

आयकर अपीलियअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM 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. 119/Viz/2024  
(निर्धारण वर्ष / Assessment Year : 2017-18)

Vara Prasad Didla, Visakhapatnam. PAN: ABMPD8306K (अपीलार्थी/ Appellant)	Vs.	Assistant Commissioner of Income Tax, Circle-3(1), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri I. Kama Sastry, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	31/07/2024
घोषणा की तारीख/Date of Pronouncement	:	12/09/2024

O R D E R

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/250/2023-24/1060154056(1), dated 26/01/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961.

2. Briefly stated the facts of the case are that the assessee is an individual, deriving income from capital gains and other sources, filed his return of income for the AY 2017-18 on 07/07/2017 admitting a total income of Rs. 21,23,540/-. Subsequently, the case was selected for limited scrutiny under CASS for the reasons viz., (i) large value of cash deposits during demonetization period and (ii) Large value of cash deposits during demonetization period as compared to return of income. Accordingly, notice U/s. 143(2) of the Act was issued to the assessee on 24/09/2018 and the same was served on the assessee electronically. Subsequently, notices U/s. 142(1) of the Act were issued on various dates and called for certain information from time to time. Further, due to change in incumbency, notice U/s. 129 of the Act was also issued on 09/08/2019 & 28/10/2019. In response, the assessee made submissions from time to time and on verification of the information submitted by the assessee as well as on perusal of the ITR filed by the assessee, the Ld. AO observed that the assessee has received Rs. 43 lakhs as full value of consideration and claimed deduction U/s. 48 of the Act as cost of acquisition with indexation at Rs. 22,50,000/-. Accordingly, the assessee was asked to furnish verifiable evidence in support of the

assessee's claim of cost of acquisition with indexation of Rs. 22,50,000/- along with detailed computation of capital gains. However, the Ld. AO observed that the assessee has failed to produce any proofs in support of his claim of deduction U/s. 48 of the Act. Therefore, the Ld. AO computed the long term capital gains based on the material available on record and assessed the LTCG at Rs. 5,65,500/-. Further, the Ld. AO also issued notice U/s. 142(1) of the Act and requested the assessee to furnish proof in support of receipt of Rs. 43 lakhs towards sale of property as against registered value of the property at Rs. 6,78,000/-. In the absence of any cogent documentary proof in support of the assessee's claim, the Ld. AO issued a show cause notice and accordingly treated the difference between the assessee's claim of sale proceeds received and sale consideration mentioned in the registered sale deed of Rs. 36,22,000/- as unexplained money U/s. 69A of the Act and taxed the same as per the provisions of section 115BBE of the Act. The Ld. AO also initiated the penalty proceedings U/s. 271AAC of the Act. Thus, the Ld. AO determined the total income of the assessee at Rs. 43,61,039/- and passed the assessment order U/s. 143(3) of the Act dated 25/12/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. The Ld. CIT(A)-NFAC, after considering the submissions of the assessee and on perusal of the material available before him, confirmed the addition made by the Ld. AO U/s. 69A of the Act. Further, the Ld. CIT(A)-NFAC directed the Ld. AO to verify the assessee's returns of income for the previous assessment years and determine the cost of acquisition and indexation in accordance with law. Thus, the Ld. CIT(A)-NFAC partly allowed 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 Ld. AO is not justified in treating Rs. 36,22,000/- as unexplained deposits in bank during demonetization period and bringing to tax the same U/s.69A and levying tax U/s. 115BBE and CIT(A) is not justified in confirming the same.*
2. *The AO is not justified in re-computing the LTCG returned by the assessee as the same is beyond the scope of the issue for which the case is selected for limited scrutiny and the CIT(A) is not justified in confirming the same.*
3. *The AO is not justified in rejecting the claim for indexed cost of construction of building.*
4. *All the above grounds of appeal are mutually exclusive and without prejudice to one another.*
5. *The appellant craves leave to add to alter; modify; delete all or any of the above grounds of appeal.”*

4. At the outset, the Learned Authorized Representative [Ld. AR] submitted that the Ld. AO selected the assessee's case for limited scrutiny under CASS to verify the cash deposits during the demonetization period. However, while framing the assessment, the Ld. AO travelled beyond the scope of limited scrutiny and added the cash deposits made by the assessee before the demonetization period also. Referring to the issue involved in Ground No.1 relating to the addition of Rs. 36,22,000/- made U/s. 69A r.w.s 115BBE of the Act, the Ld. AR submitted that the assessee has disposed of his immovable property and received sale consideration of Rs. 43 lakhs on various dates in three installments viz., (i) cash of Rs. 5 lakhs was received on 21/06/2016; (ii) cash of Rs. 20 lakhs on 10/08/2016 and (iii) Rs. 18 lakhs was received through RTGS to my account on 17/10/2016. The Ld. AR further submitted that the assessee has withdrawn an amount of Rs. 40 lakhs on 01/11/2016 out of the sale consideration received for various purposes. But, due to announcement of demonetization of currency, the assessee deposited the same in into the bank account. However, the Ld.AO did not consider the same and made addition of Rs. 36,22,000/- U/s. 69A of the Act as unexplained cash credit. Therefore, the Ld. AR pleaded that since the source

of the cash deposit is properly explained, the decision taken by the Ld. Revenue Authorities is unsustainable in law and therefore they may be set-aside and the assessee may be granted relief by deleting the addition made U/s. 69A of the Act.

5. On the other hand, the Ld. DR vehemently opposed to the submissions of the Ld. AR and submitted that the Ld. AO and the Ld. CIT(A)-NFAC have thoroughly gone through the issue and also discussed the matter at length in their respective orders by stating that the assessee has not produce any evidence of depositing the sale proceeds of Rs. 43 lakhs into his the assessee's bank account. Therefore, the decision taken by the Ld. Revenue Authorities is in accordance with law and pleaded to uphold the decision of the Ld. Revenue Authorities.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The case of the assessee was taken up for scrutiny assessment to verify the cash deposits made by the assessee in his bank account during demonetization. Before the Ld. AO the assessee submitted that the cash deposits were made out of the sale proceeds of the property. However, the assessee could not produce any documentary evidence before the Ld. AO to

substantiate his claim. Therefore, the Ld. AO proceeded to make addition of Rs. 36,22,000/- being the difference between the assessee's claim of sale proceeds received [Rs. 43,00,000/-] and sale consideration mentioned in the registered sale deed [Rs.6,78,000/-] by invoking the provisions of section 69A r.w.s 115BBE of the Act. On appeal, even before the Ld. CIT(A)-NFAC, the assessee did not produce any cogent documentary evidence or explanation with regard to the source of the cash deposits in his bank account after demonetization. Therefore, the Ld. CIT(A)-NFAC discussed the issue at length vide paras 5.1 to 5.8 of his order and rejected the assessee's claim by confirming the addition made by the Ld. AO by observing as under:

*“5.8. The source of the money must be proved by the appellant, despite the fact that the sale proceeds were reported in his return of income. The appellant has not provided any primary evidence to prove the source of cash deposits made into his bank account during the demonetization period, as already stated in this order. The appellant's theory that the sale proceeds were disclosed in the return of income to justify the deposits he made in his bank account is fanciful, but it has to be proven to be true. Therefore, the appellant's case cannot be advanced by simply stating that the sale proceeds were disclosed in his return of income without proving the source of money. The appellant's failure to provide evidence of his claim on the return of income implies that the reporting of the sale proceeds in his return of income is a figment of the assessee's imagination designed to cover up the real nature of the sale proceeds. The appellant has not discharged his primary responsibility of proving the source of money and deposits in question. Based on what I have discussed*

*earlier, I do not think there is a need to interfere with the decision of the AO. Therefore, the addition of Rs. 36,22,000/- made by the AO under section 69A is confirmed. Thus, the appeal is not successful on this ground.”*

From the above, it is evident that the assessee has not discharged his onus of substantiating his claim of receiving of sale proceeds either before the Ld. AO or before the Ld. CIT(A)-NFAC. Even before me, the assessee did not produce any credible evidence to prove the source of cash deposits made during the demonetization period. Therefore, I am of the considered opinion that the Ld. CIT(A)-NFAC has rightly adjudicated the issue in accordance with law based on the material available on record and therefore the Ld. CIT(A)-NFAC's decision needs no interference. Thus, Ground No.1 raised by the assessee is dismissed.

7. The issues raised in Ground No.2 and 3 are interlinked. **Ground No.2** is with respect to the Ld. AO's decision in re-computing the LTCG returned by the assessee. **Ground No.3** is with respect to Ld. AO's decision in rejecting the assessee's claim for indexed cost of construction of building. On these issues, on perusal of the assessment order, I find that the case of the assessee is selected for "limited scrutiny" under CASS for the

reasons that (i) large value of cash deposits during demonetization period and (ii) Large value of cash deposits during demonetization period as compared to return of income. Therefore, I find merit in the submission of the Ld. AR that the Ld. AO travelled beyond the scope of limited scrutiny. Accordingly, the decision taken by the Ld. AO on these issues is null and void. Hence, I set-aside the decision of the Ld. CIT(A)-NFAC on these issues. It is ordered accordingly.

8. **Grounds No.4 and 5 are general** in nature and needs no separate adjudication.

9. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on 12<sup>th</sup> September, 2024.

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

Dated :12/09/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee – Vara Prasad Didla, 3-102, C-Gorlivanipalem, Parawada Post, Andhra Pradesh – 531021.

2. राजस्व/The Revenue – Assistant Commissioner of Income Tax, Circle-3(1), 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