

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.330/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2014-15)

Srinivasa Rao Bammidi,
53-27-3/2, KRM Colony,
Seethammadhara,
Visakhapatnam-530013,
Visakhapatnam District,
Andhra Pradesh-530013.
PAN:AKWPB1983F

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by
प्रत्यार्थी की ओर से / Respondent by

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

(प्रत्यर्थी/ Respondent)

Sri C. Sanjeevarao, AR
Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing : 08/10/2024
घोषणा की तारीख/Date of
Pronouncement : 24/10/2024

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/250/2024-25/1067107542(1), dated 29/07/2024

arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 ["the Act"] for the AY 2014-15.

2. Briefly stated the facts of the case are that the assessee is an individual working Laya Voluntary Organization. The assessee e-filed his return of income for the AY 2014-15 on 29/12/2015 declaring a total income of Rs. 1,71,374/-. The case was selected for scrutiny through CASS for verification of large value sale of share or unit which is settled otherwise than by the actual delivery or transfer. Accordingly, notice U/s. 143(2) of the Act was issued on the assessee on 28/07/2016. In response, the assessee filed his reply and furnished the information as called for by the Ld. AO. On verification of the submissions made by the assessee, the Ld. AO noticed that the assessee has incurred loss in share trading of Rs. 4,13,857/- as detailed in the AO's order and a show cause letter was issued to the assessee as to why the amount of Rs. 4,13,857/- should not be brought to tax as unexplained investment. In response to the show cause notice, the assessee furnished the details of sources for investment in shares trading of futures, equities and speculations of shares amounting to Rs. 2,13,837/-. However, the assessee did not furnish any details with regard to the source of investment in

shares transactions amounting to Rs. 2,00,000/-. Therefore, another show cause notice dated 2/11/2016 was issued to the assessee. However, the assessee could not furnish any evidence with regard to the investment made in shares amounting to Rs. 2 lakhs. Thus, the Ld. AO made addition of Rs. 2 lakhs to the returned income of Rs. 1,71,374/- and the total income was determined at Rs. 3,51,901/- and raised a demand of Rs. 31,680/- including interests U/s. 234A and 234B of the Act by passing the order U/s. 143(3) r.w.s. 147 of the Act dated 20/12/2016. Thereafter, penalty notice U/s. 274 r.w.s 271(1)(c) of the Act was issued to the assessee on 20/12/2016. In reply to the penalty notice, the assessee submitted that he is not aware of the provisions of the Act and hence requested to drop the penalty proceedings initiated U/s. 271(1)(c) of the Act. Further, the assessee submitted that he got retired from Laya, an NGO, based in Visakhapatnam and received Provident Fund and Gratuity in the same year and invested a part of the said money in financial markets. The assessee further submitted that he was providing freelance consultancy service to civil contractors and builders on and off and was able to earn money with his consultancy services also and invested in the market operations. On perusal of the assessee's submissions, the Ld. AO observed that the assessee

failed to submit the reasonable reasons for non-disclosure of income of Rs. 2 lakhs. The assessee has not submitted any proofs / evidence regarding the source of amount invested in shares amounting to Rs. 2 lakhs. Accordingly, the Ld. AO came to a conclusion that the assessee has concealed the income to the tune of Rs. 2 lakhs and evaded the tax of Rs. 61,800/-. Thus, the Ld. AO concluded that it is a fit case to levy penalty U/s. 271(1)(c) of the Act and levied penalty of Rs. 61,800/- for the AY 2014-15 and passed the order U/s. 271(1)(c) of the Act on 23/06/2017. Aggrieved by the penalty order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC after considering the submissions of the assessee confirmed the penalty levied 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. That the Ld. CIT(A) erred in upholding the order of the Ld. AO and confirming the penalty, ignoring the facts are bad in law and arbitrary.
2. That the Ld. CIT(A) erred in confirming the penalty of Rs. 61,800/- made by the Ld. AO.
3. That the Ld. CIT(A) and AO should discern from the notice that under which limb covers i.e., concealment of income or furnishing of inaccurate particulars. In the absence of such finding, the order of penalty would be

void ab initio and consequently not sustainable under the law.

4. *Each one of the above grounds of appeal is without prejudice to each other.*
5. *That the appellant craves leave to add/alter any of the grounds of appeal on or before the time of hearing.”*

4. At the outset, the Ld. AR submitted that the assessee has explained the investment made by him but the Ld. AO without considering the submissions of the assessee, levied the penalty based on the quantum addition. He further submitted that even the assessee has not challenged the quantum addition made by the Ld. AO. The Ld. AR further submitted that the penalty is not automatic and it is not a fit case to levy penalty. The Ld. AR also submitted that the assessee took voluntary retirement from Laya an NGO and made investment in financial markets a part of money received from his PF and Gratuity in the same year. The assessee was also providing freelance consultancy service to civil contractors and builders on and off and was able to earn money and invested in the market operations. However, the Ld. AO did not consider the submissions made by the assessee and denied an amount of Rs. 2 laksh which was invested in the shares as unexplained investment. The assessee has not contested this issue and paid the taxes. But, again the Ld. AO has levied the penalty on the addition made by the Ld. AO. The Ld. AR also

submitted that the penalty is not automatic. He therefore pleaded to set aside the order passed by the Ld. Revenue Authorities.

5. On the other hand, the Ld. Departmental Representative heavily relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

6. 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 admitted fact that the assessee has paid the taxes on alleged unexplained investment of Rs. 2 lakhs. The only contention of the assessee is that he earned money with his consultancy services and made investment in the financial market. Further, the assessee submitted that he also received amounts in the form of PF and Gratuity as voluntary retirement benefits and also invested a part amount of such benefits amounting to Rs. 2 lakhs in financial markets. Considering the quantum of investment, I am of the view that in this case, the penalty is not warranted since the assessee has explained that he earned money from consultancy services as well as benefits from voluntary retirement. Therefore, I direct the Ld. AO to delete the penalty of Rs. 61,800/-. It is ordered accordingly.

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

Pronounced in the open Court on 24th October, 2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :24/10/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Srinivasa Rao Bammidi, 53-27-3/2, KRM Colony, Seethammadhara, Visakhapatnam-530013, Visakhapatnam District, Andhra Pradesh-530013.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(1), Infinity Towers, Shankaramattam Main Road, Lalitha Nagar, Visakhapatnam, Andhra Pradesh-530016.
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