

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

आयकर अपील सं./ I.T.A. No.215/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2012-13)

Tirumala Surya Kumari, Srikakulam. PAN: AEZPT7686L (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1, Srikakulam. (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	:	11/06/2024
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/NAFC/S/250/2023-24/1053607724(1), dated 08/06/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2012-13.

2. Briefly stated the facts of the case are that the assessee an individual deriving income from house property, income from business being income from wines and partnership firm besides income from other sources. The assessee e-filed her return of income for the AY 2012-13 on 31/10/2013 declaring an income of Rs. 76,050/- and agricultural income of Rs. 1,17,040/-. The return was processed by the CPC and later the return was selected for scrutiny through CASS. Accordingly, statutory notice U/s. 143(2) was issued on 3/9/2014 and served on 5/9/2014. In response, the assessee's Representative appeared from time to time and was asked to furnish complete details of unsecured loans aggregating to Rs. 71,82,400/- accepted along with confirmation letters, bank accounts held and also a detailed explanation for all the deposits appearing in the bank account, books of account, bills and vouchers in support of the claims made in the return of income in respect of wine business. Further, the assessee was also asked to furnished the documentary evidence with regard to the advance claimed to have been taken of Rs. 21,00,000/-. In response, the assessee's husband furnished the information partly and the assessee's Representative has also produced Sri Nalla Gopinath, who claimed to have given advance to the assessee for examination

before the Ld. AO. After analyzing the information filed before him, the Ld. AO observed that the assessee has carried business in purchase and sale of Indian Made Foreign Liquor (IMFL). During the year, the assessee has made purchases of Rs. 2,06,31,074/- and admitted sales of Rs. 3,09,55,470/-. Against the sales, the assessee admitted a gross profit of Rs. 97,68,832/- and net profit of Rs. 71,178/-. The Ld. AO asked the assessee to justify her claim of deriving low profit with necessary evidences viz., books of account, sale of bills etc. Since there was no response, the Ld. AO issued a show cause notice to the assessee as to why the net profit on stock put to sale should not be adopted at 20%? Considering the assessee's non-compliance, the Ld. AO observed that in view of the unverifiable nature of sales admitted, the assessee's books of account deserves to be rejected and the income has to be estimated by invoking the provisions of section 145 of the Act. Accordingly, the Ld. AO, after discussing the issue at length and relying on the judgment of the Hon'ble AP High Court in the case of CIT, Rajahmundry vs. M/s. R. Narayana Rao (ITA No. 3 of 2003, dated 21/6/2011), wherein the Hon'ble High Court has estimated the profit @ 16% on purchase price of the liquor, Ld. AO estimated the net profit, clear off all expenses, @ 10% of the stock purchases. Further, with regard to the

genuineness of the assessee's claim of receipt of advance of Rs. 21,00,000/-, the assessee has stated that she has received money from two persons viz., (i) Sri Nalla Gopinath (Rs. 15,00,000/- on 26/04/2011) and (ii) Smt. Nalla Naga Raja Kumar (Rs.6,00,000/- on 5/5/2011). However, the Ld. AO did not accept the explanation of the assessee for the reasons stated vide para 3.1 of his order. Thus, the Ld. AO worked out the estimation @ 10% on the total stock purchase of Rs. 2,06,31,074/- which comes to Rs. 20,63,107/- and also made addition of Rs. 21,00,000/- towards unproved unsecured loans U/s. 68 of the Act. Accordingly, the Ld. AO determined the total income of the assessee at Rs. 43,28,479/- and passed the assessment order U/s. 143(3) of the Act on 25/03/2015. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC, uphold the decision of the Ld. AO with regard to the estimation of 10% on the total stock purchased by the assessee. Further, the Ld. CIT(A)-NFAC also confirmed the addition made by the Ld. AO U/s. 68 of the Act. Thus, the Ld. CIT(A)-NFAC dismissed the appeal 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. *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 sustaining the addition of Rs. 20,63,107/- made by the AO by estimating the profit in the liquor business @ 10% of the purchases.*
3. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 21,00,000/- made by the AO U/s. 68 of the Act treating the advances received by appellant against sale of property as unexplained.*
4. *Any other grounds may be urged at the time of hearing.”*

4. From the above grounds of appeal, there are two core issues that need adjudication ie.,

- (i) Whether the Ld. CIT(A)-NFAC is justified in confirming the Ld. AO's estimation of 10% of the purchase price of the stock as profit in the liquor business of the assessee?
- (ii) Whether the Ld. CIT(A)-NFAC is justified in sustaining the addition of Rs. 21,00,000/- made by the Ld. AO U/s. 68 of the Act?

5. At the outset, **on the first issue**, the Ld. Authorized Representative [“Ld. AR”] submitted that the Ld. Revenue

Authorities have erred in estimating the income of the assessee @ 10% of the total purchases made by the assessee. The Ld. AR further submitted that in similar case, this Bench of the Tribunal in the case of Kalla Viswanatha Babu vs. ITO in ITA No. 249/Viz/2020, AY 2011-12, has estimated the net profit @ 5% of the purchase price of the stock which was put to sale which is net of all deductions. Therefore, the Ld. AR pleaded that considering the identical facts and circumstances of the case, the assessee may also be granted relief by estimating the profit @ 5% of the total purchase price of the stock that was put to sale.

6. On the other hand, the Ld. Departmental Representative ["Ld. DR"] heavily relied on the orders of the Ld. Revenue Authorities and submitted that in the absence of any cogent evidence to substantiate the claim of the assessee, the Ld. Revenue Authorities have passed the orders in accordance with law based on the facts and circumstances of the case as well as the material available on record. Therefore, the Ld. DR pleaded to uphold the orders of the Ld. Revenue Authorities.

7. I have heard both the sides and perused the orders of the Ld. Revenue Authorities on this issue as well as the material available before me. On perusal of the Tribunal's decision in the

case of Kalla Viswanatha Babu vs. ITO in ITA No. 249/Viz/2020, AY 2011-12 (supra), wherein the Tribunal has estimated the net profit @ 5% of the purchase price of the stock which was put to sale against 10% estimated by the Ld. CIT(A). For the sake of immediate reference, the relevant para 10 from the Tribunal's order (supra) is hereby extracted as under:

“9. We have heard the rival contentions and perused the materials on record and the orders of the Authorities below. Admitted facts are that the assessee failed to produce any evidence in support of sales made and hence the Ld. AO rejected the books of account and estimated the income @ 20% of the stock put to sale. The reliance placed by the Ld. AR in the decision of the Coordinate Bench of the Tribunal in the case of Majji Naga (supra) and Tangadu Jogisetty in ITA No. 96/Viz/2016 (supra) deserves consideration. Respectfully following the decisions of the Coordinate Bench of the Tribunal we hereby direct the AO to estimate the net profit @ 5% of the purchase price of the stock which was put to sale which is net of deductions. Accordingly, ground no.3 raised by the assessee is partly allowed.”

Respectfully following the above decision of the Division Bench of this Tribunal, which is binding on me, I hereby direct the Ld. AO to estimate the net profit @ 5% of the purchase price of the stock that was put to sale which is net of deductions. Accordingly, **this issue raised by the assessee is partly allowed.**

8. With regard to the **second issue**, the Ld. AR submitted that assessee has produced the sundry creditors before the Ld. AO with regard to the assessee's claim of advance of Rs. 21,00,000/-.

The Ld. AR further submitted that the assessee has made elaborative submission before the Ld. AO in support of his claim. However, the Ld. AO did not appreciate the submissions of the Ld. AO and made addition U/s. 68 of the Act which was confirmed by the Ld. CIT(A)-NFAC also. Therefore, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. AO in order to provide one more opportunity to the assessee to substantiate her claim.

9. On the other hand, the Ld. DR vehemently opposed to the submissions of the Ld. AR and submitted that though the assessee has been given sufficient opportunity to furnish the evidences with respect to the claim of the assessee, the assessee has failed furnish the same before the Ld. AO as well as before the Ld. CIT(A)-NFAC. Therefore, the Ld. DR pleaded that, in the absence of any cogent evidence, the Ld. Revenue Authorities have acted in accordance with law and therefore the decision of the Ld. Revenue Authorities need not be disturbed.

10. I have heard both the sides and perused the orders of the Ld. Revenue Authorities on this issue as well as the material placed on record. On perusal of the assessment order, it appears that before the Ld. AO, the assessee's Representative has stated

that the assessee has received Rs. 21,00,000/- from Sri Nalla Gopinath and Smt. Nalla Naga Raja Kumar. However, the Ld. AO rejected the assessee's claim of receipt of advance from the above persons and observed that the assessee has failed to explain that the amounts received were used for the assessee's business purposes. Considering the facts and circumstances involved in this issue, I am of the considered view that the Ld. Revenue Authorities ought to have appreciated the submissions made by the assessee and called for the corroborative information and evidence required, if any, before rejecting the submissions of the assessee which lacks in the case of the assessee. In this situation, I am of the view that this issue needs revisit to the file of the Ld. AO for proper examination of the loans received by the assessee and the relatable evidences and details produced by the assessee in support of her claim. Accordingly, I hereby remit this issue to the file of the Ld. AO with a direction to examine the issue at length and pass a detailed and speaking order in accordance with law and on merits after affording a reasonable opportunity of being heard to the assessee. Further, I also hereby caution the assessee to cooperate with the Ld. Revenue Authorities for speedy disposal of the issue otherwise the Ld.

Revenue Authorities are at liberty to pass the orders in accordance with law and on merits. It is ordered accordingly.

11. In the result, appeal filed by the assessee is partly allowed for statistical purposes as indicated herein above.

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 – Tirumala Surya Kumari, Plot No. 19, Rajeev Nagar Colony, Srikakulam, Andhra Pradesh – 532001.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Aayakar Bhavan, Palakonda Road, Srikakulam, Andhra Pradesh – 532001.
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