

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 60/VIZ/2019
(Asst. Year : 2013-14)**

Sakalabaktula Vaikunta Rao, vs. ITO, Ward-2,
Prop. Sri Tirumala Modern Srikakulam.
Rice Mill, K.T. Road, Palasa,
Srikakulam.

PAN No. AADHS 7593 D (Appellant) (Respondent)

Assessee by : Shri G.V.N. Hari, Advocate.
Department By : Shri D. Manoj Kumar, Sr.DR

Date of hearing : 05/11/2019.
Date of pronouncement : 08/11/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-9, Hyderabad, dated 27/11/2018 for the Assessment Year 2013-14.

2. In this case, there is a delay in filing the appeal before the Id. CIT(A). According to the assessee, the delay is only 242 and according to the Id. CIT(A) the delay is 463 days. The assessee

has filed a petition for condonation of delay, wherein he explained the delay as under:-

- "1. The appellant is involved in the business of milling the paddy and sale of rice. The police authorities seized a cash amount of Rs. 28,00,000 on 07/05/2012 that was carried by him for the purpose of purchasing cashew nuts from farmers of Pendurthi. The appellant explained that this amount was drawn from his books of account. In order to ascertain this, the income tax authorities conducted a Survey on 08/05/2012 in the business premises of the appellant.*
- 2. On noticing certain discrepancies, the survey was converted into search action on 09/05/2012 and the amount that was intercepted by the police authorities was seized by the income tax authorities. During the assessment proceedings, the appellant agreed to admit Rs.7,20,000/- towards additional income. He filed the return admitting the same. Thereafter, he filed a letter dt.24/03/2013 requesting the Assessing Officer to adjust the tax on the above amount of Rs. 7,20,000/- and to release the balance from the seized amount of Rs. 28 lakhs.*
- 3. The assessment u/sec. 143(3) was completed on 31/03/2015 by making addition of Rs. 2,50,000/- towards excess stock of paddy and Rs. 28,00,000/- towards unexplained cash. However, the appellant was not served with the assessment order.*
- 4. Thereafter, penalty proceedings were initiated by issue of notice u/sec. 271(1)(c) dated 31/03/2015 that was served on the appellant on 15/04/2015. There was no mention of the assessment that was completed u/sec. 143(3) in the notice. The appellant replied that he admitted Rs 7,20,000/- and paid taxes and hence requested the Assessing Officer to drop the penalty proceedings. The appellant all the time was under the impression that the seized amount of Rs. 28 lakhs was explained.*
- 5. The penalty proceedings were concluded on 30/09/20145 levying a penalty of Rs. 11,64,900/-. However, the penalty order was also not served on him.*
- 6. The appellant is an aged person of 72 years. He sent his son Sri S. Ravi Kumar on 31/03/2016 to the Income Tax Department at Visakhapatnam to enquire about the release of the cash seized. At that time only it was know that the assessment and the penalty orders were passed in his case. The Income Tax Officer made Sri S. Ravi Kumar sign the*

acknowledgement with date as received on 30/09/2015 and handed over him the copies of the assessment and penalty orders.

7. *During the first week of April, the appellant fell ill. He consulted a doctor during which he was found to be suffering with viral hepatitis. The doctor advised him to have complete bed rest for 3 months. Owing to his old age, the appellant took considerable time to recover fully.*
8. *During the last week of July, while he was going through the pending works he noticed that appeals were not filed against the assessment order u/sec. 143(3) and the penalty order u/sec. 271(1)(c) of the Act. Without further delay, he took necessary steps to file the appeals. As such, the appeals could be filed on 05/08/2016. Consequently, there was a delay of 242 days in filing the appeal against the assessment order u/sec. 143(3) of the Act.*
9. *Thus, the delay of 242 days in filing the appeal was neither intentional nor deliberate and was on account of reasons beyond the control of the appellant.*

Therefore, it is prayed that the said delay of 242 days may kindly be condoned and appropriate orders may be passed in the interests of substantial justice."

- 3.** The Id.DR strongly opposed for condonation of delay.
- 4.** We have gone through the condonation application filed by the assessee and find that there is a sufficient cause to condone the delay. Therefore, delay is condoned and the order passed by the Id. CIT(A) is set aside and direct him to pass the orders on merits of the case in accordance with law after giving proper opportunity of hearing to the assessee. Thus, this appeal filed by the assessee is allowed for statistical purpose.

5. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order Pronounced in open Court on this 08th day of Nov., 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 08th November, 2019.

vr/-

Copy to:

1. *The Assessee – Sakalabaktula Vaikunta Rao, Prop. Sri Tirumala Modern Rice Mill, K.T. Road, Palasa, Srikakulam.*
2. *The Revenue – ITO, Ward-2, Srikakulam.*
3. *The Pr.CIT-2, Visakhapatnam.*
4. *The CIT(A-9, Hyderabad.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.