter back to the file of Ld. AO for providing one more opportunity to the assessee of being heard before finalizing the penalty levied U/s. 271(1)(c) of the Act. At the same breath, we also hereby caution the assessee to promptly co-operate 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.

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

Pronounced in the open Court on 08th August, 2024.

Sd/-
(एस बालाकृष्णन)
(S.BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

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

Dated :08/08/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Aju Chakradhar, D.No. 2-10-14, Mindi, BHPV Post, Visakhapatnam, Andhra Pradesh – 530012.
2. राजस्व/The Revenue – Income Tax Officer, Ward-5(4), O/o. ITO, Direct Taxes Building, MVP Colony, Visakhapatnam, Andhra Pradesh – 530017.
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