

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**  
*(Through web-based video conferencing platform)*

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 108/VIZ/2020  
(Asst. Year : 2013-14)**

Tatineni Ramesh Kumar  
Rep. by L/H Tatineni Saket  
Ram Chowdary, D.No. 1-84-17/1,  
Plot No.227/IV, Sujatha  
Agencies, Sector 4, MVP Double  
Road, Visakhapatnam.

vs. Income Tax Officer  
Ward-2(4), Vijayawada.

PAN No. AARPT 4568 P  
(Appellant)

(Respondent)

Assessee by : None.

Department by : Smt.Suman Malik, Sr.DR

Date of hearing : 24/06/2021.

Date of pronouncement : 24/06/2021.

**ORDER**

**PER N.K. CHOUDHRY, JUDICIAL MEMBER**

This appeal has been preferred by the Assessee's legal heir against the order dated 23/12/2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals) [for short, "Id. Commissioner"], Kurnool u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2013-14.

**2.** In this case, the appeal was filed before the Id. Commissioner with a delay of 151 days, however, the Appellant failed to adduce any plausible reasons with supporting documentary evidence to demonstrate that there was sufficient cause for 151 days delay in filing the appeal within the meaning of section 249(3) of the Act as observed by the Id. Commissioner. Further, Id. Commissioner observed that even after a lapse of more than 3 years from the date of filing of the appeal till date i.e. from 28/09/2016 to 23/12/2019, the Appellant has not yet filed the requisite formal condonation petition along with affidavit and supporting documentary evidence seeking condonation of delay.

It also appears from the impugned order that the Appellant being a legal heir of the deceased Assessee has filed the appeal before the Id. Commissioner and in Form No.35 at column Nos. 14 & 15 which relate to delay in filing of appeal, stated that the Assessee has expired on 14/03/2016 and therefore the legal formalities for getting the relevant certificates got delayed, hence, delay is requested to be pardoned.

The Id. Commissioner did not get impress by the reasons for delay given by the legal heir of the Assessee and dismissed the

appeal in *limine* on the point of limitation. The Appellant being aggrieved preferred the instant appeal.

**3.** Having heard the parties and perused the material available on record. The appeal of the Assessee was dismissed in *limine* as not admitted on the ground of non-filing of the necessary application with supporting affidavit. It is an admitted fact that the Assessee deceased had expired on 14/03/2016 and as per the legal heir of the Assessee the legal formalities for getting the relevant certificates have been delayed which resulted into delay of 151 days in filing the appeal. Though, the Appellant has mentioned the reason for delay in Form No.35 at column 14 & 15 and requested in column 15 itself for pardoning the delay, however, failed to file appropriate application and supporting documents which includes affidavit before the Id. Commissioner.

**3.1.** Though, the application for condonation of delay is supposed to be filed along with the appeal itself, however as has been held by the Hon'ble Supreme Court in the case of **State Of M.P. And Anr vs Pradeep Kumar and Anr.**, decided on 12<sup>th</sup> September, 2000 [2000 Supp (3) SCR 235] the same can be entertained at a later stage. The relevant conclusion of the Hon'ble Supreme Court is reproduced herein below :

*“The object of enacting Rule 3-A in Order 41 of the Code seems to be two- fold. First is, to inform the appellant himself who filed a time barred appeal that it would not be entertained unless it is accompanied by an application explaining the delay. Second is, to communicate to the respondent a message that it may not be necessary for him to get ready to meet the grounds taken up in the memorandum of appeal because the court has to deal with application for condonation of delay as a condition precedent. Barring the above objects, we cannot find out from the rule that it is intended to operate as unremediably or irredeemably fatal against the appellant if the memorandum is not accompanied by any such application at the first instance. In our view, the deficiency is a curable defect, and if the required application is filed subsequently the appeal can be treated as presented in accordance with the requirement contained in Rule 3-A of Order 41 of the Code”.*

**3.2.** It seems that may be due to lack of knowledge or guidance or inadvertence, the appellant failed to file the appropriate application and supporting affidavit/evidence in support of reasons for delay. The Assessee died and the appeal before the Id. Commissioner was filed by the legal heir, therefore, considering the peculiar facts and circumstances as discussed above, we deem it appropriate to remand back this case to the file of the Id. Commissioner for decision afresh while affording reasonable opportunity(s) to the Assessee for filing an appropriate application along with affidavit/evidence in support of reasons for delay. Hence ordered accordingly.

**4.** In the result, appeal filed by the Assessee stands allowed for statistical purpose.

Order Pronounced in open Court on this 24<sup>th</sup> day of June, 2021.

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

sd/-  
**(N.K. CHOUDHRY)**  
**Judicial Member**

**Dated: 24<sup>th</sup> June, 2021.**

**vr/-**

*Copy to:*

1. *The Assessee - Tatineni Ramesh Kumar, Rep. by L/H Tatineni Saket, Ram Chowdary, D.No. 1-84-17/1, Plot No.227/IV, Sujatha Agencies, Sector 4, MVP Double Road, Visakhapatnam.*
2. *The Revenue -, ITO, Ward-2(4), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Kurnool*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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