

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No. 103/Viz/2024  
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sree Sai Sameera Pharmacy,  
22-135, Ankamma Temple Street,  
Nandigama, Krishna District,  
Andhra Pradesh – 521185.

PAN: ACVFS1385F

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

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

(प्रत्यार्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

: 22/07/2024

: 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/NFAC/S/250/2023-24/1060263005(1), dated 30/01/2024 arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 [“the Act”] for the AY 2018-19.

2. Briefly stated the relevant facts of the case are that the assessee is a partnership firm engaged in the business of purchase and sale of all kinds of medicines at Nandigama. During the assessment proceedings, as per the information available with the Department, the Ld. AO observed that during the FY 2017-18 relevant to the AY 2018-19, the assessee made cash deposits in Andhra Bank to the tune of Rs. 2,19,07,080/-. Subsequently, the Ld. AO issued various letters, notices U/s. 142(1) and show cause notices to the assessee to furnish the details with respect to the above cash deposits. However, the assessee did not respond and failed to furnish any supporting evidence, details or any type of communication before the Ld. AO. Therefore, the Ld. AO issued a show cause notice to the assessee on 11/10/2023 wherein it was stated the assessee's case has been selected U/s. 148 of the Act and the assessee was requested to furnish the details and supporting documents as mentioned in the table in page-6 of the assessment order. In the absence of any details or documents furnished before the Ld. AO, the Ld. AO proposed to complete the assessment U/s. 144 of the Act. Accordingly, the Ld. AO observed that the assessee has made cash deposits amounting to Rs. 2,19,07,080/- on various occasions on various banks. In spite of sufficient opportunities

and time given to the assessee, the assessee failed to furnish any supporting details / documents / information etc. Hence the Ld. AO came to a conclusion that there is an escapement of assessment to the extent of Rs. 2,19,07,080/-. Therefore, the Ld. AO treated the same as unexplained cash credit in the hands of the assessee U/s. 69A r.w.s 115BBE of the Act. Accordingly, the Ld. AO determined the total income of the assessee at Rs. 2,19,07,080/- and passed the assessment order U/s. 144 r.w.s 147 r.w.s 144B of the Act vide order dated 21/12/2023. 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 dismissed the assessee's appeal by observing as under:

*“2.7. As per section 249(4), No appeal shall be admitted unless at the time of filing of the appeal, the prescribed conditions are satisfied. As per section 249(4)(b) of the Act, the appeal shall not be admitted, unless the appellant has paid an amount equal to the amount of advance tax which was payable. As the applicable advance tax has not been paid by the appellant before filing of the appeal, the present appeal shall not be admitted. Therefore, the present appeal filed not admitted as per the provisions of section 249(4) of the Act.”*

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 passed U/s. 147 read with section 144B of the Act dated 21/12/2023, which was subsequently upheld by the Ld. CIT(A) vide order U/s. 250 of the IT Act dated 30/01/2024, is contested on the grounds that it is in direct contradiction to the facts of the case and provisions of law.*
2. *The Ld. CIT(A) in dismissing the assessee’s appeal, erroneously relied on section 249(4) of the Act, stating that the appeal cannot be admitted unless advance tax is paid. This finding is legally flawed as the assessee firm incurred losses and consequently did not file a return of income. Therefore, 249(4) is inapplicable in this context.*
3. *Furthermore, the Ld. CIT(A) failed to address the merits of the case, a mandatory requirement under the law, which constitutes a grave error.*
4. *Despite the above, the Ld. CIT(A) neglected to consider the assessee’s claim regarding the discrepancy in the amount of deposits in the bank account as stated by the Assessing Officer. The actual deposits amount to only Rs. 1,12,53,540/- not Rs. 2,19,07,080/- as mentioned by the Ld. AO.*
5. *The impugned order passed U/s. 147 r.w.s 144 r.w.s 144B of the Act is not compliance with the provisions of the law. The notices issued by the jurisdictional assessing officer U/s. 148A(d), dated 27/04/2022, and U/s. 148 dated 27/04/2022, are invalid and violate the provisions of statute as envisaged U/s. 144B and section 151A of the Act.*
6. *The issuance of invalid notices by the assessing Officer taints the subsequent proceedings, rendering the assessment null and void. Consequently, the orders passed U/s. 147 r.w.s 144 r.w.s 144B of the Act are liable to be annulled.*
7. *Additionally, the notice issued U/s. 148 for the impugned assessment year exceeds the statutory time limit since the alleged escapement of income is less than Rs. 50 lakhs. As per section 149(1)(b) of the Act, the permissible time frame for issuing such notice is three years, which has been surpassed in this instance.*
8. *For these and other reasons that are to be urged, it is prayed that the Hon’ble ITAT may, in the interest of justice and fair play, delete the addition.”*

4. At the outset, the Learned Authorized Representative [“Ld. AR”] submitted that the decision of the Ld. CIT(A)-NFAC in applying the provisions of section 249(4) of the Act is not in

accordance with law as the assessee firm has incurred losses and consequently did not file the return of income for the AY under consideration. The Ld. AR further submitted that thereafter the assessee filed return on 05/05/2022 by showing taxable income at Rs. NIL and in that situation the provisions of section 249(4) of the Act with regard to payment of advance tax would not be attracted. The Ld. AR further submitted that the actual deposits made by the assessee during the AY under consideration are only to the extent of Rs. 1,12,53,540/- and not Rs. 2,19,07,080/- as decided by the Ld. AO. Therefore, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. CIT(A)-NFAC for proper appreciation of the facts of the case and to decide the case on merits.

5. On the other hand, Ld. Departmental Representative [“Ld. DR”] strongly relied on the orders of the Ld. Revenue Authorities as argued in support of the decision taken by them.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. On perusal of the order of the Ld. CIT(A)-NFAC, we find that the assessee’s appeal was dismissed by the Ld. CIT(A)-NFAC on the ground that the assessee has not paid the amount

equivalent to the amount of advance tax which was payable as per the provisions of section 249(4) of the Act. On this issue, we have perused the return of income filed by the assessee as well as the P & L Account and the relevant documentary evidence placed before us and we find that the assessee has not filed the return of income since there was loss in the assessee's business and therefore did not opt to file the return of income. However, on 05/05/2022 the assessee filed the return of income showing NIL income. In this situation, when the assessee has no taxable income and was stated that there was business loss, the question of paying the advance tax does not arise. Therefore, in our considered opinion, the provisions of section 249(4)(b) does not apply to the case of the assessee. Further, in our view, the Ld. CIT(A)-NFAC ought to have decided the case on merits instead of resorting to apply the provisions of section 249(4)(b) of the Act since the core issue before the appellate authority is the addition made by the Ld. AO on account of unexplained cash deposits U/s. 69A of the Act. Therefore, we hereby the remit the matter back to the file of the Ld. CIT(A)-NFAC in order to decide the case on merits after affording a reasonable opportunity of being heard to the assessee in accordance with the principles of natural justice. Needless to mention that the assessee should cooperate

in the proceedings of the Ld. Revenue Authorities otherwise, the Ld. Revenue Authorities are at liberty to pass the orders based on the material available on record and in accordance with law. It is ordered accordingly.

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

Pronounced in the open Court on 10<sup>th</sup> September, 2024.

Sd/-  
(एस बालाकृष्णन)  
(S.BALAKRISHNAN)  
लेखा सदस्य/ACCOUNTANT MEMBER

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 – Sree Sai Sameera Pharmacy, 22-135, Ankamma Temple Street, Nandigama, Krishna District, Andhra Pradesh – 521185.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), 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