

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.290/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2023-24)

Thota Venkateswarulu,
D.No. 3-29-39/4,
6th Lane, Chandramouli Nagar,
Guntur, Andhra Pradesh-522002.
PAN: ACAPT3755D

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-1(1),
Guntur.

(प्रत्यार्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 26/08/2024

: 27/08/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Addl/JCIT (Appeals)-1, Jaipur in DIN & Order No. ITBA/APL/S/250/2024-25/1065411146(1), dated 05/06/2024 arising out of the order passed U/s. 143(1) of the Income Tax Act, 1961 ["the Act"] for the AY 2023-24.

2. Briefly stated the facts of the case are that the assessee is an individual and a licensed chillies commission agent in Agricultural Market Yard Committee [AMYC], Guntur. The assessee filed his return of income for the AY 2023-24 on 31/10/2023 declaring a total income of Rs. 27,89,170/- wherein the assessee claimed TDS credit for Rs. 4,40,344/-. Thereafter, the Ld. AO, CPC while processing the return of income U/s. 143(1) of the Act granted TDS only to the extent of Rs. 29,181/- and disallowed the TDS credit of Rs. 4,11,163/- [Rs. 4,40,344 – Rs. 29,181] and passed the Intimation U/s. 143(1) of the Act on 11/12/2023. Aggrieved by the Intimation of the Ld. AO, CPC passed U/s. 143(1) of the Act, the assessee filed an appeal before the Ld. Addl / JCIT (A)-1, Jaipur. On appeal, after considering the submissions of the assessee, the Ld. Addl/ JCIT (A), dismissed the appeal of the assessee. On being aggrieved, 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) ought to have directed the Assessing Officer to grant credit for entire amount Rs. 4,40,344/- that was deducted as tax at source U/s. 194Q and 194A of the Act from the commission*

income and Interest income as against TDS credit of Rs. 29,181/- allowed by the CPC.

3. *The Ld. CIT(A) ought to have appreciated that the appellant is only a commission agent and therefore the CPC is not justified in applying Rule 37BA by treating the gross sale proceeds as the income of the appellant.*
4. *Any other grounds may be urged at the time of hearing.”*

3. At the outset, the Ld. Authorized Representative [AR] submitted that the assessee is only a commission agent and therefore the total gross sale proceeds cannot be treated as the income of the assessee and thereby the Ld. Revenue Authorities have erred in applying the Rule-37BA of the Income Tax Rules, 1962. The Ld. AR also submitted that as per the Circular No.452, dated 17th March, 1986 issued by the Central Board of Direct Taxes [CBDT] the actual turnover of the Kaccha Aarahtias is the commission charged and it does not include the sales affected on behalf of the principals. The Ld. AR strongly relied on the Board Circular (supra) and reiterated that since the assessee is only a commission agent, the assessee is eligible to get credit of the entire amount deducted as tax at source U/s. 194Q of the Act and therefore pleaded that the grounds raised by the assessee may be allowed. The Ld. AR further submitted that on the identical facts and circumstances, the Hon'ble Tribunal has

decided the case in favour of the assessee in the case of Yagneswari General Traders vs. ITO in ITA No. 39/Viz/2024 (AY 2022-23, dated 18/03/2024). Therefore, the Ld. AR strongly relied on the decision of this Bench (supra) and pleaded that considering the similar facts and circumstances, the decision taken by the Bench in the case of Yagneswari General Traders vs. ITO (supra) may be applied to the case of the assessee also.

4. On the other hand, Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

5. I have heard both the sides and perused the material available on record as well the orders of the Ld. Revenue Authorities. I have also gone through the CBDT Circular No. 452, dated 17th March, 1986 (supra) relied on by the Ld. AR. Further I have perused the decision of this Tribunal in the case of Yagneswari General Traders vs. ITO (supra). For the sake of reference, the relevant paras 5 & 6 of the Tribunal's order dated 18/03/2024 (supra) are extracted herein below:

"5. I have heard both the sides and perused the material available on record as well the orders of the Ld. Revenue Authorities. I have also gone through the CBDT Circular No. 452, dated 17th March, 1986 (supra) relied on by the Ld. AR. For the

sake of reference, the relevant portion of paragraph No.4 of the said Circular (supra) is extracted herein below:

*“4. The Board are advised that so far as **kaccha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of 44AB.** But the position is difference with regard to paccarahtias.....”*

6. From the above it is clear that Kaccha Arahtias turnover includes only the gross commission and not the sales effected on behalf of their principals. In the present case, it is a fact that the assessee is only a licensed commission agent in Agricultural Market Committee Yard, Guntur which is formed under the rules and regulation of the Government of Andhra Pradesh. Therefore, the Circular issued by the CBDT (supra) squarely applies to the assessee and hence I am of the view that the assessee is acted only as an agent (kaccha arahtia) and therefore it is eligible to get credit of the entire amount deducted as tax at source and there is no short fall of TDS as concluded by the Ld. Revenue Authorities. Accordingly, I hereby set-aside the orders of the Ld. Revenue Authorities and direct the Ld. AO to grant credit of the entire amount deducted as tax at source in the case of the assessee. The grounds raised by the assessee are allowed.”

6. Considering the identical facts and circumstances of the assessee's case with that of the appeal decided by the Tribunal in the case of Yagneswari General Traders vs. ITO (supra), following the principle of consistency, I have no hesitation to set-aside the orders of the Ld. Revenue Authorities and direct the Ld. AO to grant credit of the entire amount deducted as tax at source in the case of the assessee. Thus, the grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 27th August, 2024.

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

Dated :27/08/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Thota Venkateswarulu, D.No. 3-29-39/4, 6th Lane, Chandramouli Nagar, Guntur, Andhra Pradesh-522002.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), O/o. ITO, Lakshmipuram Main Road, Guntur, Andhra Pradesh – 522006.
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