

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

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. 179/Viz/2021
(निर्धारण वर्ष/Assessment Year : 2019-20)**

Focus Transtech Shipping Private Vs. Dy.Commissioner of Income Tax
Limited Circle-3(1)
Flat No.402, Level 4, Waltair Heights Visakhapatnam
Visakhapatnam
[PAN : AABCF3074H]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri I.Kamasastry, AR
प्रत्यर्थी की ओर से / Respondent by : Shri SPG Mudaliar, DR

सुनवाई की तारीख / Date of Hearing : 03.02.2022
घोषणा की तारीख/Date of Pronouncement : 16.02.2022

आदेश /ORDER

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi dated 09.09.2021 for the Assessment Year (A.Y.) 2019-20.

2. The only grievance of the assessee is that the Ld.CIT(A) failed to condone the delay in filing the appeal. Brief facts of the case are that the assessee is a Private Limited Company engaged in the business of ocean freight providers for container transportation. The assessee filed its return of income for the A.Y.2019-20 declaring total income at Rs.2,54,17,543/-. The Central Processing Center (CPC) sent a communication of adjustment 143(1)(a) on 10.05.2019 of Rs.7,13,654/- towards PF, ESI and profit on sale of vehicle. The CPC passed an order u/s 143(1) without considering the submissions made by the assessee. The assessee has submitted that there were payments reported in 3CD Annexure to the Audit Report which were made beyond the due date as stipulated in the respective Acts, but all the payments were made before the due date of filing the return of income u/s 139(1). Further the sale proceeds of the vehicle were duly deducted from block assets. After considering all the submissions, the CPC has made an addition of Rs.10,33,125/- to the returned income and thereby computed the total income as Rs.2,68,73,970/-.

3. On being aggrieved, the assessee preferred an appeal before the Ld.CIT(A) with a delay of 234 days. The Ld.CIT(A) dismissed the appeal in limine, saying that there is no sufficient cause to condone the delay.

4. On being aggrieved, the assessee preferred an appeal before us and raised the following grounds :

1. *The National Faceless Appeal Centre, (NFAC for short) Delhi is not justified in dismissing the appeal of the assessee in limine as being belated for the reason that:*

i. *NFAC has considered the date of uploading the intimation under section 143(1)(a) in the registered account of the assessee on the ITBA portal in the absence of any SMS alert on the registered mobile number or email on the registered email id of the assessee.*

ii. *NFAC has not considered the CBDT Circular No. 10/2021 extending the period of limitation with respect to appeals falling due for filing on or after 15.03.2020 in obedience to the Honourable Supreme Court decision on this issue due to the unprecedented COVID-19 Pandemic.*

2. *The Central Processing Centre (CPC for short) is not justified in making an addition of Rs.6,00,658/- being Employees' Contribution to Provident Fund and Employees' State Insurance Contribution on the plea that the same have been paid after the due dates under the respective acts though the same have been paid within the due date for filing the return of income under section 139(1) of the income-tax Act, 1961.*

3. *The Central Processing Centre is not justified in making an addition of Rs.1,06,269/- on the ground that the nature of business mentioned by the assessee is other than power sector. Whereas this amount is profit on sale of a vehicle which is credited to Profit and Loss Account and therefore deducted from the Profit as Per Profit and Loss Account.*

4. *The Central Processing Centre is not justified in disallowing Rs.6,727/- being employee's contribution to State Insurance for the month of January, 2019, which has not been paid before the due date of filing the return of income and has been disallowed by the assessee in the computation of income filed. This tantamounts to double disallowance once by the assessee and once again by the CPC.*

5. *The appellant prays to add to; delete; alter; modify all or any the above grounds of appeal.*

At the outset, the Ld.Counsel for the assessee has submitted that due to pandemic, the assessee was unable to file the appeal in time and relied on the decision of Hon'ble Supreme Court in a writ petition (Civil) No.3/2020 dated 23.03.2020, wherein the Hon'ble Supreme Court has *suo moto* has extended the time prescribed for filing all appeals till further orders. In obedience of the said orders, the CBDT in its Circular No.10/21 (F.No.225/49/2021/ITAT11 dated 25.05.2021 has clarified that limitation period for filing appeals before CIT(A) under the Income Tax Act has been extended. The Ld.Counsel for the assessee has further submitted that the delay is not due to willful negligence of the assessee. He further submitted that the Ld.CIT(A) did not consider the decision of Hon'ble Supreme Court as well as the Circular issued by CBDT vide its Circular No.10/21 and dismissed the assessee's appeals *in-limine*. He further submitted that the assessee is having good case to succeed the appeal as the Ld.CIT(A) has not considered the issue on merits. Therefore, the delay may be condoned.

5. On the other hand, the Ld.DR submitted that the Ld.CIT(A) has rightly considered all the submissions made by the assessee and came to a conclusion that there is no sufficient cause to condone the delay. He further submitted that intimation was sent online, but the assessee claimed that he was not aware of the intimation issued by CPC, but that itself is not

at all a valid ground to condone the delay and the Ld.CIT(A) has rightly dismissed the assessee's appeal. Therefore, the Ld.DR requested to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

5. We have heard both the parties and perused the material placed on record. After considering the facts and circumstances of the case, we are of the view that the assessee's appeal suffers from 234 days delay in filing the appeal before the Ld.CIT(A). The Ld.Counsel for the assessee has submitted that due to the outbreak of pandemic, COVID-19, the assessee was unable to file the appeal in time as prescribed by the Act. The Ld. Counsel for the assessee has relied on Civil Appeal No.9488 and 9489/2019 dated 17.12.19, in which it was held that such delay supported by cogent reasons deserves to be condoned, so as to make a way for the cause of substantial justice. Therefore, after considering the submissions made by the Ld.Counsel for the assessee, we hold that the assessee's impugned delay of 234 days is neither intentional nor deliberate, but due to the circumstances beyond its control. Accordingly, we condone the delay of 234 days and remit the matter back to the file of the Ld.CIT(A) to adjudicate the assessee's appeal on merits after giving opportunity of being heard to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16th February, 2022.

Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिक सदस्य/ JUDICIAL MEMBER
Dated : 16.02.2022 L.Rama, SPS	

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

1. निर्धारिती/ The Assessee – Focus Transtech Shipping Private Limited, Flat No.402, Level 4, Waltair Heights, Visakhapatnam
2. राजस्व/The Revenue – Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
3. आयकर आयुक्त (अपील)/ CIT(A), National Faceless Appeal Centre (NFAC), Delhi
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
5. गार्डफ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam