

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री ललित कुमार, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI LALIET KUMAR, HON’BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.68/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)

Venkateswara Rao Koganti D.No. 41-1-148, Rice Shops Street Krishnalanka, Vijayawada Krishna District – 520013 Andhra Pradesh [PAN: ADNPK6311Q] (अपीलार्थी/ Appellant)	v.	ACIT – CIRCLE – 2(1) Vijayawada Andhra Pradesh (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	16.01.2025
घोषणा की तारीख/Date of Pronouncement	:	14.02.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059602683(1) dated 11.01.2024 for the

A.Y.2017-18 arising out of order passed under section 143(3) of Income Tax Act, 1961 (in short 'Act') dated 13.08.2021.

2. Briefly stated facts of the case are that, assessee being an individual filed its return of income on 31.10.2017 admitting a total income of Rs. 25,68,280/-. Subsequently, the case was selected for complete scrutiny under the E-assessment Scheme, 2019 to verify the issue of "Cash deposit during demonetization period". Subsequently, statutory notices under section 143(2) and 142(1) of the Act were issued from time to time. Assessee in response to these notices also made submissions from time to time. During the assessment proceedings, as per the submissions made by the assessee, the Ld. Assessing Officer [hereinafter in short "Ld. AO"] observed that assessee is doing business of trading on old iron scrap in the name and style of Shri Venkateshwara Old Iron Corporation and Koganti Metal Industries. It was observed by the Ld. AO that the assessee has made cash deposits during the demonetization period amounting to Rs.3,22,83,000/- in State Bank of Hyderabad, Gandhi Nagar Branch, Vijayawada. Assessee has submitted that he has deposited only Rs.16,50,000/- in Account Number 52018273961 in State Bank of India, Vijayawada branch and Rs.40,000/- in State bank of India, Bhaskerraopet Branch, Vijayawada. Assessee has submitted that in support of the cash deposits he has provided the cash book and copies of bank statements before Ld. AO. However, Ld. AO observed that assessee has not submitted any details during the assessment proceedings and thereafter proceeded to issue the

show-cause notice along with the draft assessment order. Since assessee failed to substantiate to the satisfaction of the Ld. AO, Ld. AO proceeded to taxing cash deposits of Rs.3,22,83,000/- made during demonetization period as unexplained money under section 69A of the Act.

3. Further Ld. AO also noticed that assessee has introduced cash amounting to Rs. 67,02,435/- on 01.05.2016. In this connection, assessee submitted that it has paid an advance of Rs. 65,00,000/- for additional work for the construction of the building which was finished without additional works and the amount of Rs.65,00,000/- was recovered from the contractors. Ld. AO did not accept the contention of the assessee, as assessee has not provided the details of the contractors and the date of payment made to them and hence proceeded to tax the cash deposits of Rs. 67,02,435/- as unexplained money under section 69A of the Act.

4. Further, Ld. AO also observed that the assessee has shown rental income of Rs. 12,00,000/- from property situated at 41-1-148, Rice shop Street, Vijayawada. In the balance sheet of the assessee filed before Ld. AO for the A.Y.2017-18 showed the investment at Rs. 3,45,42,968/-. The Ld. AO referred the matter to the District Valuation officer (in short “DVO”) to estimate the cost of investment under section 142(A) of the Act. In response, the DVO submitted its valuation report on 16.06.2021 by valuing the property at Rs. 4,15,51,000/-. Therefore, Ld. AO proceeded to add Rs. 70,08,032/- being the difference

between the DVO and the book value of the asset as unexplained investment in the hands of the assessee.

5. On being aggrieved by the additions made by the Ld. AO, assessee filed an appeal before Ld. CIT(A). Assessee reiterated the submissions made before Ld.AO. However, Ld. CIT(A) did not accept the contentions of the assessee and dismissed the appeal of the assessee.

6. On being aggrieved by the order of the Ld. CIT(A) assessee is in appeal before us by raising the following grounds of appeal: -

“1. That under the facts and circumstances of the case the orders passed u/s 143(3) r.w.s 144B of the IT Act dt: 13/08/21 passed by the Assessment Unit NFAC (in short AU NFAC) and upheld by the Ld. CIT(A) NFAC vide orders us 250 of the IT Act dt:11/01/24 is contrary to the facts of the case and provisions of law.

2. The Ld. CIT(A) NFAC erred on facts end in law in confirming the following additions made by the assessing officer:-

- i. Cash deposits in bank u/s sec 69A - Rs.3,22,83,000/-*
- ii. Cash introduced in books u/s 69A - Rs.67,03,425/-*
- iii. Variation in cost of construction - Rs.70,08,032/-
of property u/s 69B*

3. With regards to cash deposits in bank u/s sec 69A of Rs.3,22,83,000/-

3.1 The Ld. CIT(A) incorrectly upheld the addition of Rs.3,22,83,000/-, based on the AO's erroneous claim that the assessee did not submit bank account and cash book records which the assessee filed before the AO on dt: 26/11/2019 and 16/12/2019. This way evidence on record contradicts the AO's claim, rendering it factually incorrect.

3.2. Both the CIT(A) and the AO overlooked the assessee's submission that cash deposits during the demonetization period amounted to only Rs.16,15,000/-, rather than the projected figure of Rs.3,22,83,000/-.

4. Cash introduced in books u/s 69A - Rs.67,03,425/-

4.1 *The Id. CIT(A), NFAC erred in confirming the cash introduced by the assessee during the year of Rs.67,03,425/-, u/s 69A of the IT. Act, without considering the submissions of the assessee and the explanations given therein justifying the impugned issue.*

5. Variation in cost of construction of property u/s 69 - Rs.70,08,032/-

5.1 *The Id. CIT(A) NFAC erred both on facts and in law in confirming the addition of Rs.70,08,032/-, u/s 69B of the IT Act, being the unexplained investment pertaining to the alleged difference to the cost of construction estimated by DVO and as per books.*

5.2 *The Id. CIT(A) ignored and overlooked a vital aspect which was brought to his notice wherein, it was stated that DVO has issued the valuation report without physical inspection of the building and as well as taking physical measurements, the important ingredients of valuation, therefore, such valuation report cannot stand the test of legal scrutiny.*

5.3 *The Id. CIT(A) ought to have given a finding stating that the DVO report is barred by limitation in view of the provisions of sub section 6 of sec. 142A of the IT Act, in as much as the impugned valuation report was issued beyond the period of 6months from the end of the month in which reference was made.”*

7. Ground Nos. 1 & 2 are general in nature and needs no adjudication.

8. Ground No. 3 is with respect to addition of cash deposits in the bank account under section 69A of the Act for Rs.3,22,83,000/-. On this issue, Ld.Authorised Representative [hereinafter “Ld.AR”] submitted that assessee has deposited only Rs. 16,50,000/- on 11.11.2016. However, he pleaded that the Ld.AO has treated the entire cash deposits made during the Financial Year as deposits made during demonetization and added the same accordingly. He further submitted that the copies of bank statements provided before Ld. AO and Ld. CIT(A) wherein it was not considered by the Revenue Authorities. He therefore pleaded that the addition made by the Ld. AO amounting to

Rs.3,22,83,000/- is erroneous. Further he also submitted that the amount of deposit of Rs. 16,50,000/- during the period of demonetization on 22.11.2016 is out of the existing cash balance available as per the cash book submitted before Revenue Authorities. He therefore pleaded to delete the entire addition.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] relied on the orders of the Revenue Authorities.

10. We have heard both the sides and perused the material available on record. In the instant case, the contention of the Ld. AO is that the assessee has made cash deposits into the bank account amounting to Rs.3,22,83,000/- during the demonetization period. However, it is the contention of the assessee that it has made cash deposits arising out of the cash balance available with the assessee on 22.11.2016 for Rs. 16,50,000/- and this is the only cash deposit made during the demonetization period. However, on perusal of the submissions made by the assessee, we find that the assessee has not furnished full set of the bank statements but has furnished part of the statements particularly during the period November, 2016 – December, 2016. We also do not find the bank account held by the assessee with State Bank of Hyderabad in the documents submitted before us. In these circumstances, we find it deemed fit to remit this issue back to the file of the Ld. CIT(A) by directing the assessee to submit the full set of the bank account statements including the cash deposits made during the entire Financial Year and during the demonetization period.

We also direct Ld. CIT(A) to call for Remand Report from the Ld. AO and decide the issue on merits by providing opportunity to the assessee in accordance with law. Accordingly, this ground raised by the assessee is allowed for statistical purposes.

11. Ground No. 4 is with respect to introduction of cash of Rs. 67,02,435/- by the assessee. On this issue, Ld.AR submitted that assessee has paid advance for additional work for the building amounting to Rs. 65,00,000/- to various contractors. Ld.AR further submitted that since the additional work was not done by the contractors amount of Rs. 65,00,000/- was returned to the assessee which was deposited into the bank account. He therefore pleaded that since the source for cash deposits is properly explained addition may be deleted.

12. Per contra, Ld. DR placed heavy reliance on the orders of the Revenue Authorities.

13. We have heard both the sides and perused the material available on record. Assessee has deposited an amount of Rs. 67,02,435/- on 01.05.2016 which was stated that cash returned from “SVV to SVOIC” in the cash book submitted before us. Further, we also find from the submissions made by the assessee that, assessee has not in detailed manner explained the advances made to the contractors by providing the date of payments of advances and the mode of payment of advances. No confirmation letters were also provided either before Revenue Authorities or even before us regarding the receipt of advances

and further a copy of the contract was also not provided before us for the additional work to be done on the building. In these circumstances, we are inclined to reject the contentions of the Ld.AR thereby sustaining the addition made by the Revenue Authorities. Accordingly, this ground raised by the assessee is dismissed.

14. With respect to Ground No. 5 regarding the variation in cost of construction of property for Rs. 70,08,032/-. Ld.AR submitted that the assessee has constructed the building wherein actual cost was accounted in the books of accounts of the assessee. He further submitted that the books of accounts were not rejected by the Ld. AO whereas the Ld. AO proceeded to call for the Valuation Report under section 142(A) of the Act. He further submitted that the Valuation Officer has not considered the self-supervision charges @15% but has instead allowed only 7.5%. Further rebate on the variation between CPWD and PWD rates @10% was also not considered. Ld.AR pleaded that if these rates are considered the value of the property will be as accounted in the books of accounts. Ld.AR in this connection relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Ayush NRI LEPL Healthcare private Limited v. ITO in ITA Nos.135 & 136/VIZ/2023 dated 30.10.2024, he therefore pleaded that 15% for self-supervision charges and 10% for the difference in material rates shall be allowed as held by the Co-ordinate Bench of the Tribunal.

15. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that the copy of the DVO report was sent to the assessee for its rebuttal, whereas assessee has failed to furnish any reply on the DVO report. He therefore submitted that the assessee has therefore accepted the Valuation Report by the DVO and hence pleaded that the order of the Revenue Authorities be upheld on this issue.

16. We have heard both the sides and perused the material available on record. In the instant case, assessee in Ground No. 5.3 of the ground has raised a legal issue stating that the DVO report is barred by limitation under section 142A(6) of the Act. On this issue, we find that reference by the Ld. AO to the DVO was made on 26.12.2019 and the report of the DVO was given on 16.06.2021. However, a period six months as specified under section 142A(6) of the Act falls on 30.06.2020. The Hon’ble Supreme Court by suomoto petition has directed that the period from 24.03.2020 to 28.02.2022 shall be excluded for the purpose of computing the limitation period under various enactments. Accordingly, we find that the valuation report dated 16.06.2021 is within the period of six months as specified under section 142A(6) of the Act and hence the legal ground raised by the assessee in Ground No. 5.3 is dismissed.

17. Further on the issue on self supervision and difference in material rates, the Ld.AR reliance in the Co-ordinate Bench in the case of Ayush NRI LEPL

Healthcare private Limited v. ITO(supra) deserves consideration and the relevant Para is extracted below:

“11. The assessee has also capitalised the cost of construction in the books of accounts which was subjected to audit. Moreover, considering the fact that CPWD rates are always higher than local rates, we find force in the arguments of the Ld.AR. Additionally, after the deductions on account of rates and self-supervision is adopted the cost of construction will be Rs 12,14,83,264/- as stated in table above. Further, the decisions relied on by the Ld.AR, it was consistently held by the Co-ordinate Bench of this Tribunal, and other judicial pronouncements we are of the opinion that the assessee is entitled for 15% deduction towards difference between CPWD rates and local rates and further 10% deduction towards Self-Supervision charges, from valuation made by DVO, we have no hesitation to direct the Ld. AO to determine the cost of construction of the building by allowing 15% and 10% respectively towards material difference and Self-Supervision charges. We therefore direct the Ld.AO to delete the addition of Rs. 1,68,13,500/- being the amount allocated by the Ld AO during the impugned AY, arising out of the difference between the Valuation Report of the DVO and the value declared by the assessee in the books of accounts. Thus, we allow the ground raised by the assessee.”

18. Following the principle of consistency, we are inclined to direct the Ld.AO to determine the cost of construction of building by allowing 15% and 10% respectively towards material difference and self-supervision charges. Accordingly, Ground No.5.1 & 5.2 raised by the assessee are allowed.

19. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 14th February, 2025.

Sd/- (ललित कुमार) (LALIET KUMAR) न्यायिक सदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated: 14.02.2025

Giridhar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **Venkateswara Rao Koganti**
D.No. 41-1-148, Rice Shops Street
Krishnalanka, Vijayawada
Krishna District – 520013
Andhra Pradesh
2. राजस्व/ The Revenue : **ACIT – CIRCLE – 2(1)**
Vijayawada
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

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam