

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

श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON’BLE JUDICIAL MEMBER

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SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.422/VIZ/2024
(निर्धारण वर्ष/ Assessment Year:2018-19)

Income Tax Officer – Ward – 2(1) Infinity Tower, 2 nd Floor Range-2, Sankaramatam Road Santhipuram, Visakhapatnam – 530016 Andhra Pradesh	Vs.	Sathish Kumar Attada Flat No. 506, TSR NRI County 2 Srinivasanagar, Yendada-530020 Andhra Pradesh [PAN:AKAPA1392B]
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri I. Kama Sastry, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri MN Murthy Naik, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	19.08.2025
घोषणा की तारीख/Date of Pronouncement	:	24.09.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the revenue 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/250/2024-25/1067402380(1) dated 07.08.2024 for the

A.Y.2018-19 arising out of order passed under section 144 of Income Tax Act, 1961 (in short 'Act') dated 26.05.2021.

2. Brief facts of the case are that, assessee filed his return of income on 27.10.2018 for the A.Y. 2018-19 admitting a total loss of Rs.16,69,592/- which was processed under section 143(1) of the Act. Subsequently, the case was selected for complete scrutiny assessment under the E-Assessment Scheme, 2019 on the following issues: -

- i. Securities (Derivative) Transaction.
- ii. Business Expenses.

3. Thereafter, notice, under section 143(2) and 142(1) of the Act along with questionnaires were issued and served on the assessee. Assessee failed to respond to the notices and another notice under section 142(1) dated 24.03.2021 was issued and served on the assessee. Since assessee failed to respond to this notice as well, a show-cause notice under section 144 of the Act was issued on 09.04.2021. Assessee inspite of submitting any responses requested for additional time which was not granted by the Ld. Assessing Officer [hereinafter in short "Ld. AO"]. Ld. AO thereafter concluded the assessment by adding a sum of Rs.1,33,262/- towards brokerage and Rs.109,78,06,788/- as unexplained investments under section 69 of the Act.

4. On being aggrieved by the additions made by the Ld. AO, assessee filed an appeal before Ld. CIT(A). The assessee contested the notice stating that it

was issued during the COVID-19 period and hence could not respond during the assessment proceedings. He submitted additional evidences in the form of the paper book contained statements from his broker BMA Wealth Creators Limited. The said additional evidences were forwarded to Ld. AO to submit the Remand Report on 21.02.2023. Subsequently, three reminders were sent to the Ld. AO requiring him to furnish the Remand Report. Ld. AO has not submitted any Remand Report till 10.04.2024. The Ld. AO vide letter dated 10.04.2024 only reiterated the facts which lead to passing of the best judgment assessment under section 144 of the Act. Therefore, the Ld. CIT(A) concluded that Ld. AO has nothing to say in his Remand Report with respect to additional evidences and Ld.CIT(A) thereafter admitted the additional evidences under Rule 46A of the I.T. Rules, and allowed the appeal of the assessee by relying on the additional evidences submitted by the assessee.

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

1. *The Order of the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi iserroneous in law and to the facts of the case.*
2. *The Ld.CIT(A) erred in deciding the appeal in favour of the assessee without waiting for remand report called for from the Assessing Officer on the additional evidence submitted by the assessee during the course of appeal proceedings, which is in violation of Rule 46A (3) of Income-tax Rules, 1962.*
3. *The Ld.CIT(A) erred in deciding the appeal in favour of the assessee merely taking into consideration the assessee's submissions and merely stating that no defect has been pointed out by the Assessing Officer in the said books of account of the assessee. In the event of Assessing Officer failing to discharge his functions properly, obligation to conduct*

proper inquiry shifts to Commissioner (Appeals) and CIT(A) cannot simply delete addition made by the Assessing Officer on ground of lack of inquiry by the Assessing Officer or on the ground that no defect has been pointed out in the books of account of the assessee by the Assessing Officer. The Ld.CIT(A) has plenary powers of Assessing Officer and should have himself worked out the profit margin and arrived at taxable income of the assessee after conducting proper enquiry instead of accepting the profit margin admitted by the assessee.

4 The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.

5 For these and other grounds that may be urged at the time of appeal hearing, it is prayed that the above addition be restored.”

6. Ground Nos. 1, 4 & 5 are general in nature and needs no adjudication.
7. Ground No.2 challenges allowing of the appeal by the Ld. CIT(A) without waiting for the Remand Report called for from the Ld. AO on the additional evidences submitted by the assessee to the Ld. CIT(A).
8. On this issue, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that Ld. CIT(A) has not waited for the Remand Report from the Ld. AO on the additional evidences submitted by the assessee and has not provided an opportunity to the Ld. AO to examine the additional evidences thereby erred in violation of Rule 46A(3) of I.T. rules, 1962. He therefore pleaded that the issue may be remitted back to the file of Ld. AO for examining the additional evidences calling for the Remand Report from the Ld. AO.
9. Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has explained in detail regarding his inability to appear during the assessment proceedings. He further submitted that additional

evidences have been submitted to the Ld. CIT(A). The Ld. CIT(A) has called for the Remand Report vide first letter dated 21.02.2023. He also submitted that the Ld. CIT(A) almost waited for more than one year for the Remand Report for which the Ld. AO has not responded. After examining the additional evidences, Ld. AO without going into the merits of the additional evidences, has reiterated the facts which lead to the best judgement assessment under section 144 of the Act. Ld.AR therefore submitted that the Ld. CIT(A) is right in concluding that Ld. AO does not have any objection to the admission of additional evidences and therefore Ld. CIT(A) by relying on the additional evidences after examining the same allowed the appeal of the assessee. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

10. We have heard both the sides and perused the material available on record. It is an undisputed fact that the Ld. CIT(A) has called for the Remand Report vide letters dated 21.02.2023, 24.05.2023, 12.12.2023 and 08.04.2024. The Ld.CIT(A) waited for almost one year for the Remand Report from the Ld.AO. The Ld. AO in spite non-responding to the notice by the Ld. CIT(A) vide his letter dated 10.04.2024 only reiterated the facts which led him to pass the best judgment assessment. In this situation, the Ld. CIT(A) is right in concluding that the Ld.AO does not have anything to say in his Remand Report with regard to the additional evidences filed by the assessee. The Ld. CIT(A) thereafter admitted additional evidences and proceeded to adjudicate the appeal

on the strength of the additional evidences submitted by the assessee. The Ld.CIT(A) found that books of accounts of the assessee are duly audited and no defect has been pointed out by the Ld. AO in the said books of accounts. Further the Tax Audit Report in Form 3CD for the impugned assessment year also clearly declares the loss at Rs.19,50,263/-. Since the transactions are duly recorded in the books of accounts of the assessee and audited by the statutory tax auditor, the Ld. CIT(A) concluded that section 69 of the Act had no application in these circumstances. The Ld. CIT(A) also observed that with respect to derivative transactions the real turnover should be the margin of these transactions and not the total value of transactions. Ld. CIT(A) has therefore held as follows:

“5.2.5 In view of the above, I am inclined to hold that since derivative transactions have been entered by the appellant are duly recorded in his books of account, no defect in the said books of account has been pointed by the AO, the AO has failed to reply to the call of this authority to submit remand report on the additional evidences filed by the appellant during the course of current appellate proceedings, ground of appeal raised by the appellant is allowed and the addition made by the AO is deleted.”

11. We find in the instant case, the Ld. AO has not pointed out any defects in the books of accounts and hence the provisions of section 69 of the Act cannot be applied. The Ld.AO also erred in examining the additional evidences while furnishing the remand report. Therefore, the Ld. CIT(A) has rightly considered the additional evidences while adjudicating the appeal in favour of the assessee on this issue. We therefore find no infirmity in the order of the Ld. CIT(A) and

hence did not wish to interfere in the decision of the Ld. CIT(A) on this issue.
Accordingly, this ground raised by the revenue is dismissed.

12. Further, with respect to the addition of Rs.1,33,262/- paid as brokerage to BMA Wealth Creators Limited, the Ld. CIT(A) found that the assessee has filed additional evidences with respect to the payment of brokerage through normal banking channels and hence deleted the disallowance made by the Assessing Officer. We are in agreement with the findings of the Ld. CIT(A) and hence do not wish to interfere in the decision of the Ld. CIT(A) on this issue.
Accordingly, this ground raised by the revenue is dismissed.

13. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court 24th on September 2025.

Sd/-

(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated:24.09.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee : **Sathish Kumar Attada**
Flat No. 506, TSR NRI County 2
Srinivasanagar, Yendada-530020
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 2(1)**
Infinity Tower, 2nd Floor
Range-2, Sankarmatham Road
Santhipuram, Visakhapatnam – 530016
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

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam