

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.269/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

Konathala Nooku Naidu,
Anakapalle.

PAN: ACZPN 4551 C

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. The Income Tax Officer,
Ward-1,

Anakapalle.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

: 12/03/2024

: 18/03/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal is filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1055591804(1), dated 30/08/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual filed his return of income for the AY 2017-18 on 23/01/2018 declaring a total income of Rs. 5,28,089/- under 'Short Term Capital Gains' [STCG] and 'other sources'. Subsequently, the case was selected for Limited Scrutiny under CASS to examine the cash deposits made by the assessee during the demonetization period and the claim of exemption of agricultural income. Subsequently, a notice U/s. 143(2) was issued on 15/08/2018 and duly served on the assessee. Thereafter, notice U/s. 142(1) of the Act was issued on 17/7/2019 and called for certain information. In response, the assessee furnished the information as called for. During the course of assessment proceedings, the assessee was asked to explain the sources for cash deposits of Rs. 25,40,000/- made in ICICI Bank account of the assessee. In reply, the assessee submitted that he is engaged in purchase and sale of small sites (real estate) situated in Anakapalli area. Further, the assessee submitted that the alleged cash deposit was made out of the cash balance of Rs. 27,39,364/- as on 1/11/2016. In support of his claim the assessee also submitted cash book and confirmation letters. On perusal and verification of the submissions made by the assessee, the Ld. AO came to a conclusion that the assessee is not having appropriate

source to deposit cash of Rs. 25,40,000/- in his bank account. Accordingly, the Ld. AO treated the cash deposit of Rs. 25,40,000/- as unexplained cash in the hands of the assessee and made addition by invoking the provisions of section 69A of the Act. Thus, the Ld. AO determined the assessed income at Rs. 30,68,089/- and completed the assessment U/s. 143(3) of the Act vide order dated 26/12/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, the assessee made various submissions before the Ld. CIT(A)-NFAC but the Ld. CIT(A)-NFAC did not consider the assessee's submissions and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in 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) is not justified in sustaining the addition of Rs. 25,40,000/- made by the Assessing Officer U/s. 69A of the Act towards alleged unexplained cash deposits in the bank account.*
3. *Any other grounds may be urged at the time of hearing.”*

3. At the outset, the Ld. Authorized Representative [AR] submitted that the cash deposited by the assessee in his ICICI bank account is nothing but sale consideration of sites / land. The

Ld. AR also submitted that the assessee has filed an agreement of sale before the Ld.AO as well as the Ld. CIT(A)-NFAC but the Ld. Revenue Authorities have not considered the same. The Ld. AR also submitted that the purchaser has also given the confirmation letter stating that he has entered into an agreement of sale with the assessee and paid an amount of Rs. 30 lakhs as an advance. Further, the Ld. AR submitted that the said advance amount was also recorded in the books of account of the assessee. But, without considering the said facts, the Ld. Revenue Authorities have arbitrarily made an addition of Rs. 21,50,000/-. Out of the remaining balance amount, insofar as Rs. 2.60 lakhs is concerned, the assessee has availed loan from the bank and withdrawn the loan amount and deposited the same during the demonetization period. In so far as Rs. 90,000/- is concerned, the assessee held this amount as cash on hand to meet the petty expenses and deposited the same during the demonetization period. Insofar as Rs. 40,000/- is concerned, it is nothing but exchange of old notes and the assessee deposited and withdrawn the same on the same date. Therefore, the Ld. AR pleaded that the source of the cash deposits are clearly established by the assessee and hence the addition made by the Ld. Revenue Authorities may be deleted.

4. Per contra, the Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities. The Ld. DR also argued that the assessee has not properly explained the source of cash deposits and in the agreement of sale, the purchaser has not signed but he filed the confirmation letter and therefore the Ld. AO and the Ld. CIT(A)-NFAC have not considered the same. The Ld. DR pleaded to uphold the orders of the Ld. Revenue Authorities.

5. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is a fact that the assessee has mentioned about the receipts of sale consideration as per the sale of agreement in his books of accounts. As per the agreement of sale, the purchaser has paid the sale consideration of Rs. 30 lakhs to the assessee. But the contention of the Revenue is that the purchase agreement was not signed by the purchaser. On this aspect, on perusal of the Agreement of Sale, it is clear that the stamp paper is also in the name of the purchaser. Apart from the above, the assessee is engaged in the real estate business. Considering the above facts and circumstances of the case, it is apparent that the assessee has received sale consideration of Rs. 30 lakhs as per the agreement of

sale and filed the confirmation letter saying that the purchaser has paid the sale consideration to the assessee. Therefore, I am of the view that the assessee has properly explained the source of cash deposit of Rs.21,50,000/-. Therefore, I direct the Ld. AO to delete the addition of Rs.21,50,000/- made in the hands of the assessee.

6. Insofar as the loan of Rs. 2,60,000/- is concerned, the contention of the assessee is that he has availed a loan and withdrawn the amount and redeposited the same in his bank account. On perusal of this transaction of the assessee, I find that the assessee has availed a loan on 26/9/2016 and withdrawn the same on 29/9/2016. But, the assessee has deposited the said amount on 13/11/2016. The assessee has not properly explained as to why the loan was availed by the assessee and for what purpose he has withdrawn the amount on 29/11/2016 and deposited the same after one and half months. Therefore, the contention of the assessee is not tenable. Hence, I am of the view that the assessee has not properly explained the source for the cash deposit of Rs. 2,60,000/- and thus I sustain the addition to this extent.

7. Insofar as Rs. 90,000/- is concerned, the contention of the assessee is that he was having cash on hand for petty expenses

and the same was deposited due to demonetization. After considering the assessee's submissions and the assessee's nature of the business and the material available on record, I find force in the argument of the assessee and therefore the cash deposit of Rs. 90,000/- is treated as explained. It is ordered accordingly.

8. Insofar as Rs. 40,000/- is concerned, the contention of the assessee is that he has deposited the old currency notes which are kept for petty expenses and obtained the new currency notes from the Bank. After considering the submissions of the assessee, I find force in the argument of the assessee and therefore the cash deposit of Rs. 40,000/- is treated as explained. It is ordered accordingly.

9. Conclusively, after considering the above facts and circumstances of the case, I hereby sustain the addition to the extent of Rs. 2,60,000/- as unexplained.

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

Pronounced in the open Court on 18th March, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated :18/03/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Konathala Nooku Naidu, D.No. 14-9-32/1, Nidhanamdoddi, Anakapalle Mandal, Visakhapatnam District, Andhra Pradesh – 531002.
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, O/o. Income Tax Office, Aayakar Bhavan, Gandhinagaram, Anakapalle, Andhra Pradesh-531001.
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