

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

**श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE VICE-PRESIDENT**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.224/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

Satti Chandra Reddy D.No. 46-20-1 Chinna Anjaneya Swamy Temple Danavaipeta, Rajahmundry – 533101 Andhra Pradesh [PAN: AERPS3072F]	v.	Income Tax Officer – Ward -2(1) Income Tax Office Aayakar Bhavan Veerabhadrapuram Rajahmundry – 533105 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	19.12.2024
घोषणा की तारीख/Date of Pronouncement	:	31.01.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order passed by Learned Principal Commissioner of Income Tax, Visakhapatnam -1 [hereinafter "Ld.Pr.CIT"] vide DIN & Order No. ITBA/COM/F/17/2023-24/1063341276(1) dated 25.03.2024 for the A.Y. 2013-14 arising out of order passed under section 147 r.w.s. 144B of the Income Tax Act, 1961 (in short 'Act') dated 25.03.2022.

2. Brief facts of the case are that, assessee being an individual did not file his return of income for the impugned assessment year. Later, notice under section 148 of the Act dated 31.03.2021 was issued after obtaining approval from the concerned authorities. The reason for invoking section 147 of the Act observed by the Ld. Assessing Officer [hereinafter in short "Ld. AO"] was due to the fact that the assessee has not filed his return of income whereas the assessee had transactions in the Savings Bank Account totalling to Rs.3,34,21,125/- during the impugned assessment year. Therefore, Ld. AO treated the amount of Rs.3,34,21,125/- as income escaping assessment while reopening the case under section 147 of the Act. In response to notice u/s 148, assessee filed his return of income on 04.03.2022 declaring a total income of Rs.1,84,950/-. Subsequently, statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. In response, assessee submitted copies of bank statements, cash books and confirmations from family members, etc. Considering the reply of the assessee, Ld. AO accepted the return of income filed by the assessee and completed the assessment under section 147 r.w.s. 144B of the Act.

3. By exercising his powers under section 263 of the Act, Ld.Pr.CIT observed that order of the Ld. AO passed under section 147 r.w.s. 144B of the Act dated 25.03.2022 for the A.Y. 2013-14 as erroneous and prejudicial to the interest of the revenue. Thereafter, Ld.Pr.CIT issued a show-cause notice dated 12.03.2024 and duly served on the assessee. In response, assessee made various

submissions before Ld.Pr.CIT. Considering all the submissions made by the assessee, the Ld.Pr.CIT passed the order with following directions: -

“9. The Assessing Officer is directed to pass consequential order keeping in view the direction given in para 7 above. Thus the Assessing Officer is directed to bring to tax the amount of Rs.80,75,000/- being unexplained cash deposits u/s.69 of the I.T.Act and to be taxed u/s.115BBE of the I.T.Act. The Assessing Officer is directed to pass necessary consequential order accordingly.”

4. On being aggrieved by the order of the Ld.Pr.CIT, assessee is in appeal before us by raising following grounds of appeal: -

“1. The order of the learned Principal Commissioner of Income Tax is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Pr. Commissioner of Income Tax, Visakhapatnam is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order u/s 147 r.w.s.144B dated 25.03.2022 for the A.Y 2013-2014 is neither erroneous nor prejudicial to the interests of revenue.

3. The learned Pr. Commissioner of Income Tax, Visakhapatnam is not justified in directing the Assessing officer to treat the following amounts as unexplained money u/s 69 of Income Tax Act, 1961 and to assess the same to taxation us 115BBE of the Act:

	(Rs.)
a) Gift from HUF	20,25,000
b) Gift from Sons	20,00,000
c) Gift from Wife	12,50,000
d) Gift from Brothers and Sisters	<u>28,00,000</u>
	<u>80,75,000</u>

4. The learned Pr. Commissioner of Income Tax, Visakhapatnam ought to have appreciated that the assessing officer initiated enquiries in respect of the above issues and as such it is not a case of 'lack of inquiry to enable the learned Commissioner of Income Tax to invoke the provisions of S.263.

5. Any other ground that may be urged at the time of appeal hearing.”

5. At the outset, Ld. Authorised Representative [hereinafter “Ld.AR”] argued that the Ld.Pr.CIT has given a specific direction to complete the assessment in a particular manner. He submitted that the Ld.Pr.CIT has exceeded his jurisdiction in directing the Ld. AO to complete the assessment in a particular manner by giving a specific direction. On this count he relied on the order of the Hon’ble Madras High Court in the case of CIT v. Smt. Tasneem Z. Madraswala [(2010) 324 ITR 0067]. He therefore pleaded that the order of the Ld.Pr.CIT is *void abinito*.

6. With respect to the merits of the case, Ld.AR argued that the Ld. AO has made enquires and on being satisfied accepted the return of income filed by the assessee. He argued that various judicial pronouncements have held that provisions of section 263 of the Act cannot be invoked in cases where there are two opinions possible. He pleaded that even on merits the order of the Ld.Pr.CIT deserves to be deleted.

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] relied on the orders of the Ld.Pr.CIT. Ld.DR submitted that, Ld.Pr.CIT considering the submissions made by the assessee has passed a detailed order as assessee failed to substantiate its case with evidence. He therefore pleaded that the order of the Ld.Pr.CIT be upheld.

8. We have heard both the sides and perused the material available on record. It is an undisputed fact that various judicial pronouncements have held

that the Ld.Pr.CIT while passing the order under section 263 of the Act cannot give specific direction to the Ld. AO to complete the assessment in a particular manner. In the reliance placed by the Ld.AR in the case of CIT v. Smt. Tasneem Z. Madraswala (supra), the Hon'ble Madras High Court in paragraph No. 8 of the order held as follows: -

“8. A reading of the abovesaid judgment would clearly show that while remanding the matter, the CIT ought not to have given a specific direction to complete the assessment in a particular manner. Further, the Tribunal has only set aside the abovesaid direction by which the AO was directed to complete the assessment by following s. 50C(2)(b) of the Act. We do not find any error in the order passed by the Tribunal. The questions of law raised by the Revenue are answered against the Revenue. Accordingly, the tax case appeal is dismissed. No costs.”

9. In the instant case, the facts are identical and similar to the case cited by the Ld.AR in CIT v. Smt. Tasneem Z. Madraswala (supra). Judicially following the decision of the Hon'ble Madras High Court, we hereby set-aside the order of the Ld.Pr.CIT thereby restoring the order of the Ld. AO. Accordingly, appeal of the assessee is allowed and all the other grounds raised by the assessee are not adjudicated being academic in nature.

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

Order pronounced in the open court on 31st January, 2025.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) उपाध्यक्ष /VICE PRESIDENT	Sd/- (एस बालाकृष्णन) (S. BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER
--	---

Dated: 31.01.2025
Giridhar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Satti Chandra Reddy**
D.No. 46-20-1
Chinna Anjaneya Swamy Temple
Danavaipeta, Rajahmundry – 533101
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward -2(1)**
Income Tax Office
Aayakar Bhavan
Veerabhadrapuram
Rajahmundry – 533105
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam