

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

(HYBRID HEARING)

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.299/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2016-17)**

Sunkara Kotipalli Naidu Chettupalli Village Narsipatnam Mandal Visakhapatnam Andhra Pradesh – 531116 [PAN: DZDPS4163R]	v.	Income Tax officer –Ward- (International Taxation) Income Tax Office Infinity Towers Sankaramatam Road Visakhapatnam Andhra Pradesh,530016
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	11.02.2025
घोषणा की तारीख/Date of Pronouncement	:	07.03.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is Filed by the assessee against the final assessment order passed under section 147 r.w.s. 144C(3) of Income Tax Act, 1961 (in short 'Act') dated 28.05.2024 vide DIN & Order No. ITBA/AST/S/147/2024-25/1065196685(1) for the A.Y. 2016-17.

2. Briefly stated the facts of the case are that assessee is a Non-Resident Individual and has not filed his return of income. Based on the NMS data, it was found that the assessee has carried out transactions of purchase of immovable property for Rs.37,34,300/- and one more property for Rs.37,12,500/-. On a perusal of the information available with the department, Ld. Assessing Officer [hereinafter in short "Ld. AO"] observed that income chargeable to tax has escaped assessment and the procedure prescribed under section 148 of the Act was followed and show-cause notice was issued to explain why the income should not be taxed. Assessee has not provided any details in response to the show-cause notice. After considering the material available on record, order under section 148A(d) of the Act was passed on 28.03.2023 with the prior approval of the competent authority considering it as fit case for issue of notice under section 148 of the Act. Thereafter notice under section 148 was issued on 29.03.2023 and served on the assessee. In response to show-cause notice dated 20.09.2023 assessee filed his return of income on 08.04.2023 which is wrongly mentioned as 08.04.2022 in the final assessment order. Assessee has declared "Nil" Income. Subsequently, notice under section 142(1) of the Act was issued to the assessee calling for details. In response, assessee uploaded written submissions. Based on the submissions, Ld. AO issued a show-cause notice dated 20.02.2024. Assessee submitted his reply to the show-cause notice, confirming the purchase of properties. Considering the

submissions made by the assessee, Ld. AO made an addition of Rs. 59,05,450/- as detailed in the draft assessment order.

3. Aggrieved by the additions made in the draft assessment order, assessee filed its objections before Dispute Resolution Panel [in short “Ld. DRP”] on 10.04.2024. Ld. DRP while issuing direction under section 144(5) of the Act, observed that assessee has filed the objection with a delay of two days and since Ld.DRP does not have power to condone the delay, thereby rejected the objections filed by the assessee. Assessee, vide Mail dated 10.05.2024 to the Ld.DRP submitted that they received the draft order on 13.03.2024 and as such application is within the due time. However, Ld. DRP vide their order has held that assessee has mentioned at Column 6 of Form 35A that the draft order was received on 07.03.2024 and hence the application is beyond the stipulated time. Assessee thereafter filed an appeal before Ld. Commissioner of Income – Tax, Hyderabad. In Appeal No. 10/10322/2015-16 dated 25.07.2024, the Ld.Commissioner of Income-Tax dismissed the appeal of the assessee stating that any appeal against order of Ld.DRP lies before the jurisdictional Tribunal. Assessee therefore filed an appeal before us by raising the following grounds of appeal: -

“1. The order of the hon'ble Dispute Resolution Panel -1, Bengaluru is contrary to the facts and also the law applicable to the facts of the case.

2. The hon'ble Dispute Resolution Panel ought to have quashed the notice u/s 148 of the Act as invalid and ought to have quashed the consequential reassessment proceedings as void ab initio.

3. *Without prejudice to the above, the hon'ble Dispute Resolution Panel ought to have directed the assessing officer to delete the following additions made u/s 69 of the Act towards unexplained investment:*

i) Addition of Rs.28,30,700 towards purchase of flat on 10.02.2016 vide Doc no.950/2016.

ii) Addition of Rs.30,74,750 towards purchase of site on 07.01.2016 vide Doc no.152/2016.

4. *Any other ground may be urged at the time of hearing.”*

4. Grounds raised by the assessee before us are not maintainable since the assessee has challenged the directions of the Ld.DRP whereas DRP has rejected the filing of objections which is beyond the stipulated time period of 30 days.

5. Alternatively, assessee also filed a petition for admission of additional evidences as detailed in paper book-2. Ld. Authorised Representative [hereinafter “Ld.AR”] also relied on the decision of the Hon’ble Telangana High Court in the case of Venkataramana Reddy Patloola v. DCIT & Ors. (2024) 468 ITR 0181 (Telangana), wherein the mandatory faceless procedure as prescribed in the scheme dated 29.03.2022 was not followed. He also pleaded for admission of additional evidences and prayed for remitting the matter back to the file of Ld. AO for fresh consideration of additional evidences and completing the assessment denovo.

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] objected to the admission of additional evidences. Ld. DR also relied on the decision of the Hon’ble Delhi High Court in the case of T.K.S. Builders (P.) Ltd., v. ITO [2024] 167 taxmann.com 759 (Delhi), wherein Ld. DR

submitted that decision of the Hon'ble Telangana High Court has been considered by the Hon'ble Delhi High Court while rendering its decision. Ld.DR submitted that the appeal is against the final assessment order and not against the directions of the Ld.DRP as mentioned in the grounds of appeal raised by the assessee.

7. We have heard both the sides and perused the material available on record including the orders of Ld.DRP and the Revenue Authorities. Considering the prayer of the Ld.AR regarding the admission of additional evidences in the form of confirmation letters from the relatives of the assessee along with the bank statements, we consider that these evidences are necessary for adjudicating the case on merits. We therefore are of the considered view to admit the additional evidences and therefore remit the matter back to the file of Ld.AO to examine the additional evidences and decide the case on merits in accordance with law. Case laws relied on by the rival parties are not considered. Thus, appeal stands disposed off accordingly for statistical purposes.

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

Order pronounced in the open court on 07th March, 2025.

Sd/-
(के.नरसिम्हाचारी)

(K.NARASIMHA CHARY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated: 07.03.2025

Giridhar, Sr.PS

Sd/-

(एसबालाकृष्णन)

(S. BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : **Sunkara Kotipalli Naidu**
Chettupalli Village
Narsipatnam Mandal
Visakhapatnam
Andhra Pradesh – 531116

2. राजस्व/ The Revenue : **Income Tax officer –Ward-(International Taxation)**
Income Tax Office
Infinity Towers
Sankaramatam Road
Visakhapatnam
Andhra Pradesh,530016

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