

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

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.226/Viz/2021

(निर्धारण वर्ष / Assessment Year :2017-18)

Balaganeswararao Dasari,  
D.No.8-10, Chitra Cheruvu  
Gattuchivara, Palakol-534260.  
PAN: BOQPD 4127 N

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,  
Ward-1,  
Palakol.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam

Sri SPG Mudaliar, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

15/03/2022

06/04/2022

**ORDER**

**PER DUVVURU RL REDDY, Judicial Member :**

This appeal filed by the assessee against the order of the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2021-22/1035239033(1), dated 02/09/2021 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2017-18.

2. The assessee has raised five grounds in his appeal and they are extracted herein below for reference:

- “1. That under the facts and circumstances of the case the order passed by CIT(A), NFAC U/s. 250 of the Act dated 2/9/2021 is contrary to the provisions of the law and facts of the case.
2. the Ld. CIT(A) erred in dismissing the appeal on the ground that the Assessee did not respond to the notices of hearing, when the fact of the matter is that assessee had filed written submissions through e-filing portal on 27/07/2021. Therefore, dismissing the appeal by the Ld. CIT(A) due to alleged non-compliance is not acceptable.
3. Even if it is to be accepted, without conceding that assessee did not respond to the notice of hearing, the Ld. CIT(A) ought to have decided the issue on merits, instead of dismissing the appeal for alleged non-compliance, therefore impugned order passed is against the provisions of law.
4. The Ld. CIT(A) by dismissing the appeal, erred in confirming the additions made by the AO of Rs. 8,13,994/- without considering the facts and submissions on record.
5. For these and other reasons that are to be urged at the time of hearing of the appeal, the appellant prays that the order passed by the Ld. CIT (A) is erroneous both on facts and as well as in law, therefore, the same needs to be set aside in the interest of justice.”

3. Before us, at the outset the Ld. AR submitted that in the case of the assessee the Ld. AO passed order U/s. 143(3) of the Act vide order dated 04/12/2019 wherein the Ld. AO made addition of Rs. 8,13,994/- on account of difference in gross receipts as per the P & L Account and as per the statement in Form 26AS. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). On appeal, the Ld. CIT (A), National Faceless Appeal Centre (NFAC), Delhi had passed *ex-parte* order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to

the file of the Ld CIT (A) in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee however, on the given dates of hearing none appeared before the Ld. CIT (A). Therefore the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

4. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that the Ld. CIT (A), NFAC had posted the case on certain occasions which is apparent at para 4 of the Ld. CIT(A)'s order. However, none appeared on behalf of the assessee before the CIT(A) on the given dates of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeal ex-parte. In this situation, considering the nature of issues involved in the appeal and the prayer of the Ld. AR, following the principles of natural justice as well as in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings

failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on record. It is ordered accordingly.

5. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on the 06<sup>th</sup> April, 2022.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 06.04.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee- Balaganeswara Rao Dasari, D.No.8-10, Chitra Cheruvu Gattuchivara, Palakol – 534260, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Income Tax Buildings, Doddipatla Road, Palakol, West Godavari, Andhra Pradesh – 534260.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam