

आयकर अपीलीयअधिकरण, 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. 129/Viz/2024  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Janaki Ram Babji Rao Annam, Vijayawada. PAN: AECPA4464Q (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-3(1), Vijayawada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri C. Subrahmanyam, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	09/10/2024
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/250/2023-24/1059213637(1), dated 29/12/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. At the outset, it is noticed that there is a delay of 01 day in filing the appeal before the Tribunal. On this issue, after hearing the Ld. AR's explanation with respect to the belated filing of the appeal, as well as considering the minuscule nature of the delay and also considering the issues involved in the appeal, we hereby condone the delay of 01 day in filing the appeal and proceed to adjudicate the case on merits.

2. Briefly stated the facts of the case are that the assessee is an individual filed his return of income electronically on 09/12/2017 declaring a total income of Rs. 3,49,950/- for the AY 2017-18. The return was processed U/s. 143(1) of the Act by the CPC on 24/12/2017. The case was selected for limited scrutiny through CASS to examine the sources for cash deposits made during the demonetization period. Thereafter, notice U/s. 143(2) of the Act dated 14/08/2018 was issued and the same was duly served on the assessee on 03/09/2018 through mail. Subsequently, notice U/s. 142(1) of the Act dated 20/05/2019 was issued to the assessee calling for certain details. As there was no response to the notices issued U/s. 142(1) of the Act, Ld. AO obtained the information from the Bank authorities with regard to the cash deposits made in the assessee's bank

accounts. On verification of the bank account copies and the other material available before him, the Ld AO noticed that the assessee made cash deposits amounting to Rs. 24,31,000/- by way of Specified Bank Notes ["SBNs"]. Accordingly, another notice U/s. 142(1) of the Act was issued on 17/10/2019 however there was no compliance from the assessee. Considering the assessee's no reply to the notices issued, the Ld. AO observed that he was left with no option but to finalize the assessment based on the information available on record as per the provisions of section 144 of the Act. During the assessment proceedings, in the absence of any explanation from the assessee with respect to the source of cash deposits made during the demonetization period, the Ld. AO treated the entire amount of Rs. 24,31,000/- deposited in his bank accounts during demonetization period as income of the assessee from unexplained sources as per the provisions of section 69A of the Act. Accordingly, the Ld. AO determined the assessed income of the assessee at Rs. 27,80,950/- and completed the assessment U/s. 143(3) of the Act, and passed the assessment order dated 19/12/2019. 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 after considering the submissions of the assessee dismissed the appeal of the assessee and uphold the additions made by the Ld. AO. While dismissing the assessee's appeal, the Ld. CIT(A)-NFAC observed that the written submissions and the documentary evidence filed before him without making any request and without mentioning the same in Form 35. Thus, the Ld.CIT(A)-NFAC did not admit the additional evidence filed before him U/s. 46A of the Rules and dismissed the assessee's appeal. 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 under the facts and circumstances of the case the orders passed U/s. 143(3) of the Act dated 19/12/2019 passed by the ITO, Ward-3(1), Vijayawada and upheld by the Ld. CIT(A)-NFAC vide orders U/s. 250 of the Act dated 29/12/2023 is contrary to the facts of the case and provisions of law.*
2. *The Ld. CIT(A)-NFAC erred on facts and in law in confirming the addition made by the ITO, Ward-3(1), Vijayawada of cash deposits in bank U/s. 69A of Rs. 24,31,000/-.*
3. *The Ld. CIT(A)-NFAC erred on facts and in law in confirming the addition made by the ITO, Ward-3(1), Vijayawada U/s. 69A of the Act by not admitting the additional evidence produced by the appellant as per Rule 46A of the Income Tax Rules. Since appellant's case is covered under clause (b) and (c) of Rule 46A(1) due to ill health of the appellant.*
4. *The Ld. CIT(A)-NFAC erred on facts and in law in confirming the addition made by the ITO, Ward-3(1), Vijayawada U/s. 69A without following the provisions of Rule-250(4).*

4. At the outset, the Ld AR submitted that before the Ld. CIT(A)-NFAC, the assessee had filed the written submissions and

documentary evidence to substantiate his claim that the sources for cash deposits are nothing but collection from debtors and cash available on hand at the time of demonetization. However, the Ld.CIT(A)-NFAC did not admit the additional evidence produced by the assessee and dismissed the assessee's appeal which is unsustainable in law. Therefore, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. CIT(A)-NFAC and prayed that the Ld. CIT(A)-NFAC may be directed to admit the additional evidence filed by the assessee before the Ld.CIT(A)-NFAC and to decide the case on merits.

5. On the other hand, the Ld. DR vehemently argued in support of the orders of the Ld. Revenue Authorities. The Ld. DR further submitted that while filing the Form No.35, at Para-12, wherein it has been asked that whether the assessee is filing any additional documentary evidence in terms of Rule-46A, the assessee mentioned "NO". Further, the Ld. DR argued that the assessee did not make any request for admission of additional evidence under Rule 46A of the Act. Therefore, the Ld. CIT(A)-NFAC has acted in accordance with law and hence the decision of the Ld. CIT(A)-NFAC needs no interference.

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 a fact that during the AY under consideration there was some cash deposits made by the assessee and in the absence of any cogent documentary evidence / explanation from the assessee, the Ld. AO made addition of Rs. 24,31,000/- U/s. 69A of the Act as income of the assessee from unexplained sources as per the provisions of section 69A of the Act. On appeal, before the Ld. CIT(A)-NFAC, the assessee made various submissions and documentary evidences to substantiate his claim that the sources for cash deposits are nothing but collection from debtors and cash available on hand at the time of demonetization. However, on perusal of the Ld.CIT(A)-NFAC's order, we find that the Ld. CIT(A)-NFAC did not admit the additional evidence produced by the assessee by simply holding that no request for admission of additional evidence under Rule-46A was filed by the assessee neither in Form-35 at para 12 nor by adducing separate application under Rule-46A of the IT Rules, 1962. In this situation, considering the facts and circumstances of the case and also taking into account the nature of the issues involved in the appeal, we are of the considered view that the Ld. CIT(A)-NFAC ought to have admitted the written submissions and

documentary evidence in the form of additional evidence filed by the assessee to substantiate his claim and decide the case on merits. Under these circumstances, we deem it fit remit the matter back to the file of the Ld. CIT(A)-NFAC. Accordingly, we hereby remit the matter back to the file of the Ld. CIT(A)-NFAC with a direction to admit the additional evidence produced before the Ld.CIT(A)-NFAC U/s. 46A of the IT Rules, 1962 and decide the case in accordance with law and on merits. Needless to mention that the assessee should be given proper opportunity of being heard following the principles of the natural justice. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 24<sup>th</sup> 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 – Janaki Ram Babji Rao Annam, 26-2-89, Annam Building, Andhra Ratna Road, Gandhinagar, Vijayawada-520003, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-3(1), CR Building, Vijayawada, Andhra Pradesh-520003.
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