

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

**न्यायमूर्ति (सेवा निवृत्त) सी.वी. भडंग, माननीय अध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE JUSTICE (RETD.) C.V. BHADANG, HON'BLE PRESIDENT**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.503/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2023-24)**

Gorla Srinivasa Reddy D.No. 23-5-11/4 SBI Building, Old Union Bank Road Guntur – 522003, Andhra Pradesh [PAN: ACJPG0404F]	v.	ITO – Ward – 1(1) Income Tax office C.R. Buildings, Kannavarithota Guntur – 522001 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	20.12.2024
घोषणा की तारीख/Date of Pronouncement	:	20.12.2024

आदेश /O R D E R

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT

1. By this appeal the Appellant-Assessee is challenging the order dated 17.10.2024 passed by the Addl/JCIT(A) which in turn arose out of the intimation dated 11.12.2023 by CPC, Bangalore under section 143(1) of the Income Tax Act ("Act" for short). The appeal relates to A.Y. 2023-24.
2. The brief facts are that, the Appellant had filed his return of income for the relevant assessment year on 30.09.2023 by declaring total income of

Rs.19,47,960/-. The Appellant had received a notice claiming that the receipts found in Form No. 26AS are not fully disclosed in the Income Tax Return. Subsequently the Appellant received the intimation under section 143(1) of the Act on 11.12.2023 disallowing the TDS credit of Rs. 1,40,557/-. The principal issue which arose in the appeal is “whether the appellant was Trader (Pucca Arhatia) or commission Agent (Kachha Arhatia)”. The appellant happens to be a licensed chilli commission agent in the Guntur Agriculture Market Yard. The appellant had received interest from the Traders under section 194A of the Act for delay in payment and commission from sale of chillies and the same was offered to tax. The traders had deducted TDS on sale value. According to the appellant the only commission which the appellant earns is 2% on the total sales.

3. We have heard the parties and perused record.

4. A perusal of Para 4.1 of the impugned order passed by the JCIT(Appeals) shows that the First Appellate Authority has accepted the contention on behalf of the Appellant that he is only acting as a commission agent. However, in the subsequent Para 4.2 the JCIT(Appeal) has recorded a contrary conclusion that appellant is a Trader and not a broker / commission agent as claimed.

5. On behalf of the appellant reliance is placed on the decision of the Coordinate Bench in the case of Sri Sai Kiran Traders v. ITO in ITA No.402/VIZ/2024 decided on 30.10.2024, wherein the Coordinate Bench

of this Tribunal relying on its earlier decision in the case of Thota Venkateswarlu v. ITO in ITA No. 290/VIZ/2024 decided on 27.08.2024 and Yegneswari General Traders v. ITO in ITA No. 39/Viz/2024 decided on 18.03.2024 have held that the assessee were acting as Kachha Arhatia and were earning only gross commission. The Decision relied upon had in turn placed reliance on a CBDT Circular No. 452 dated 17.03.1986.

6. Ld. Sr. AR on behalf of the revenue in all fairness submitted that if the facts as obtaining in the present appeal would be covered by the decision in the case of Sri Sai Kiran Traders v. ITO supra. In that view of the matter and particularly in view of the fact that in Para 4.1 even the First Appellate Authority has accepted that the Appellant was only a commission agent. We find that the impugned decision cannot be sustained. In the result, the appeal is allowed and direct the AO/CPC to grant TDS to the appellant as claimed in the return of income filed by the assessee.

7. In the result, appeal is allowed in the aforesaid terms.

Order pronounced in the open court on 20th December, 2024.

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated:20.12.2024

Giridhar, Sr.PS

Sd/-

(न्यायमूर्ति (सेवा निवृत्त) सी.वी. भडंग)

(JUSTICE (RETD.) C.V. BHADANG)

अध्यक्ष /PRESIDENT

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

1. निर्धारिती/ The Assessee : **Gorla Srinivasa Reddy**
D.No. 23-5-11/4
SBI Building, Old Union Bank Road
Guntur – 522003, Andhra Pradesh
2. राजस्व/ The Revenue : **ITO – Ward – 1(1)**
Income Tax office
C.R. Buildings, Kannavarithota
Guntur – 522001
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam