

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.153/Viz/2024  
(निर्धारण वर्ष / Assessment Year : 2017-18)

Ch. Rama Rao, 4-99, ramavarappadu, Vijayawada-521108. PAN: AACFC0545L (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-3(4), Vijayawada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri C. Subrahmanyam, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	18/07/2024
घोषणा की तारीख/Date of Pronouncement	:	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/250/2023-24/1059943285(1), dated 19/01/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961.

2. At the outset, it is noticed that there is a delay of 22 days in filing this appeal before the Tribunal. With respect to belated filing of the appeal, the assessee filed petition for condonation of delay along with the affidavit and the relevant paras of the affidavit is extracted herein below for reference:

“.....

2. Whereas, it is stated that the assessee was go to Counsel office for signing appeal papers on 16/03/2024 but fallen ill effected with Dengue fever, therefore could not move out from the house however, after recovery signed the appeal papers which were filed on 190/04/2024 causing a delay of 24 days which may kindly be condoned.

3.....

4.....”

3. On perusal of the explanation given by the assessee with respect to filing of the appeal before the Tribunal beyond the prescribed time limit, I find that the assessee was prevented by a reasonable and sufficient cause to file the appeal within the stipulated time. Therefore, I hereby condone the delay of 22 days in filing the appeal of the assessee before the Tribunal and proceed to adjudicate the appeal on merits.

4. Briefly stated the facts of the case are that the assessee is a partnership firm doing business of petrol bunk in the name & style of M/s. Ch. Rama Rao (Indian Oil Dealers) at Ramavarappadu, Vijayawada. For the AY 2017-18 the assessee firm filed its return of income on 22/10/2017 and admitted total

turnover of Rs. 35,70,43,007/-. Since the assessee's turnover exceeded the prescribed limit of Rs. 1 Crore during the FY 2016-17, the assessee got its books of account audited and submitted the audit report as per the provisions of section 44AB of the Act. Subsequently, **the case of the assessee was selected for "complete scrutiny" under CASS to examine the 'large value cash deposits during the demonetization period'**. Accordingly, statutory notice U/s. 143(2) of the Act was issued through ITBA on 24/09/2018 and the same was duly served on the assessee. Later on, during the assessment proceedings, noticed U/s. 142(1) of the Act were issued and called for certain information. In response, the assessee furnished its reply through ITBA from time to time. On verification of the P & L Account for the FY 2016-17, the Ld. AO noticed that the assessee has claimed expenditure of Rs. 25 lakhs towards sales commission which is said to have been paid to a partner of the assessee Sri Cherukuri Krishna Abhiram for his contribution for improvement of assessee's sales during the year. However, the Ld. AO observed that as per the partnership deed dated 30/04/2012, it does not authorize for payment of such commission to any of the partners. On this issue, after discussing the matter at length, the Ld. AO observed that as per the provisions of section 40A(2) of the Act,

the excess / unreasonable commission paid to the partner of the assessee of Rs. 23.94 lakhs is required to be disallowed U/s. 40A(2) of the Act. The Ld. AO further observed that the recipient of the commission is a partner in the firm and therefore the provisions of section 40(b) will squarely apply. Accordingly, the Ld. AO disallowed Rs. 25 lakhs on account of sales commission paid to a partner of the assessee and added the same to the total income of the assessee. Further, the Ld. AO also observed that since the assessee itself, in principle, accepted for the addition on account of debit balance of the partner's account, which works out to Rs. 14,38,274/-, made an addition of Rs. 14,38,274/- and added the same to the total income of the assessee. Thus, the Ld. AO determined the total income of the assessee at Rs. 44,16,554/- and passed the assessment order U/s. 143(3) of the Act dated 30/12/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

5. On appeal, the Ld. CIT(A)-NFAC, after considering the submissions of the assessee and on perusal of the material available before him, confirmed the additions made by the Ld. AO and 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 orders passed U/s. 143(3) of the Act dated 30/12/2019 upheld by the Ld. CIT(A)-NFAC vide orders passed U/s. 250 of the Act dated 19/01/2024 are vehemently contested by the appellant on the grounds that they are contrary to the facts of the case and provisions of law.*
2. *The Ld. CIT(A) ought to have held that AO in selecting the case for scrutiny to examine large value cash deposits during the demonetization period, overstepped the scope of his authority by delving into unrelated areas, specifically pertaining to the disallowance of commission payments and interest paid to the bank.*
3. *The Ld. CIT(A) erred in upholding the disallowance of commission payment amounting to Rs. 25 lakhs to the working partner, invoking the provisions of section 40A(2) of the Act. Such disallowance is unjustified and lacks merit as the payment was made in the ordinary course of business and for genuine services rendered.*
4. *Furthermore, the Ld. CIT(A) erroneously upheld the disallowance of commission payment to the working partner U/s. 40(b) of the Act without due consideration of the factual and legal nuances of the case.*
5. *Additionally, the Ld. CIT(A) upheld the AO’s action in disallowing the interest paid to the bank on the overdraft account, citing a negative capital balance as computed by the AO. Further, the methodology employed by the AO to arrive at the negative capital balance while disallowing Rs. 14,38,274/- is arbitrary and devoid of statutory backing.*
6. *In the light of the above, the appellant humbly prays for the quashing of the impugned orders passed by the Ld. CIT(A) and the deletion of the additions made therein.*
7. *The appellant reserves the right to add, alter or amend any grounds of appeal and to produce further evidence as may be deemed necessary at the time of hearing.”*

6. At the outset, the Learned Authorized Representative [“Ld. AR”] submitted that **Grounds No. 1, 3, 4, 6 & 7 are not pressed** by the assessee. Therefore, these grounds raised by the assessee are **dismissed as not pressed**.

7. With respect to **Ground No.2**, the Ld. AR submitted that the case was selected for limited scrutiny to verify the cash deposits in the bank accounts. However, the Ld. AO travelled beyond the scope of limited scrutiny and made the assessment. Therefore, the Ld.AR pleaded that the assessment order passed by the Ld. AO may be quashed as it is void-ab-intio.

8. On the other hand, Ld. DR strongly objected to the argument of the Ld. AO and submitted that the case was selected for complete scrutiny and it is not reopened for limited scrutiny and the same was also mentioned in the assessment order passed by the Ld. AO. Therefore, the assessment order passed by the Ld. AO holds good and needs no interference.

9. I have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material placed on record. On careful perusal of the assessment order, I find that the Ld. AO has categorically mentioned in the First Paragraph of the

assessment order that ***the case of the assessee was selected for “complete scrutiny” under CASS.*** Therefore, the contention of the Ld. AR that the Ld. AO travelled beyond the scope of limited scrutiny and made the assessment is not tenable and the **Ground No.2 raised by the assessee is dismissed.**

10. With respect to **Ground No.5**, on the issue of disallowance of interest paid to the bank on the overdraft account, it was the submission of the Ld. AR that as per the day-to-day calculation as computed by the assessee, the interest worked out to only Rs. 9,07,391/- however, the Ld. AO made disallowance of Rs. 14,38,274/-. It was the further submission of the Ld. AR that all the day-to-day break-ups were filed before the Ld. Revenue Authorities by way of paper book. However, without proper verification and examination of the details submitted by the assessee, the Ld. AO made disallowance of interest at Rs. 14,38,274/- and the same was confirmed by the Ld. CIT(A)-NFAC. Therefore, the Ld. AR pleaded that the orders of the Ld. Revenue Authorities may be quashed.

11. Per contra, the Ld. DR submitted that the assessee has not filed any details before the Ld. Revenue Authorities by way of paper book. Therefore, as per the material available on record,

the Ld. Revenue Authorities have passed the orders and pleaded to uphold the orders of the Ld. Revenue Authorities.

12. I have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material available on record. I have also gone through the paper book filed by the assessee before the Tribunal which shows the details of day-to-day interest breakup. On verification of the details filed by the assessee, I find that as per the assessee, the calculation of interest on day-to-day basis works out to Rs. 9,07,391/- whereas the Ld. AO disallowed Rs. 14,38,274/-. However, I find that there is no evidence placed before the Bench to show that the said details in the form of paper book were placed before the Ld. Revenue Authorities during the proceedings before them. Therefore, under these circumstances, I am of the considered view that it is a fit case to examine the day-to-day interest computation as provided by the assessee by the Ld. AO. Accordingly, I hereby remit the matter back to the file of the Ld. AO to verify the day-to-day interest computation as provided by the assessee and if it is found correct then the Ld. AO should restrict the disallowance to Rs. 9,07,391/- only against Rs. 14,38,274/-. It is ordered accordingly. Thus, the **Ground No.5**

**raised by the assessee is allowed for statistical purposes** as indicated herein above.

13. In the result, appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 10<sup>th</sup> 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 – Ch. Rama Rao, 4-99, ramavarappadu, Vijayawada-521108.
2. राजस्व/The Revenue – Income Tax Officer, Ward-3(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