

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.59/Viz/2024

(निर्धारण वर्ष / Assessment Year :2022-23)

Kanjula Rajagopal Reddy Firm,
Guntur.

PAN: AAEFK 4114 B

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. The Income Tax Officer,
Ward-1(1),
Guntur.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

21/03/2024

27/03/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee against the order of the Ld. Addl / JCIT (Appeals)-7, Mumbai in DIN & Order No. ITBA/APL/S/250/2023-24/1059005871(1), dated 22/12/2023 arising out of the order passed U/s. 143(1) of the Income Tax Act, 1961 [the Act] for the AY 2022-23.

2. Briefly stated the facts of the case are that the assessee filed its return of income for the AY 2022-23 on 18/9/2022 declaring total income of Rs. 14,71,610/-. The return was processed U/s. 143(1) of the Act on 17/02/2023 accepting the return of income. However, the Ld. AO, CPC while processing the return filed by the assessee observed that the assessee had claimed TDS of Rs. 72,218/-. Considering the facts and circumstances of the case, the Ld. AO, CPC applied Rule 37BA of the Income Tax Rules, 1962 and restricted the claim of the assessee to an extent of Rs. 9,583/- only and passed Intimation U/s. 143(1) of the Act. Aggrieved by the Intimation of the Ld. AO, CPC passed U/s. 143(1) of the Act, the assessee preferred an appeal before the Ld. Addl./ JCIT (Appeals)-7, Mumbai. On appeal, after considering the submissions of the assessee the Ld. Addl. / JCIT (Appals) partly allowed the appeal. On being aggrieved, the assessee filed the present appeal before the Tribunal by raising the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A) ought to have directed the AO to grant credit for entire amount of Rs.37,984/- that was deducted as tax at source U/s. 194Q of the Act from the commission income.*
- 3. The Ld. CIT(A) ought to have appreciated that the appellant is only a commission agent and therefore the CPC is not justified in applying Rule 37BA by treating the gross ale proceeds as the income of the appellant.*

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

3. At the outset, the Ld. Authorized Representative [AR] submitted that the assessee is only a commission agent and therefore the total gross sale proceeds cannot be treated as the income of the assessee and thereby the Ld. Revenue Authorities have erred in applying the Rule-37BA of the Income Tax Rules, 1962. The Ld. AR further submitted that since the assessee is a commission agent, the purchaser has deducted the TDS as per his portion of commission but the Ld. AO opined that there is a shortfall of TDS. The Ld. AR also submitted that as per the Circular No.452, dated 17th March, 1986 issued by the Central Board of Direct Taxes [CBDT] the actual turnover of the Kaccha Aarahtias is the commission charged and it does not include the sales effected on behalf of the principals. The Ld. AR strongly relied on the Board Circular (supra) and reiterated that since the assessee is only a commission agent, the assessee is eligible to get credit of the entire amount deducted as tax at source U/s. 194Q of the Act and therefore pleaded that the grounds raised by the assessee may be allowed.

4. On the other hand, Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

5. I have heard both the sides and perused the material available on record as well the orders of the Ld. Revenue Authorities. I have also gone through the CBDT Circular No. 452, dated 17th March, 1986 (supra) relied on by the Ld. AR. For the sake of reference, the relevant portion of paragraph No.4 of the said Circular (supra) is extracted herein below:

*“4. The Board are advised that so far as **kaccha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of 44AB.** But the position is difference with regard to pacca arahtias.....”*

6. From the above it is clear that Kaccha Arahtias turnover includes only the gross commission and not the sales effected on behalf of their principals. In the present case, it is a fact that the assessee is only a licensed commission agent in Agricultural Market Committee Yard, Guntur which is formed under the rules and regulations of the Government of Andhra Pradesh. Therefore, the Circular issued by the CBDT (supra) squarely applies to the assessee and hence I am of the view that the assessee is acted only as an agent (kaccha arahtia) and therefore it is eligible to get credit

of the entire amount deducted as tax at source and there is no short fall of TDS as concluded by the Ld. Revenue Authorities. Accordingly, I hereby set-aside the orders of the Ld. Revenue Authorities and direct the Ld. AO to grant credit of the entire amount deducted as tax at source in the case of the assessee. The grounds raised by the assessee are allowed.

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

Pronounced in the open Court on 27th March, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 27/03/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee– Kanjula Rajagopal Reddy Firm, d.No. 24-3-115, 1st floor, Mahalakshamma Chettu Veedhi, Patnam Bazar, Guntur, Andhra Pradesh – 522003.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), O/o. ITO, CR Buildings, Kannavarithota, Guntur, Andhra Pradesh – 522001.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam