

आयकर अपीलिय अधिकरण, 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.410/Viz/2024  
(निर्धारण वर्ष / Assessment Year : 2015-16)

Simhadri Naidu Samanthula, Palakonda. PAN: AMSPS2903C (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1, Srikakulam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri I. Kama Sastry, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	04/11/2024
घोषणा की तारीख/Date of Pronouncement	:	05/11/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in ITBA/NFAC/S/250/2024-25/1067407944(1), dated 07/08/2024 arising out of the order passed U/s. 147 r.w.s 144B of the Income Tax Act, 1961 [“the Act”] for the AY 2015-16.

2. Briefly stated the facts of the case are that the assessee is an individual and has not filed his original return of income for the AY 2015-16. As per the information available with the Department, the Ld. AO observed that the assessee had made cash deposits amounting to Rs. 48,40,000/- in his SB account and also made time deposits in the form of FDs amounting to Rs. 27,45,524/- during the FY 2014-15. In the absence of return of income, the Ld. AO, after obtaining the approvals from the competent authority, issued a notice U/s. 148 of the Act on 5/4/2023 and in response, the assessee filed his return of income on 2/5/2023 declaring his total income of Rs. 2,86,870/-. The assessee filed response to the notice U/s. 143(2) of the Act on 17/06/2023. Further, vide notices U/s. 142(1) of the Act, the assessee was asked to furnish the details regarding the cash deposits and time deposits in his bank accounts during the AY under consideration and requested to explain the source of income along with supporting documentary evidences. However, after various notices, the assessee submitted his reply on 11/09/2023 along with ledger account of FD and ledger account of cash deposits. After examination of the ledger account and bank accounts submitted by the assessee, the Ld. AO observed that the assessee has made cash deposits amounting to Rs.

23,59,000/- and invested in fixed deposits amounting to Rs. 26,66,074/- in his deposit account during the FY 2014-15. In view of the above, Ld. AO issued a show cause notice and the assessee was asked as to why the income of Rs. 54,51,160/- [Rs. 23,59,000 plus Rs. 26,66,074 + Interest income of Rs. 1,44,214 + Rs. 2,81,872] should not be added to the total income of the assessee for the AY 2015-16. In response, the assessee filed his reply on 22/10/2023. On perusal of the assessee's reply to the show cause notice as well as the submissions of the assessee, the Ld. AO concluded the assessment by making certain additions viz., (i) Rs.1,06,708/- received from interest on maturity of fixed deposits were not declared by the assessee and hence the same is added back to the total income of the assessee under the head income from other sources. (ii) Rs. 24,19,000 and Rs. 7,50,000/- were added U/s. 69A of the Act as unexplained money since the assessee has failed to explain the source of cash deposits. Thus, the Ld. AO determined the total income of the assessee at Rs. 35,62,576/- and passed the assessment order U/s. 147 r.s. 144B of the Act, dated 31/10/2023. The Ld. AO also initiated the penalty proceedings U/s. 271(1)(c) and 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, 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. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following modified grounds of appeal:

- “1. *The order passed U/s. 147 r.w.s 144B by the Assessment unit, IT Department, National Faceless Assessment Centre is null and void as the assessment made is based on notice U/s. 148 which is barred by limitation as per the first proviso to section 149(1) (new section inserted by the Finance Act, 2021 w.e.f 01/04/2021.*
2. *The notice U/s. 148 is barred by limitation U/s. 149(1)(b) as the income chargeable to tax escaping assessment with respect to which evidence is in the possession of the AO is below Rs. 50 lakhs and there is duplication of amounts in the show cause notice U/s. 148A(b) and order U/s. 148A(d).*
3. *The show cause notice under section 148A(b) dated 22/03/2022 is invalid as the same has not been given 7 clear days for compliance, consequently the entire reassessment proceedings are invalid and void ab initio.*
4. *The notice U/s. 148 dated 05/04/2022 issued by the ITO, Ward-1, Srikakulam is invalid for the reason that **(i)** the notice has been issued by the jurisdictional AO instead of by the National Faceless Assessment Centre as mandated by the e-assessment of income escaping assessment scheme. **(ii)** The notice is issued with prior approval of Pr. CCIT, AP & Telangana, Hyderabad whereas no such approval is needed for notices issued on or after 01/04/2022 where order U/s. 148A(d) is passed with the prior approval of the specified authority. **(iii)** The copy of the approval of the specified authority is not furnished to the assessee till the date though the same is mandated by the CBDT guidelines for issue of notices under section 148. **(iv)** the information / material relied on for reopening*

*the assessment is not furnished to the assessee till date. Consequently, the entire assessment proceedings under such an invalid notice are bad in law and void ab initio.*

5. *The Assessment Unit, National Faceless Assessment Centre is not justified in treating Rs.31,69,000/- as unexplained income under section 69A when the assessee has maintained books of account and the same are recorded in the books of account. Also, the books of account have been furnished during the course of the assessment proceedings.*
6. *All the above grounds of appeal are mutually exclusive and without prejudice to one another.*
7. *The appellant craves leave to add to, alter, amend, modify or delete all or any of the above grounds of appeal.”*

4. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted before me 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 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 Ld. 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)-NFAC was left with no other option except to adjudicate the appeal ex-parte and dismissed the appeal by confirming the additions made by the Ld. AO. Further, I have also noticed that the Ld. AO passed the assessment order U/s. 147 r.w.s 144B of the Act. In this situation, I am of the considered view that the Ld. CIT(A)-NFAC ought to have disposed off the case on merits instead of dismissing the appeal ex-parte. Therefore, considering the facts and circumstances of the case and considering the issues involved in the appeal, as well as considering the prayer of the Ld. AR, in the interest of justice, 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 05<sup>th</sup> November, 2024.

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

Dated :05/11/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee –
2. राजस्व/The Revenue –
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