

आयकर अपीलिय अधिकरण, 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.125/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2016-17)

Chandrasekhar Yernena,
39-31-68, Gandhi Nagar,
Marripalem,
Visakhapatnam-530018,
Andhra Pradesh.
PAN: ABQPY2029N

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-4(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri N.V. Ramana Murthy, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 11/06/2024

: 10/09/2024

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/250/2023-24/1060329523(1), dated 31/01/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2016-17.

2. Briefly stated the facts of the case are that the assessee is an individual engaged in liquor business has filed his return of income for the AY 2016-17 electronically on 29/09/2016 admitting a total taxable income of Rs. 9,53,550/- which includes business income, salary income and commission. Later on, the case was selected for scrutiny through CASS under complete scrutiny. Accordingly, notice U/s. 143(2) of the Act was issued on 03/07/2017 and in response to the same, the assessee's Authorized Representative appeared from time to time and filed copy of the return, P & L Account, balance sheet and audit report. The Ld. AO asked the assessee to produce bills / vouchers, details of unsecured loans with supporting evidences etc. However, the assessee has not furnished the requisite information and the books of account before the Ld. AO and therefore the Ld. AO issued notice U/s. 142(1) of the Act dated 03/10/2018 and in response, the assessee has partly furnished the information and has not furnished the books of account and other evidences. Therefore, another notice U/s. 142(1) of the Act dated 03/11/2018 was issued to the assessee and in reply the assessee submitted that the amounts claimed to have been received from his family members. Therefore, the Ld. AO issued a show cause notice dated 03/12/2018 and communicated the Ld.

AO's proposal for estimation of income. However, there was no response from the assessee and therefore the Ld. AO proceeded to complete the assessment. During the assessment proceedings, the Ld. AO observed that the assessee has claimed (i) Rs. 10,84,000/- as his own capital in the business; (ii) Rs. 10,00,000/- as funds received from family members out of their agricultural income and Rs. 5,00,000/- received from the assessee's brother. On perusal of the assessee's submissions and the evidences placed before him, the Ld. AO made addition of Rs. 15,00,000/- as unexplained investment U/s. 69 of the Act. Further, the Ld. AO estimated the income of the assessee from liquor business ie., @ 5% on the total stock put to sale (Rs. 3,62,48,715/-) which worked out to Rs. 18,12,435/- and brought the same to tax. Accordingly, the Ld. AO completed the assessment U/s. 143(3) of the Act and determined the total income of the assessee at Rs. 35,65,398/- and passed the order dated 11/12/2018. The Ld. AO also initiated the penalty proceedings U/s. 271(1)(c) of the Act. Aggrieved by the order of the Ld. AO, the assessee is in appeal before the Ld. CIT(A)-NFAC.

3. On appeal, after considering the submissions of the assessee, the Ld. CIT(A)-NFAC observed that with respect to

estimation of income @ 5% on the value of the total stock to use, the Ld. AO has taken a very reasonable view while estimating the profit in the absence of books of accounts. Further, with respect to unexplained investment, the Ld. CIT(A)-NFAC observed that the assessee has failed to furnish the proof of his land-holding and agricultural produce apart from some confirmation of the Village Revenue Officer which cannot be accepted in the absence of purchase and sales bills. 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 impugned appellate order dated 31/01/2024 passed U/s. 250 of the Act by the Ld. CIT(A)-NFAC is unjust and uncalled for.*
2. *The Ld. CIT(A) ought to have treated the amount of Rs. 15, lakhs contributed by the appellant from his family funds mainly accumulated savings of agricultural income (Rs. 10.00 lakhs) and loan from his brother ie., Y. Raja Sekhar Rao (Rs. 5 lakhs) as unexplained investment U/s. 69 of the Act in any view of the matter.*
3. *The Ld. CIT(A) ought to have considered positively the evidences and explanation submitted by the appellant during the course of the impugned proceedings.*
4. *The Ld. CIT(A) ought to have appreciated the fact that the appellant discharged his onus by submitting the necessary and supporting documentary evidences in support of the impugned investment of Rs. 15 lakhs made by the appellant in his business.*
5. *The Ld. CIT(A) ought not have resorted to estimation of appellant’s business income, as the appellant maintained*

regular books of account and got them audited U/s. 44AB of the Act and the tax auditor did not report any irregularities in his audit report. So the Ld. CIT(A) ought to have accepted the book results of the appellant's business income for the AY 2016-17 in the interest of justice."

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 sustaining the addition of Rs. 15,00,000/- made by the Ld. AO U/s. 69 of the Act on account of unexplained investment?
- (ii) Whether the Ld. CIT(A)-NFAC is justified in confirming the Ld. AO's estimation of 5% of the total value of the stock put to sale as profit in the liquor business of the assessee?

5. At the outset, **on the first issue**, the Ld. AR submitted that the assessee's family members hold 7.02 Acres of agricultural land from which they earn around Rs. 3.5 lakhs to Rs. 4 lakhs per year and therefore the assessee's family members have contributed funds in the business of the assessee out of their agricultural income. The Ld. AR further submitted that in support of the assessee's claim, the assessee has also produced confirmation letters from the family members along with Pattadar

Passbooks of the family members in support of their landholdings. The Ld. AR further submitted that, in addition to the above, during the AY under consideration the assessee has taken loan of Rs. 2 lakhs from his brother Sri Y. Rajasekhara Rao. Furthermore, to prove the creditworthiness of Y. Rajasekhara Rao, the assessee has also furnished his return of income before the Ld. AO. However, the Ld. AO did not consider the submissions and documentary evidences submitted by the assessee, and made an addition of Rs. 15 lakhs as unexplained investment U/s. 69 of the Act. Therefore, the Ld. AR pleaded that since the assessee has properly explained the sources for his claim of agricultural income of Rs. 10 lakhs as well as the loan taken from his brother amounting to Rs. 5 lakhs, the addition of Rs. 15 lakhs made on account of unexplained investment U/s. 69 of the Act may be deleted.

6. On the other hand, Learned Departmental Representative ["Ld. DR"] strongly relied on the orders of the Ld. Revenue Authorities and submitted that the onus is on the assessee to provide the documentary evidence with regard to earning of the agricultural income of Rs. 10 lakhs during the year by the family members of the assessee. Further, the Ld. DR submitted that the

assessee has also failed to prove the creditworthiness of his brother Mr. Y. Rajasehara Rao who advanced the loan of Rs. 5 lakhs to the assessee along with documentary evidence. In the absence of any proper cogent documentary evidence, the Ld. AO has made the addition. Even before the Ld. CIT(A)-NFAC the assessee has not produced any evidence to substantiate his claim. Therefore, the Ld. DR pleaded that the decision taken by the Ld. Revenue Authorities need not be disturbed.

7. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is a fact that the during the assessment proceedings, before the Ld. AO, the assessee has stated that the sources for his investment in his business are (i) his own capital Rs. 10,84,000/-; (ii) family funds – agricultural income Rs. 10,00,000/- and (iii) loan from his brother Y. Rajasekhara Rao Rs. 5,00,000/-. With regard to agricultural income, before the Ld. AO the assessee has furnished the copies of confirmation letters along with Pattadar Passbooks of his family members. It is evident from the Ld. AO's order that the assessee has also furnished the certificates issued by the Village Revenue Officer ["VRO"] of Devudala Village, Regidi, Amudalavalasa Mandal,

Srikakulam District wherein the VRO has certified that an aggregate income of Rs. 3,64,000/- per yield will come from the agricultural lands of the assessee's family members. Further, with regard to the loan of Rs. 5 lakhs advanced by the assessee's brother, the assessee has also furnished the return of income to evidence the creditworthiness of Mr. Y. Rajasekhara Rao. Before me, the assessee has also produced the copies return of income his family members, confirmation letters from the assessee's family members, Pass Books of the assessee's family members evidencing their agricultural land holdings and the certificates issued by the VRO as well as the copy of the return of income filed by the assessee's brother Mr. Y. Rajasekhara Rao for the AY 2014-15 and 2015-16. On perusal of all these documents as well as the submissions of the assessee, I am of the considered opinion that the assessee's family members are having agricultural income and the assessee's brother is also having creditworthiness to advance loan to the assessee. Considering these facts and circumstances of the case, I hereby grant relief to the assessee to the extent of Rs. 5 lakhs towards agricultural income and Rs. 2 lakhs towards the loan availed from the assessee's brother Mr. Y. Rajasekhara Rao as explained out of Rs. 15 lakhs additions made U/s. 69 of the Act. Accordingly, the Ld.

AO is directed to grant relief to the assessee as above. It is ordered accordingly. **Thus, the first issue raised by the assessee is partly allowed.**

8. At the outset, **on the second issue**, the Ld. Authorized Representative ["Ld. AR"] submitted that the Ld. Revenue Authorities have erred in estimating the income of the assessee @ 5% of the total purchases made by the assessee. The Ld. AR further submitted that in similar cases, various Benches of the Tribunal have estimated that the net profit of the assessee's in this line of liquor business at 3% of the purchases or total stock put for sale during the year would be reasonable. 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 @ 3% of the total purchase price of the stock that was put to sale.

9. 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.

10. 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. It is an undisputed fact that the assessee was engaged in the liquor business. During the proceedings before the Ld. Revenue Authorities, the assessee has not produced sales bills in support of the sales admitted during the year in the Trading and P & L Account and has also not produced any books of account for verification. Under these circumstances, the Ld. AO proposed to reject the book results of the assessee and resorted to estimate the income on liquor business @ 5% on the stock put to use during the year under consideration. While coming to such decision, the Ld. AO relied on the decision of this Tribunal in the case of T. Appala Swamy vs. ACIT in ITA Nos. 65 & 66/Viz/2012, dated 26/02/2014. Further, on similar set of facts and circumstances, the Division Bench of this Tribunal in the case of Kalla Viswanatha Babu vs. ITO in ITA No. 249/Viz/2020, AY 2011-12 (supra), 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.”

11. Respectfully following the above decision of the Division Bench of this Tribunal, which is binding on me, I hereby uphold the decision of the Ld. CIT(A)-NFAC in sustaining the decision of the Ld. AO in estimating 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 dismissed.**

12. In the result, appeal of the assessee is partly allowed as indicated herein above.

Pronounced in the open Court on 10th September, 2024.

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

Dated :10/09/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Chandrasekhar Yernena, 39-31-68, Gandhi Nagar, Marripalem, Visakhapatnam-530018, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-4(1), Prathyakshkar Bhawan, MVP Double Road, Visakhapatnam, 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