

आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ, विशाखापट्टणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.93/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2018-19)

Vishnu Srinivasa Rao Kakarla,
2, Main Road, Ganapavaram –
534198, Andhra Pradesh.

PAN: AMUPK 8375 Q

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

Vs.

Income Tax Officer,
Ward-1, Tanuku,
Andhra Pradesh-534211.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Sri Sankar Pandi, Sr. AR

22/05/2023

15/06/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1049624886(1), dated 10/02/2023

arising out of the order passed U/s. 143(3) r.w.s 144B of the Act, dated 26/04/2021 for the AY 2018-19.

2. The facts of the case are that the assessee is a Fish Commission Agent and acts as a middleman between farmer and market person for which he receives commission. The assessee filed his return of income for the AY 2018-19 on 25/10/2018 admitting total income of Rs. 46,15,390/-. Subsequently, the case was selected for limited scrutiny for the purpose of verifying "cash deposits". A notice U/s. 143(2) of the Act and a detailed questionnaire through a notice U/s. 142(1) of the Act was issued and served on the assessee. In response, the assessee filed the required details before the Ld. AO. Considering the submissions made by the assessee, the Ld. AO noticed that the assessee has made cash payments exceeding the limits prescribed U/s. 40A(3) of the Act and hence the Ld. AO treated the cash withdrawals of Rs. 84,60,669/- as disallowance U/s. 40A(3) of the Act and added to the total income of the assessee. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A)-NFAC, the assessee contested in his written submissions that the Ld. AO has travelled beyond the limited scrutiny proceedings and converted it into a full scrutiny

proceedings without permission from the Ld. Pr. CIT. The Ld. CIT(A)-NFAC rejected the explanation furnished by the assessee and therefore confirmed the order of the Ld. AO by dismissing the appeal. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us and raised 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 quashed the assessment order passed in the case of appellant U/s. 143(3) r.w.s 144B of the Act on the ground that no notice U/s. 143(2) of the Act was issued by the Assessing Officer having jurisdiction over the appellant.*
- 3. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) ought to have deleted the addition of Rs. 84,80,669/- made by the Assessing Officer towards disallowance U/s. 40A(3) of the Act as beyond the scope of limited scrutiny.*
- 4. Without prejudice to Ground No.2, and Ground No.3, the Ld. CIT(A) is not justified in sustaining the addition of Rs. 84,80,669/- made by the Assessing Officer towards disallowance U/s. 40A(3) of the Act.*
- 5. Any other grounds may be urged at the time of hearing."*

4. Grounds No. 1 and 5 are general in nature and need no adjudication.

5. Ground No.2 being a legal ground was not pressed by the Ld. AR.

6. With respect to Grounds No. 3 & 4 where a disallowance U/s. 40A(3) was made for Rs. 84,80,669/-, the Ld. AR argued

that the Ld. AO has travelled beyond his powers in verifying the cash withdrawals where the case was selected under CASS for Limited Scrutiny for the purpose of verifying the cash deposits into the bank account of the assessee. The Ld. AR vehemently argued that the Ld. AO has no jurisdiction to make disallowance U/s. 40A(3) of the Act without converting the assessment into complete scrutiny proceedings. The Ld. AR therefore pleaded that the addition made by the Ld. AO and confirmed by the Ld. CIT(A)-NFAC be deleted.

Per contra, the Ld. DR fully supported the orders of the Ld. Revenue Authorities.

7. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. It is a fact that the case was selected for scrutiny for the purpose of verifying the huge cash deposits into the bank account by the assessee. The Ld. AO has travelled beyond his jurisdiction in verifying the cash withdrawals without converting the case into complete scrutiny as per the directions issued by the Central Board of Direct Taxes [CBDT]. The Ld. AO in para 7.5 of his order has stated that the assessee himself accepted the cash withdrawals for paying the fishermen. The Ld. AO therefore disallowed the same U/s. 40A(3) of the Act since it is not covered

under the exceptions prescribed under Rule 6DD of the IT Rules, 1962. However, we find that the Ld. AO has not taken approval from the Ld. Pr. CIT for verification of the cash withdrawals which is beyond the scope of the limited scrutiny for which the assessee's case is opened for the purpose of verification of the huge cash deposits into the bank account of the assessee. There is no dispute by the Ld. AO regarding the satisfaction of the cash deposits for which the limited scrutiny purpose was initiated. As far as the limited scrutiny proceedings are concerned, the scrutiny has to be limited to the parameters selected for the purpose of scrutiny only to the specific issues and not beyond that under any circumstances. In case, if the Ld. AO wants to take up the case for complete scrutiny, first the Ld. AO has to convert the limited scrutiny into complete scrutiny case and then he may take up the case for complete scrutiny with the prior approval of the Ld. Pr. CIT / CIT concerned after being satisfied about the issue of converting it into a complete scrutiny. In the instant case, we find that no such approval has been granted to the Ld. AO to travel beyond the verification of the cash deposits. The Ld. AO also not found any material against the assessee with respect to the cash deposits into the bank accounts of the assessee. In view of the above discussions, we find that the Ld.

AO has travelled beyond his jurisdiction in disallowing the cash withdrawals being payments made to various fishermen by invoking the provisions of section 40A(3) of the Act is not valid in law and therefore we are inclined to quash the order passed by the Ld. AO U/s. 143(3) r.w.s 144B of the Act and allow the Grounds No.3 and 4 raised by the assessee.

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

Pronounced in the open Court on the 15th June, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 15.06.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Kakarla Vishnu Srinivasa Rao, 2, Main Road, Ganapavaram, Andhra Pradesh – 534198.
2. राजस्व/The Revenue – Income Tax Office4r, Aayakar Bhavan, Sajjapuram, Tanuku, Andhra Pradesh – 534211.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam