

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM **SMC** BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER
(Through Hybrid hearing)

आयकर अपील सं./ I.T.A. No.149/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Bandi Sobha Rani, Guntur. PAN: AOJPB5766P (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-1(1), Guntur. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri M.V. Prasad, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	18/07/2024
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"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061685137(1), dated 28/02/2024 arising out of the order passed U/s. 147 r.w.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. For the AY 2017-18, the assessee has not filed her return of income. As per the information available with the Department, the Ld. AO observed that (i) the assessee had made cash deposits in account other than current account for Rs. 1,47,35,200/- and (ii) TDS return - payment to contractor amounting to Rs. 25,12,300/-. Accordingly, the case was reopened and the notice U/s. 148 of the Act was issued to the assessee on 30/03/2021 after taking prior approval of the competent authority. The assessee did not comply with the notice issued U/s. 148 of the Act and therefore a notice U/s. 142(1) was issued to the assessee on 18/11/2021. However, the assessee did not comply with the notice. Even after providing repeated opportunities to the assessee by way of issuing notices for furnishing of the return of income and reply to the notices issued, in the absence of any response, the Ld. AO observed that there was no option but to finalize the assessment proceedings U/s. 147 r.w.s 144 r.w.s 144B of the Act on the basis of the material available before him. Accordingly, the Ld. AO observed that during the year the assessee has received payments of Rs. 25,12,300/- towards contract receipts and in the absence of any

explanation, the Ld. AO calculated the net profit on the receipts of Rs. 25,12,300/- @ 26% which works out to Rs. 6,53,198/- and treated the same as business income of the assessee. The Ld. AO also initiated penalty proceedings U/s. 270A of the Act for under reporting of the income. Further, the Ld. AO also observed that during the year, the assessee made certain cash deposits ie., Rs. 18,34,400/- in Indusind Bank and Rs. 1,09,717/- in ICICI Bank. In the absence of any explanation from the assessee, the Ld. AO treated these cash deposits aggregating to Rs. 19,44,117/- as unexplained money and added to the total income of the assessee U/s. 69 r.w.s 115BBE of the Act. The Ld. AO also initiated penalty proceedings U/s. 270AAC of the Act. Thus, the Ld. AO completed the assessment and assessed income was determined at Rs. 25,97,315/- and passed the assessment order U/s. 147 r.w.s 144 r.w.s 144B of the Act. 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 by observing that even though the assessee has been provided sufficient opportunities, there was no response from 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. *On the facts and in the circumstances of the case, the order passed by the Ld. CIT (A) U/s. 250 of the Act is bad in law as well as facts.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in dismissing the appeal on the ground that the appellant has not pursued the appeal.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) ought to have afforded further opportunity to the appellant to explain which is against the principles of natural justice.*
4. *On the facts and circumstances of the case, the Ld. CIT(A) ought to have considered the appeal on merits instead of dismissing the same on the ground of non-compliance.*
5. *Any other legal & factual ground or grounds may be urged at the time of hearing.”*

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 08th August, 2024.

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 – Bandi Sobha Rani, D.No. 15-14-83/43/b, Rahul Gandhi Nagar, Revenue Ward-25, Guntur-522001.
2. राजस्व/The Revenue – The Income Tax Officer, ward-1(1), Kannavari Thota, Guntur-522001, Andhra Pradesh.
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