

आयकर अपीलियअधिकरण, 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. 306/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2013-14)

Sri Azizulla Sharief
L/R of Late Smt.Alia Begum,
D.No. 9-34-9/1, Opp.
Kalabharathi Pithapuram Colony,
Visakhapatnam.

Vs. The Income Tax Officer,
Ward-1(2),
Visakhapatnam.

[PAN : APFPA7533J]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Respondent by

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 09/09/2024

घोषणा की तारीख/Date of

: 13/09/2024

Pronouncement

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/250/2024-25/1065367376(1), dated 04/06/2024 arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 ["the Act"] for the AY 2013-14.

2. Briefly stated the facts of the case are that the assessee, Smt. Alia Begum, an individual, is a pensioner. The assessee filed her return of income for the AY 2013-14 on 14/03/2014 declaring total income of Rs. 2,58,292/-. The Ld. AO completed the assessment in the case of the assessee U/s. 143(3) r.w.s 147 of the Act on 31/03/2016 and made an addition of Rs. 5 lakhs towards unexplained cash deposits in the absence of proper evidences and explanations from the assessee. Thereafter, on appeal, the Ld. CIT(A) granted part relief to the assessee. After giving effect to the Ld. CIT(A)'s order, the Ld. AO revised the income of the assessee for the AY 2013-14 at Rs. 5,61,410/- as against the returned income of Rs. 2,56,410/-. Accordingly, the Ld. AO observed that the assessee has concealed income of Rs. 3,05,000/- for the AY 2013-14 and levied penalty of Rs. 94,245/- invoking the provisions of section 271(1)(c) of the Act and passed the order dated 17/09/2019. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, after considering the submissions of the assessee, the Ld. CIT(A) upheld the decision of the Ld. AO and dismissed the assessee's appeal. Aggrieved by the order of the Ld.

CIT(A), the assessee is in 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) is not justified in upholding the penalty of Rs. 94,245/- levied U/s. 271(1)(c) of the Act.*
3. *The Ld. CIT(A) ought to have appreciated that the addition of Rs. 3,05,000/- made by the AO stood deleted by the Hon’ble ITAT, Visakhapatnam Bench and consequently the penalty U/s. 271(1)(c) has no legs to stand.*
4. *Any other grounds may be urged at the time of hearing.”*

4. At the outset, the Learned Authorized Representative [“Ld. AR”] brought to our notice that the quantum addition made by the Ld. AO was deleted by the ITAT vide the order in ITA No. 147/Viz/2019 (AY 2013-14), dated 31/10/2019. Therefore, the penalty imposed by the Ld. AO has no legs to stand. The Ld. AR pleaded to delete the penalty levied by the Ld. AO.

On the other hand, Ld. DR relied on the orders of the Ld. Revenue Authorities.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee preferred an appeal against the quantum addition of Rs. 3,05,000/- made

by the Ld. AO and confirmed by the Ld. CIT(A). On quantum appeal, the Tribunal has passed the order in ITA No. 147/Viz/2019 (AY 2013-14), dated 31/10/2019. For the sake of brevity, the relevant paras from the Tribunal's order (supra) are extracted herein below:

“4. Ground No.3 is related to the addition of Rs.3,05,000/- sustained by the Ld.CIT(A) out of the total addition of Rs.5,00,000/- made by the Assessing Officer (AO) towards unexplained cash deposits. During the assessment proceedings, the AO found that the assessee had made cash deposits of Rs.6,02,500/- in bank account for which the AO has called for explanation and found that cash deposit of Rs.5,00,000/- was made on 20.10.2012 for which there was no satisfactory explanation from the assessee. The assessee explained the sources of cash deposits with the cash book and AO believed that some of the entries were accommodation entries and did not believe the gifts received from her son, capital withdrawal, gift received from daughter-in-law and accordingly made the addition of Rs.5.00 lakhs to the returned income.

5. Against the order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) accepted the source from M/s Classic Builders of Rs.1,10,000/- and opening balance of Rs.85,000/- and confirmed the sum of Rs.3,05,000 i.e. gifts received from Smt.Ghousia Parveen, daughter-in-law of Rs.1,30,000/- and from Shri Azizulla Sharief, son of Rs.1,75,000/-.

The Ld.CIT(A) observed that there was inconsistency in the confirmation letter given by her son, Shri Azizulla Sharief and disbelieved the genuineness of the gift. Similarly in the case of Smt.Ghousia Parveen, daughter-in-law, the Ld.CIT(A) observed that the assessee received cash gift of Rs.1,30,000/- but also received further amount of Rs.2,70,000/- aggregating to Rs.4,00,000/- but not produced the documentary evidence, hence, disbelieved the gift from daughter in law and confirmed the addition of Rs.3,05,000/-(175000+130000) u/s 68 of the Act.

6. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal.

7. We have heard both the parties and perused the material placed on record. The Ld.CIT(A) has confirmed the gifts received from Shri Azizulla Sharief, son for a sum of Rs.1,75,000/- and from Smt. Ghousia Parveen, daughter-in-law for a sum of Rs.1,30,000/- aggregating to Rs.305000/-. Shri Azizulla Sharief has given a confirmation letter stating that he has given the gift of Rs.1,75,000/- to his mother Smt.Alia Begum, scanned

copy of confirmation letter was extracted in page No.16 of the order of the Ld.CIT(A). Shri Azizulla Sharief is an income tax assessee, assessed with PAN, ACFPA6876P. Having furnished the confirmation letter, the AO ought to have examined the sources of Shri Azizulla Sharief to ascertain the credit worthiness of Shri Azizulla Sharief for giving gift of Rs.1,75,000/- to the assessee. No such exercise was made by the AO. Having furnished the confirmation letter and the donor being an income tax assessee, the assessee had discharged onus and burden shifted to the department, thus there is no case for department to make the addition without shifting the onus to the assessee. Therefore we, do not find any reason to disbelieve the gift transaction, having established the identity and the genuineness of transaction. Hence, we delete the addition and set aside the order of the Ld.CIT(A) on this issue.”

6. Considering the facts and circumstances of the case, we have no hesitation to come to a conclusions that the since the quantum addition made in the case of the assessee was deleted by the Tribunal vide its order dated 31/10/2019 (supra), the penalty levied by the Ld. AO on such quantum addition does not have legs to stand and therefore it is a fit case to delete the penalty. It is ordered accordingly. Thus, all the grounds raised by the assessee are allowed.

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

Pronounced in the open Court on 13th September, 2024.

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

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

Dated : /09/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Sri Azizulla Sharief L/R of Late Smt.Alia Begum, D.No. 9-34-9/1, Opp. Kalabharathi Pithapuram Colony, Visakhapatnam, Andhra Pradesh-530013.
2. राजस्व/The Revenue –Income Tax Officer, Ward-1(2), O/o. ITO, Direct Taxes Building, MVP Colony, Visakhapatnam, Andhra Pradesh – 530017.
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