

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री के नरसिम्हाचारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRIK NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T.A. 115/Viz/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)

Koppula Sita Rama Swamy,
Dandagara, Tadepalligudem Mandal,
West Godavari Dist,
Andhra Pradesh-534145.
PAN: BCEPK5129B

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

Vs. The Principal Commissioner
of Income Tax-1,
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Satyasai Rath, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of Pronouncement

: 29/01/2025

: 20/02/2025

O R D E R

PERS. BALAKRISHNAN, Accountant Member:

This appeal filed by the assessee is against the order of the Learned Principal Commissioner of Income Tax-1, Visakhapatnam ("Ld. PCIT") vide DIN & Order No. ITBA/COM/F/17/2023-24/1060224778(1), dated 29/01/2024 for the AY 2017-18.

2. Brief facts of the case are that the assessee is an individual who has not filed income tax return for the impugned assessment

year. As per the information available in ITBA, the Ld. AO noticed that the assessee has deposited an amount of Rs.1,44,68,710/- in his Current Account No. 1271102000000602 maintained with IDBI Bank. Further, the assessee has also deposited a sum of Rs. 17,10,900/- in his Savings Bank account No. 1271104000007351 maintained with the IDBI Bank. After obtaining necessary approval from the Competent Authority, the Ld. AO initiated the proceedings U/s. 147 of the Act and notice U/s. 148 of the Act dated 29/03/2021 was issued and served on the assessee. In response to the notice U/s. 148 of the Act, the assessee neither filed his return of income nor furnished any submissions / reply before the Ld. AO. Accordingly, statutory notices U/s. 142(1) of the Act were issued and served upon the assessee on various dates. Consequent to transfer of case to the National Faceless Assessment Centre, further notices U/s. 142(1) of the Act were issued to the assessee on various dates however, the assessee never responded. Thereafter, the Ld. AO considering the period of limitation and non-compliance on the part of the assessee, issued a show cause notice dated 11/03/2022. The assessee failed to respond for the show cause notice. Considering the fact of non-compliance by the assessee, the Ld.AO proceeded to tax the amount of Rs. 20,03,610/- as undisclosed income of

the assessee U/s. 69A r.w.s 115BBE of the Act. Further, on the remaining cash deposits found credited in the bank accounts, the Ld. AO treated them as business receipts and estimated the income @ 8% on 1,44,68,710/- amounting to Rs.11,34,080/- as income of the assessee.

3. Thereafter, the Ld. PCIT, on verification of the assessment records found that the order of the Ld. AO is erroneous and prejudicial to the interests of Revenue due to the fact that no enquiry or verification has been made by the Ld. AO while estimating the income @ 8% treating the cash deposits as business receipts. The Ld. PCIT thereafter issued a show cause notice dated 12/09/2023 to the assessee. In response to the show cause notice, the assessee submitted the information vide his letter dated 14/11/2023 through email. After examining the submissions made by the assessee, the Ld. PCIT considered that the assessee has failed to furnish the basic information as detailed in para 8 of the order. Therefore, he treated the assessment order of the Ld. AO as erroneous and prejudicial to the interests of the Revenue in the absence of any corroborative evidence filed by the assessee and thereafter, directed the Ld. AO to treat the cash deposits as unexplained credits and the same

shall be the income of the assessee for the impugned assessment year. On being aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us by raising the following grounds of appeal:

- “1. The order of the Ld. PCIT is contrary to the facts and also the law applicable to the facts of the case.
2. The Ld PCIT is not justified in passing an order invoking jurisdiction U/s. 263 under the facts and circumstances of the case.
3. In the facts and circumstances of the case, assessment originally passed is neither erroneous nor prejudicial to the interest of the revenue. Hence order of revision under appeal desirous to be set aside.
4. The Ld AO having taken a possible view of assessment should not have been treated as erroneous and as such the provisions of section 263 are not applicable under the facts and circumstances of the case.
5. In the facts and circumstances of the case particularly in view of the fact that the assessee carried on business in liquor as established by i) his part returns, ii) the TCS as made by the APBCL vide statement in 26AS for the previous years, the payments made to APBCL for supplies from banks, the deposits made in Bank accounts did represent only the business receipts with income component thereof taxable U/s. 28 only and as such the provisions of section 69A is not applicable.
6. The appellant craves leave to add, alter or substitute any of the above grounds at any time before or at the time of hearing of the appeal”

4. The assessee has also raised a petition for admission of additional ground as follows:

“Whether on the facts and circumstances of the case, the order passed by the Ld. PCIT U/s. 263 of the Act in respect of an issue with regard to which an appeal is pending before the Ld. CIT(A) is outside the scope of section 263 of the Act?”

5. Grounds No. 1 and 6 are general in nature and need no adjudication.

6. Grounds No.2 to 5 challenges the jurisdiction U/s. 263 of the Act by the Ld. PCIT. On this issue, the Ld. AR submitted that the assessee does not possess the license issued by the Andhra Pradesh Prohibition and Excise Department for carrying on the business of liquor and therefore, assessee carrying on the business as an associate wherein the license is in the name of Shri P. Narayana Rao. The Ld. AR further submitted that the assessee has disclosed the same business and has offered income U/s. 44AD of the Act during the earlier assessment years. The Ld. AR further submitted that this was not disputed by the Revenue in the earlier assessment years. He also referred to the bank statement filed in the paper book and stated that the cash deposits are being utilized for making payment to APBCL which indicates that the assessee is engaged in the business of selling IMFL. He therefore pleaded that the order of the Ld. AO needs to be upheld.

7. Per contra, the Ld. DR submitted that the assessee is not permitted to carry on the business of sale and purchase of liquor as the license is in the name of Shri P. Narayana Rao and not in the name of the assessee. He therefore pleaded that no evidence has been provided by the assessee for carrying on the business of

liquor wherein the license has been granted in some other name. The Ld. DR therefore prayed that the order of the Ld. PCIT be sustained.

8. We have heard both the sides and perused material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that the assessee has deposited an amount of Rs. 1,44,68,710/- arising out of the sale of liquor. It is also undisputed fact that the liquor license is in the name of Shri P. Narayana Rao. The Ld. Revenue Authorities have also not disputed the business income offered by the assessee during the earlier assessment years. Further, on a perusal of the bank statement held by the assessee with IDBI Bank vide A/c No. 1271102000000602, the cash deposits have been utilized for making payments to APBCL. These facts confirm that even though the assessee is not a license holder, he is engaged in the business of purchase and sale of liquor during the impugned assessment year. Therefore, we have no hesitation to confirm the order of the Ld. AO thereby setting aside the order of the Ld. PCIT. Thus, the Grounds No. 2 to 5 raised by the assessee are allowed.

9. With respect to additional ground raised by the assessee, the Ld. AR submitted that this ground shall be dismissed as not pressed. Accordingly, additional ground raised by the assessee is dismissed as not pressed.

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

Pronounced in the open Court on 20th February, 2025.

Sd/-
(श्री के नरसिम्हाचारी)
(K NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated: 20.02.2025
OKK

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee-Koppula Sita Rama Swamy, D.No. 3-175, Dandagara, Tadepalligudem Mandal, West Godavari District, Andhra Pradesh-534145.
2. राजस्व/The Revenue -Principal Commissioner of Income Tax-1, Aayakar Bhavan, Dabagardens, Visakhapatnam, Andhra Pradesh-534260.
3. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
5. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam