

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

(HYBRID HEARING)

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

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.121/VIZ/2024
(निर्धारण वर्ष/ Assessment Year:2015-16)**

Paila Venkata Padmavathi 3-47, Thanam Paravada Mandal Paravada – 531021 Andhra Pradesh [PAN: BSIPP1954P]	Vs.	The Income Tax Officer Ward– 5(3) Aayakar Bhavan Dabagardens, Visakhapatnam Andhra Pradesh
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri M. Muralidhar, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.10.2025
घोषणा की तारीख/Date of Pronouncement	:	28.11.2025

आदेश / O R D E R

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/250/2023-24/1060650937(1) dated 08.02.2024 for the A.Y.2015-16 arising out of order passed under section 143(3) of Income Tax Act, 1961 (in short 'Act') dated 28.12.2017.

2. Brief facts of the case are that, assessee is engaged in the business of “manufacturing of clinical and Sanitary items” filed her return of income for the A.Y.2015-16 on 22.09.2016 admitting a total income of Rs.2,74.340/-. The return was summarily processed under section 143(1) of the Act on 24.10.2016. Subsequently, the case was selected for limited scrutiny under CASS for the reason “Large cash deposits in savings bank account”. Notice under section 143(2) of the Act dated 24.08.2017 was issued and served on the assessee calling for information. Since the assessee was not responding to the notices, summons under section 131 of the Act was issued to the assessee. Assessee appeared before the Ld. Assessing Officer [hereinafter in short “Ld. AO”] and explained that the cash belonging to her husband deposited into her account arising out of the agricultural activities carried out for about 38 Acres of land. It was also submitted that assessee sold the land during the F.Y. 2014-15 and submitted four sale deeds. On perusal of the documents, Ld. AO noticed that assessee sold the agricultural land for cash amounting to Rs.73,71,000/- only whereas the cash deposits in the bank account amounting to Rs.1,10,45,000/-. Since no satisfactory explanation was offered by the assessee, the Ld. AO

treated the balance amount of Rs.36,74,000/- as unexplained income of the assessee.

3. Benign aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A). Assessee reiterated the same submissions before the Ld.CIT(A) stating that the purchaser of the land did not want “Cashew, Casurina, Eucalyptus and Mango Trees” and wanted a vacant land before the sale deed being registered in his favour. Therefore, these trees were sold for cash and the cash has been deposited into the assessee account. Ld. CIT(A) did not agree with the contention of the assessee in the absence of any cogent evidences and sustained the order of the Ld. AO. Ld. CIT(A) also dismissed the ground raised by the assessee regarding the issuance of notice by the Jurisdictional Assessing Officer.

4. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising multiple grounds on multiple times. Finally on the directions of the bench all the grounds were consolidated and filed grounds of appeal dated 22.08.2025 as under: -

“The grounds & additional grounds etc are produced at one place for ease of reference (instead of all other grounds submitted earlier) as below:

1. *That the assessment order(s) of authorities below were not as per the Facts of the case and as per the law applicable, under the Income tax act, 1961.*

2. **CBDT prescribed instructions & circulars binding (SOP - CASS Scrutiny) not followed:**

The Ld AO and Ld CIT(A) has not followed the CBDT instruction provided as SOP on 16.09.2016, vide F.no. DGIT(S)/ADG(S)-2/CASS 2016-17-17/93/2016,

the following point no. 8 vide page no. 2 & hence order passed was illegal & arbitrary.

2.1 As the manual processing was done, the assessment order & Demand Notice u/s 156, was issued manually & was not uploaded in the portal till date, though it was mandated by CBDT instruction for passing all orders online, is void ab-initio.

2.2 The impugned Assessment order & demand notice was not served on the assessee u/s 282(1), makes the entire assessment invalid & null and Void.

3. Unsigned show cause notice & Orders cannot provide a valid jurisdiction:

3.1 The Ld AO has erred in law & facts in initiating assessment by issuing an unsigned show cause notice u/s 143(2) dated 10.07.2017 & SCN u/s 154 dated 18/10/2021, which is neither signed digitally nor manually, and thereby making entire assessment void ab-initio for want of jurisdiction.

3.2 Ld AO erred in signing manually three important documents ie.

- Assessment order u/s 143(3) dated 28.12.20217,
- Notice of demand u/s 156 dated 28.12.20217 &
- Reasons received from Ld. ITO, ward-2(5) dta 24.12.2021

which are not valid as per law, as digital signatures a must from 01.06.2017 as per amended sec 282A & as per CBDT circular issued which is mandatory wef 01.10.2017 and thereby making the assessment order non-est in law.

3.3 This is legally invalid and void which is a jurisdictional defect and cannot be cured and saved by sec 292B as was held in

- Ramesh Gandhi v. DCIT (ITAT, Delhi)
 - Prakash Krishnavtar Bhardwaj v. ITO (Bom HC)
- ABCAUS 4174 (2024) (07) ITAT-Kol

3.4 The validity can be challenged at any stage - SC in Kiran singh vs. Chaman Paswan (AIR 1954 SC 340)

4. No "Mistake apparent from Records" as proposed by Ld AO:

Ld AO has erred in passing a non-speaking order while rectifying under the guise of sec 154, when there was no mistake apparent from record and without providing reasons for doing so and Ld. CIT(A) has also confirmed the same as mistake (vide pg 7/8 in the 2nd Paragraph).

4.1 This is against the facts and not according to the law. The rectification for implementing a section 115BBE after passing AO by

stating sec 69A (hitherto not stated in AO dtd 28.12.2017) and before a CIT(A) order was passed.

4.2 The same when an appellate order us 250 was passed overrides the provisions of sec 154 too.

4.3 Ld AO gravely erred in holding that as the issue of taxability of sec 115BBE as a mistake which was in fact a debatable issue and thus, does not fall within the ambit of rectification u/s 154.

4.4 The Ld CIT(A) is not justified in dismissing the appeal by concurring with Ld AO's order wrt sec 69A:

Ld CIT(A) has not adjudicated the ground no. 3 of addl ground, since

- i. When ITR is filed /s 44AD (pg no. 34 of paper book),
- ii. Assessee had no books of account which is a pre-condition of the initiating sec 69A and in turn sec 115BBE and is not automatic, since the Asst Order u/s 143(3) also had no mention of charging provision for the deemed addition made in the Asst order.

5. Order passed without application of Mind reason being "Doctrine of Impossibility":

Ld AO as well as Ld CIT(A) had erred in not applying mind the cash deposits belonging. to spouse who deposited the cash out of agricultural proceeds after accepting and allowing Rs. 71 lacs approx. (sale proceeds of spouse) and calling for evidence of balance cash deposits in Bank. Even otherwise the agricultural income is exempted u/s 10(1) and producing bills falls squarely in "Doctrine of Impossibility."

A case of Bonafide nature since assessee or spouse of assessee were in belief that being agricultural income was not taxable at all.

6. Taxability in wrong hands:

The Ld. AO has not justified in assessing the income in the hands of assessee instead of initiating assessment on the spouse of the assessee when Ld AO came to know the sale deeds belongs to spouse of the assessee, if at all income to be taxed.

6.1 The Ld. AO was not justified in assessing the income in the hands of assessee instead of assessing the spouse of the assessee: [Gift confirmation letter submitted]

6.2 The receipts were not "Income u/s 2(24) or 2(1)" in the hands of the assessee and a gift from spouse of the individual. This was covered by case of our own ITAT - VSP case law vide VISAKHAPATNAM-Trib.2024 126 TLC 345: I.T.A. No. 168/Viz/2023, .C.O. No.28/Viz/2023, I.T.A. No. 168/Viz/2023)

and also Jurisdictional AP & Tel HC in the case of PenduthiChadraseshkar vs. DCIT (2019) 407.ITR 179.

7. No DIN number's being mandatory as per CBDT circular:

The Ld AO and Ld CIT(A) is not justified in not specifying Document identification number(DIN) which is mandatory as per CBDT circular no. 19/2019 dated 14.08.2019 on sec 154 letters & communication(s) and a common DIN denoted as per letter dtd 18/10/2021, later specified cannot make the documents authentic.

8. Ld CIT(A) is not justified in confirming the order passed by Ld AO:

Ld CIT(A) is not justified in confirming the order passed by Ld AO, who has made addition of Rs.36,74,000/- towards alleged unexplained cash deposits in the bank accounts of the appellant, as the order falls under the category of non-speaking order as income arising out of agricultural lands out of crops are in fact agricultural Income and not taxable being exempt whether evidences are produced or not. This being Sale of Crops & Trees arising out of same agricultural land is Agricultural Income, hence any surplus amounts received or arising out of same agricultural land cannot be taxable & partakes the character of agri income only being part & parcel of agriculture income.

9. The LD AO had erred in making no findings or reasoning:

Ld AO made addition no on mistaken belief or mere suspicion or presumption of non-agricultural activity was carried on, while giving deduction to sale proceeds of the agricultural lands while balance income though was arising out of agricultural activity and her spouse being a farmer, were not accepted on mere suspicion. It was :

- i. Income was not out of any spontaneously grown trees & Plants
- ii. Income was not out Felling trees/Forest trees
- iii. The income was not due mere windfall too

10. Case laws cited by Ld CIT(A) in the order are distinguishable:

The Ld CIT(A) erred in citing the Case laws which are distinguishable and not applicable to the case of assessee.

10.1 Not an excess realisation from trees

10.2 Not an Income from Forest Trees

But in the case of the assessee,

1. The Agril. Land and Income belongs to her spouse and
2. The trees were planted by spouse of the assessee and is grown on land aided by human labour and effort, whatever does

not grow wild or spontaneously on the soil without human labour or effort.

11. Non-Adjudication of a ground by the Ld CIT(A):

Ld CIT(A) is not justified in not adjudicating the ground no. 3 due to the fact that addl grounds submitted before CIT(A) that speaks of non-mentioning of sec 28 nor 69A, becomes a non-speaking order and has rejected summarily.

12. Wrongly assumed Jurisdiction by Ld AO:

12.1 The Ld AO and Ld CIT(A) has not followed the CBDT instruction which says the jurisdiction was auto transferred to right PAN-JAO, hence assessment order should have been passed by AO, Ward-4(2) instead of Non JAO, ward 5(3).

12.2 The Ld CIT(A) gravely erred in rejecting the ground no. 6 of addl. grounds summarily:

Since the same were not according to the prescribed provisions of the act a notice u/s 129 or order u/s 127. The case as cited by Ld CIT(A) in Venketesanraghuram prasad singh (798 of 2017) by madras HC is distinguishable as follows:

- i. The service of notice u/s 143(2) was admittedly beyond the time limit(pg 75 of the paper Book).*
- ii. The objection was raised for the first time before Tribunal (Pg 76 of the paper Book).*

13. No-Speaking order by Ld CIT(A): •

The Ld CIT(A) is not justified in rejecting summarily by not adjudicating ground no. 4 speaks of "asking an impossibility to perform" becomes a non-speaking order.

*In legal systems worldwide, the principle that "the law does not compel the impossible" is a fundamental principle. This principle is known by the Latin maxim *lex non cogitadimpossibilia*.*

14. The assessing officer is not justified in charging interests of Rs. 3,53,983/- u/s 234A, 234B, 234C of the Act due to the above facts and grounds as explained above.

15. Any other ground that may be urged at the time of hearing before your goodself."

5. In the above grounds No 2 to 6, the assessee contested the following issues: -

- i. Validity of the jurisdiction assumed by the Ld. AO while issuing notice under section 143(2) of the Act.
- ii. It was also contested that the notice under section 143(2) is neither digitally signed nor manually signed.
- iii. Assessment order being manually signed by the Jurisdictional Assessing Officer without following Standard Operating Procedure (in short “SOP”) prescribed by CBDT.
- iv. Challenging the taxing of cash in the hands of the assessee even though it was accepted by the Ld. AO that the sale deeds belong to the spouse of the assessee.

6. The grounds Nos. 7 to 13 raised by the assessee are not being pressed and hence not adjudicated. Ground No 1 and 14 are general in nature and needs no adjudication.

7. The assessee has challenged the validity of the assessment order citing that the assessment was completed without issuing a valid notice under section 143(2) of the Act. This being a legal ground, we first proceed to adjudicate the same.

8. With respect to the issue of “SOP”, the Ld. Authorised Representative [hereinafter “Ld.AR”] invited our attention to Page No. 70 in Paper Book, wherein the CBDT vide CASS-Instruction No.3 dated 16.09.2016 clearly stating certain parameters, which was not followed by the revenue. He also submitted that jurisdiction of the Ld. AO who is Income Tax Officer, Ward -4(2), Visakhapatnam was issued notice under section 143(2) on 10.07.2017 without manually or digital signature. Further he stated that assessment order was passed by Income Tax Officer, Ward – 5(3), Visakhapatnam who does not have jurisdiction over the assessee. He therefore pleaded that no order under section 127 of the Act was provided to the assessee regarding the change of jurisdiction from Income Tax officer, Ward – 4(2), Visakhapatnam to Income Tax Officer, Ward – 5(3), Visakhapatnam, he therefore pleaded that in the absence of valid notice under section 143(2) of the Act, the consequent assessment proceedings is void ab-initio.

9. On the other hand, Ld. Departmental Representative [hereinafter in short “Ld. DR”] argued that the assessee has participated in the assessment proceedings and has raised no objection before lower authorities. Ld. DR further submitted that assessee has to raise its objection within a period of thirty days as provided under section 124(3)(a) of the Act. He therefore pleaded that the assessment order cannot be quashed which is curable as per section 292BB of the Act.

10. We have heard both the sides and perused the material available on record. Initially notice under section 143(2) of the Act dated 10.07.2017 was issued by Income Tax Officer, Ward - 4(2), Visakhapatnam and subsequently the assessment was framed by Income Tax Officer, Ward – 5(3), Visakhapatnam. The main contention of the assessee is no fresh notice under section 143(2) of the Act by the Assessing officer i.e., Income Tax Officer, Ward – 5(3), Visakhapatnam, has been issued to the assessee before framing the assessment under section 143(3) of the Act. However, as pointed out by the Ld.DR, assessee has participated in the proceedings consequent to the notices issued under section 142(1) of the Act and has not raised objections before the lower authorities questioning the jurisdiction of the Ld. AO to frame the assessment without issuing of notice under section 143(2) of the Act. The Hon’ble Supreme Court in the case of DCIT v. Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC) held as follows: -

“Where High Court set aside notice issued under section 143(2) in case of assessee on ground that jurisdictional officer had not adjudicated upon returns as jurisdiction had been changed after returns were filed, since records revealed that assessee had participated pursuant to notice issued under section 142 (1) and had not questioned jurisdiction of Assessing Officer, in such case order of High Court could not be sustained.”

11. The Hon’ble High Court of Gauhati in the case of ITO v. Shankar Lall Goenka[2025] 174 taxmann.com 31 (Gauhati), has also made similar observations and held as follows: -

“Assessee is barred from challenging assessment proceedings for first time before Appellate Tribunal on ground of issuance of notice under section 143(2) by Income-tax Officer in light of provisions of section 292BB”

12. The Co-ordinate Bench of Raipur in the case of ITO v. Shree Banke Bihari Infracon (P.) Ltd., [2024] 163 taxmann.com 344 (Raipur – Trib.) has also expressed the similar view as follows: -

“II. Section 124 of the Income-tax Act, 1961 - Assessing Officer - Jurisdiction of - Assessment year 2013-14 - Assessee challenged assessment order on ground that notice under section 143(2) was issued by an Assessing Officer who did not have jurisdiction over their case - Whether objection of assessee could not be accepted because assessee had not called in question jurisdiction of said Assessing Officer within specified time frame, as required by section 124 - Held, yes [Para 33] [In favour of revenue]”

13. Assessee ought to have raised this issue before the Ld. AO, within 30 days from the receipt of notice as provided in section 124(3)(a) of the Act. Since the assessee failed to raise this issue before the Ld. AO within the period of one month and participated in the assessment proceedings subsequent to the notice issued under section 142(1) of the Act, respectfully following the above judicial precedents, we are of the opinion that there is no merit in the argument of the Ld.AR challenging the jurisdiction of the Ld. AO framing the assessment order under section 143(3) of the Act without issuance of notice under section 143(2) of the Act by the Jurisdictional Assessing Officer and hence ground raised by the assessee on this issue cannot be sustained and therefore dismissed.

14. On merits, Ld.AR of the assessee submitted that the assessee has received gift from her husband amounting to Rs.36,74,000/- which was received by her husband from the sale of trees and the land sold by the assessee. He therefore pleaded that the gift confirmation letter has been provided in Paper Book Page No. 67 which may be considered. He vehemently argued that since the income has been generated out of the agricultural operations arising out of the sale of trees is exempt in nature and shall not be taxable in the hands of the assessee.

15. Per contra, Ld. DR relied on the orders of the Revenue Authorities.

16. We have heard both the sides and perused the material available on record including the written submissions of the assessee. It is an admitted fact that the assessee has deposited cash amount of Rs.1,10,45,000/- out of Rs.73,71,000/- stands explained arising out of the sale of agricultural lands as evidenced by the four sale deeds. However, assessee contended that the balance amount of Rs.36,74,000/- was arising out of the sale Cashew, Casurina, Eucalyptus and Mango Trees and at the time of sale of land these trees were sold to different persons and realised an amount of Rs.36,74,000/- which was deposited into the assessee's bank account. It is noticed that the assessee did not raise the issue of gift received from her husband before the lower authorities. Neither the assessee produced any evidences in support of the sale of trees on the agricultural lands sold by the assessee. Further, Ld.AR also could not substantiate that the assessee has disclosed agricultural income during

the earlier periods or during the subsequent period while filing the return of income. Neither the assessee's spouse has disclosed the agricultural income as submitted by the Ld.AR. The gift confirmation letter is necessarily an afterthought of the assessee to circumvent the evidences required for producing the sale of various trees on the land. In the facts and circumstances of the case as discussed above, we find no merit in the argument of the Ld.AR and therefore we find no infirmity in the order of the Ld.CIT(A) while sustaining the addition made by the Ld. AO. Thus, grounds raised by the assessee on this issue are dismissed.

17. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28th November, 2025.

Sd/-

(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 28.11.2025

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 : **Paila Venkata Padmavathi**
3-47, Thanam
Paravada Mandal
Paravada – 531021
Andhra Pradesh
2. राजस्व/ The Revenue : **The Income Tax Officer**
Ward – 5(3)
Ayakar Bhavan, Dabagardens
Visakhapatnam, 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