

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

Purama Ramakrishna Rao,
Saluru, Vizianagaram Dist.,
Andhra Pradesh.

PAN: ALTPP40003E

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. The Income Tax Officer,
Ward-2,
Vizianagaram.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 10/09/2024

: 25/09/2024

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/250/2023-24/1063147315(1), dated 22/03/2024 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual and has not filed his return of income for the AY 2017-18. As per the information available with the Department, the Ld. AO observed that the assessee has made substantial cash deposits in his bank account in the FY 2016-17 during demonetization period. Therefore, notice U/s. 142(1) of the Act was issued to the assessee on 05/01/2018 calling for the assessee to prepare true and correct return of income for the AY 2017-18 on or before 04/02/2018. However, the assessee failed to furnish the same in compliance to notice U/s. 142(1) of the Act. Thereafter, the Ld.AO made enquiries as per the provisions of section 133(6) of the Act and noticed that the assessee made cash deposits of Rs. 21,30,000/- in his Andhra Bank Saluru Branch, Vizianagaram during demonetization period. Accordingly, considering the assessee's non-compliance to the notices U/s. 142(1) of the Act, the Ld. AO proceeded to complete the assessment U/s. 144(1)(b) of the Act. Thus, the Ld. AO completed the assessment U/s. 144 of the Act on 04/11/2019 wherein an addition of Rs. 21,30,000/- was made U/s. 69A r.w.s 115BBE of the Act treating the cash deposits made during the demonetization period as unexplained money in the hands of the assessee. The Ld. AO also initiated the penalty proceedings U/s.

271AAC, 272A(1)(d) and U/s. 271F of the Act. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee. While dismissing the appeal, the Ld. CIT(A)-NFAC observed that *“the Assessing Officer issued notice U/s. 142(1) of the Act on 5/1/2018 requiring him to furnish return of income on or before 4/2/2018 which he failed to do so. The return stated to be filed U/s. 119(2)(b) of the Act on 27/03/2019 cannot be treated as valid return unless the delay condoned by the competent authority. Further, the Audit Report has also not been filed within the prescribed time limit. Therefore, the return and the audit report has no evidentiary value. The appellant did not submit any details before the AO and has also not submitted the details of source of cash deposited during demonetization period. The appellant has submitted that every transaction is disclosed in the books of account and the return of income filed for AY 2017-18 but as discussed above there is no valid return of income.”* Thus, the Ld. CIT(A)-NFAC did not consider the submissions of the assessee 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 order of the Ld. CIT(A)-NFAC 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 sustaining the addition of Rs. 21,30,000/- made by the AO U/s. 69A of the Act towards unexplained cash deposits in the bank account.*
3. *The Ld. CIT(A) ought to have held that the provisions of section 115BBE of the Act are not applicable to the case of the assessee.*
4. *Any other grounds may be urged at the time of hearing.”*

4. At the outset, the Learned Authorized Representative [“Ld. AR”] submitted that during the demonetization period, the assessee was running a Kirana Shop and he used to deposit the sale proceeds for every month in his bank account. But for the AY 2017-18, the assessee has not filed his return of income and therefore the Ld. AO issued notice U/s. 142(1) of the Act. In response to the said notice U/s. 142(1), the assessee has filed his return of income. However, the Ld. AO did not consider the return filed by the assessee as well as the submissions of the assessee and made addition of Rs. 21,30,000/- U/s. 69A r.w.s 115BBE of the Act by stating that the assessee has not filed his valid return of income for the AY 2017-18. On appeal, the Ld. CIT(A)-NFAC also confirmed the same. The Ld. AR further submitted before the Bench that even before and after the

demonetization periods also the assessee has made cash deposits in his bank account and the same was not disputed by the Revenue. The Ld. AR also submitted that the Revenue's stand that since the assessee has not filed the return of income, the deposits made by the assessee are required to be added to the total income of the assessee is not permissible in the eyes of law and therefore the Ld. AR pleaded to set-aside the orders of the Ld. Revenue Authorities and to grant relief to the assessee.

5. On the other hand, Learned Departmental Representative ["Ld. DR"] vehemently argued in support of the orders of the Ld. Revenue Authorities and pleaded to uphold their decision.

6. I have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material available on record. It is an admitted fact that there are cash deposits throughout the year which are out of the sale proceeds of the assessee's business viz., Kirana Shop. However, the Ld. AO made disallowance of cash deposits only during the November & December 2016 of Rs.10,74,400/- and Rs. 14,14,600/- respectively. It is also an admitted fact that the assessee has filed his return of income after issuance of notice U/s. 142(1) of the Act. However, the Ld. AO made an addition of Rs. 21,30,000/- as

unexplained money by holding that these are the cash deposits made during the demonetization period and also stated that since the assessee has not filed his return of income before the issue of notice U/s. 142(1) of the Act. On these aspects, I find force in the arguments of the Ld. AR that non-filing of return of income before issuing notice U/s. 142(1) of the Act is not a valid ground to make addition U/s. 69A r.w.s 115BBE of the Act and is not permissible in the eyes of law. Therefore, I am of the considered view that the assessee has properly explained that the source for cash deposits were made during the demonetization period out of sale proceeds of assessee's provision shop only. Therefore, the grounds raised by the assessee are allowed. Accordingly, I hereby direct the Ld. AO to delete the addition made U/s. 69A r.w.s 115BBE of the Act.

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

Pronounced in the open Court on 25th September, 2024.

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

Dated :25/09/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Purama Ramakrishna Rao, C/o. Harika Agencies, D.No. 38/355, Main Road, Saluru, Vizianagaram District, Andhra Pradesh-535597.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2, O/o. ITO, Koppu Guarana Building, Siddartha Nagar, Vizianagaram, Andhra Pradesh-535002.
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