

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.325/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2016-17)

Vasamsetty Gangadhara Rao, Rajahmundry. PAN: AEVPA2543M (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-2(1), Rajahmundry. (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	:	23/09/2024
घोषणा की तारीख/Date of Pronouncement	:	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/250/2024-25/1066254470(1), dated 29/06/2024 arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 ["the Act"] for the AY 2016-17.

2. Briefly stated relevant facts of the case are that the assessee is an individual. The assessee filed his return of income for the AY 2016-17 belatedly on 30/03/2018 declaring total income of Rs. 3,06,370/-. As per the information available with the Department, the Ld.AO observed that the assessee along with his wife had purchased an immovable property for a total consideration of Rs. 30,10,000/- and paid Rs. 2,25,850/- towards stamp duty during the FY 2015-16. On being asked the assessee submitted before the Ld. AO that the purchase consideration was taken from his wife and sister-in-law but could not furnish any documentary evidence. The Ld. AO after considering the submissions of the assessee as well as on perusal of the sale deed observed that the assessee has paid the entire consideration amount in cash and failed to explain the sources for making payment of sale consideration. Since the sources for the purchase of the property remained unexplained, the case was reopened under the provisions of section 147 of the Act and notice U/s. 148 of the Act was issued on 31/3/2021 after obtaining the necessary approval from the competent authority to furnish the return of income for the AY 2016-17. In response to the notice U/s. 148 dated 31/3/2021 the assessee vide his reply dated 27/04/2021 has stated that the return of income filed on

30/03/2018 may be treated as return of income filed in response to notice U/s. 148 of the Act. Accordingly, a notice U/s. 143(2) dated 20/09/2021 was issued to the assessee along with reasons for reopening. During the assessment proceedings, various notices U/s. 142(1) along with questionnaires were issued to the assessee to furnish the requisite details / submission. However, the assessee did not comply with the notices and has not furnished the requisite documentary evidence in support of his claim. Therefore, a show cause notice dated 6/3/2022 was served on the assessee. There was no response from the assessee even to the show cause notice issued. Therefore, the Ld.AO completed the assessment proceedings based on the material available on record and brought to tax Rs. 16,17,925/- being $\frac{1}{2}$ of the total property value of Rs. 32,35,850/- made addition U/s. 69 r.w.s 115BBE of the Act. The Ld. AO also initiated the penalty proceedings U/s. 271(1)(c) of the Act. Thus, the Ld. AO determined the total income of the assessee at Rs. 19,24,300/- and passed the assessment order U/s. 147 r.w.s 144 r.w.s 144B of the Act, dated 12/03/2024. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, since there was no response from the assessee with respect to the hearing notices issued and in the absence of any representation on behalf of the assessee, the Ld. CIT(A)-NFAC passed the order ex-parte and dismissed the assessee's appeal by confirming the addition made by the Ld. AO. 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) 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 deciding the appeal ex-parte and dismissing the appeal.*
- 3. The Ld. CIT(A) ought to have deleted the addition of Rs. 16,17,925/- made by the AO towards alleged unexplained investment in purchase of property.*
- 4. Any other ground that may be urged at the time of appeal hearing.”*

4. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted before the Bench that the Ld. CIT (A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard.

5. Ld. Departmental Representative [“Ld. DR”], on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that

several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative has responded to the notices issued nor filed any details / submissions as called for by the Ld. CIT (A)-NFAC. It was further submitted that, under these circumstances, the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A)-NFAC does not call for any interference.

6. I have heard the both the sides and carefully perused the materials available on record. On examining the facts of the case, I find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, there was no response on behalf of the assessee before the CIT(A)-NFAC on the dates of hearing with regard to the details / submissions as called for by the Ld. CIT(A)-NFAC. Therefore, the Ld. CIT (A)-NAFC was left with no other option except to adjudicate the appeal ex-parte and dismissed appeal in-limine. In this situation, considering the issues involved in the appeal, I am of the considered view that the Ld. CIT(A)-NFAC ought to have decided the case on merits instead of dismissing the appeal in-limine. However, considering the prayer of the Ld. AR, and in the interest of justice as well as strictly following the principles of natural justice, I hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to

consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. It is ordered accordingly.

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

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 – Vasamsetty Gangadhara Rao, D.No. 20-18-23, 3rd Street, Ramachandra Rao Peta, Thummalova, Rajahmundry, Andhra Pradesh – 533104.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(1) O/o. ITO, Aayakar Bhavan, Veerabhadrapuram, Rajahmundry, Andhra Pradesh-533105.
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