

आयकर अपीलियअधिकरण, 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.168/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Ravikumar Enantala,
D.No. 74-1-22/1,
YRL Complex, MG Road,
Patamata, Vijayawada,
Andhra Pradesh – 520007.
PAN: AADPE9027C

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-2(4),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 14/08/2024

: 23/08/2024

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/250/2023-24/1061122578(1), dated 19/02/2024 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 engaged in the business of purchase and sale of iron, steel and cement. The assessee did not file his return of income for the AY 2017-18. Subsequently, it was noticed by the Ld. AO from the AIMS module of ITBA that the assessee is listed as a non-filer and that the assessee has deposited an amount of Rs. 30,39,000/- in his bank account with Lakshmi Vilas Bank during demonetization period. Thereafter, notice U/s. 142(1)(i) of the Act dated 24/11/2017 was issued to the assessee and called for to file the return of income for the AY 2017-18. In response to the said notice, the assessee filed his return of income on 30/10/2018 admitting an income of Rs. 6,00,540/-. Subsequently, notices U/s. 142(1) of the Act were issued from time to time and called for the requisite information and the same were duly served on the assessee. In the meanwhile, the Ld. AO obtained the information from various banks as per the provisions of section 133(6) of the Act to elicit the exact amount of cash deposits made during the demonetization period and also during the FY 2016-17. On perusal of the bank statements, the Ld. AO observed that the assessee made cash deposits during demonetization to the extent of Rs. 33,44,500/- in specified bank notes in his bank accounts ie., Rs. 30,39,000/- in his account

with Lakshmvilas Bank and Rs. 1,70,500/- in his Andhra Bank account and Rs. 1,35,000/- in his account with State Bank of India. On verification of the information furnished by the bank authorities, the new notes out of the above cash deposits were Rs. 6,22,000/- and the balance of Rs. 27,22,500/- were old notes. In reply to the notices issued, the assessee submitted that his opening cash balance as on 09/11/2016 was Rs. 24,78,874/- and claimed that the cash deposits are out of the cash balance. After considering the explanation / submissions made by the assessee the Ld. AO observed that out of the total cash deposits made by the assessee, the assessee has sources to the extent of Rs. 13,35,249/- only and therefore the balance amount of Rs. 20,09,251/- was treated as unexplained investment U/s. 69A of the Act and taxed U/s. 115BBE of the Act. The Ld. AO also initiated the penalty proceedings U/s. 271AAC of the Act for default of the assessee. Further, the Ld. AO also observed that as per the assessee's P & L Account, the assessee has admitted sales of Rs. 2,49,32,226/- and net profit was admitted at Rs. 6,49,542/- which works out to 2.60%. On verification of the previous and subsequent year returns, the Ld. AO noticed that the average profit works out to Rs. 3.04% hence the net profit of the AY 2017-18 was also estimated at 3.04% which works out to

Rs. 7,57,939/- and treated the difference amount of Rs.1,08,397/- [Rs. 7,57,939 – Rs. 6,49,542] as net profit for the AY 2017-18. Thus, the Ld. AO completed the assessment U/s. 144 of the Act and determined the total income at Rs. 21,17,648/- and passed the order dated 14/12/2019. 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 as the assessee did not respond to the hearing notices issued. While dismissing the assessee's appeal, the Ld. CIT(A)-NFAC has observed as under:

“5.3Anyway, the assessee was legally not allowed to accept cash post announcement of demonetization in SBNs. During the appellate proceedings, the reply furnished by the assessee has been perused but did not find any merit. The assessee could not furnish any documentary evidences in respect of cash deposit by the assessee and deposited in his various bank account during the demonetization period. So, in absence of any credible evidence to support the averments made by the appellant, I have reason to believe that the appellant has not concrete defence in support of his grounds of appeal.

5.4. In view of the discussion made in the above paras, I confirm the addition of Rs. 21,17,648/- made by the Ld. AO. The ground of appeal is dismissed.

6.”

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. Under the facts and circumstances of the case, the orders passed U/s. 144 of the act dated 14/12/2019 by the Income Tax Officer, Ward-2(4), Vijayawada and upheld by the Ld. CIT(A)-NFAC vide orders U/s. 250 of the Act dated 19/02/2024 are contrary to the facts of the case and provisions of law.
2. The Ld. CIT(A) without giving reasonable opportunity dismissed the case ex-parte, thus violated the principles of natural justice.
3. The Ld. CIT(A) ought to have held that the order passed by the AO invoking section 144 of the Act is not in order when assessee has responded to the notices and filed explanation before the Ld. AO.
4. The Ld. CIT(A) incorrectly upheld the addition of Rs. 20,09,251/- based on the Assessing Officer’s erroneous claim that collection of SBNs from debtors is not permitted during the demonetization period, and rejected the claim of the assessee by stating that the confirmation letters from debtors are vague and incomplete.
5. The Ld. CIT(A) while uphold the addition of Rs. 20,29,251/- incorrectly upheld the Assessing Officer’s erroneous claim that the available cash balance as on 09/11/2016 is Rs. 7,13,249/- and not Rs. 24,78,874/- as claimed by the assessee as per books.
6. The Ld. CIT(A) erred in upholding the action of the Ld. AO in adding difference in profit as returned by the assessee and profit estimated by the AO on sales by Rs. 1,08,397/-.
7. For these and other reasons that are to be urged at the time of hearing the appellant prays that the addition made may kindly be deleted.”

Further, the assessee has also raised an additional ground as under:

“The Ld. AO failed to issue a notice U/s. 143(2) of the Act which is a jurisdictional requirement. In the absence of this notice, the consequential assessment order passed

U/s. 144 of the Act is null and void and liable to be quashed.”

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 his Representative has responded to the notices issued 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 as observed by the Ld. CIT(A)-NFAC in his order, the assessee has responded to the notices issued by the Ld. AO and furnished the information called for.

However, the Ld. AO passed the order U/s. 144 of the Act. Further, on perusal of the Ld. CIT(A)-NFAC's order, I observed 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 23rd August, 2024.

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

Dated :23/08/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Ravikumar Enantala, D.No. 74-1-22/1, YRL Complex, MG Road, Patamata, Vijayawada, Andhra Pradesh – 520007.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(4), Vijayawada.
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