

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.236, 237 & 238/Viz/2022

(निर्धारण वर्ष / Assessment Years: 2013-14, 2014-15 & 2015-16)

Balajee Constructions,
1-43, Hospital Road, Rambilli
Road, Rambilli Mandalam,
Visakhapatnam-531061,
Andhra Pradesh.
PAN: AAFFB8159 G

(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. Deputy Commissioner of
Income Tax,
TDS Ward-1,
Visakhapatnam,
Andhra Pradesh.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Sri ON Hari Prasada Rao,
Sr. AR

27/03/2023

21/04/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

The captioned three appeals are filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi in DIN & Order No. ITBA/NFAC/S/250/2022-23/1045777624(1), ITBA/NFAC/S/250/2022-

23/1045777903(1) & ITBA/NFAC/S/250/2022-23/1045778241(1), dated 21/09/2022; arising out of the order by Income Tax Officer, TDS, Ward-1, Visakhapatnam. Since the issues involved in all these appeals are identical, for the sake of convenience, they are clubbed, heard together and disposed off in this consolidated order.

2. At the outset, it is noted from the record that there is a delay of 16 days in filing the instant appeals before the Tribunal. Explaining the reasons for belated filing of the appeals, the Ld. Authorized Representative [AR] drawn our attention to the petition filed by the assessee seeking condonation of delay and read out the contents of the petition. For the sake of reference, the relevant portion of the condonation petition is extracted herein below:

1. *The ourder U/s. 250 of the Act dated 21/09/2022 passed by the CIT(A) was served on the same date as displayed in income tax portal. The appeal was to be filed on / before 20/11/2022 but the same is filed on 6/12/2022 thus causing a delay of 16 days. The reason for the delay is that managing partner of the assessee firm was affected with Covid Symptoms and was confined in the house till 28/11/2022.*
2. *Finally the appeal was filed on 6/12/2022 causing a delay of 16 days.*
- 3.....
- 4.....

3. After hearing the submissions of the Ld. AR as well as on perusal of the contents of the condonation petition filed by the

assessee, we are of the view that the assessee was prevented by a reasonable and sufficient cause in filing the appeal belatedly before the Tribunal with a delay of 16 days. Therefore, in our view, this is a fit case for condoning the delay and hence we hereby condone the delay of 16 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

4. Since the grounds raised by the assessee in all the three appeals are identical, we shall take up the **ITA No. 236/Viz/2022 (AY 2013-14) as the lead appeal.**

5. Brief facts of the case pertaining to AY 2013-14 are that the assessee filed e-TDS return which was processed U/s. 200A of the Act vide order dated 4/6/2016. Subsequently, the Ld. AO raised a demand of Rs. 19,540/- being late fee U/s. 234E of the Income Tax Act, 1961 [the Act]. Aggrieved by the decision of the Ld. AO levying the late filing fee U/s. 234E of the Act, the assessee filed a letter dated 24th January, 2019 seeking waiver of late filing fee and rectification U/s. 154 before the Ld. ITO (TDS), Ward-1, Visakhapatnam. The Ld. ITO vide letter dated 10/5/2019 rejected the application for waive-off of demand considering the provisions of the Income Tax Act, 1961 by stating that there is no scope for waive-off of late filing fee U/s. 234E of

the Act. Aggrieved by the letter of the Ld. ITO dated 10/5/2019, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

6. Before the Ld. CIT(A)-NFAC, the assessee contested the denial of the waive-off letter dated 10/5/2019 issued by the Ld. ITO (TDS) Ward-1, Visakhapatnam. The Ld. CIT(A)-NFAC dismissed the appeal in-limine as it is not maintainable since the appeal is filed against the letter for waive-off of late filing fee and not against the order for levying of penalty U/s. 234E of the Act. The Ld. CIT(A)-NFAC also observed that as per the provisions of section 246 of the IT Act, 1961, an appeal can be filed against assessment, penalty order or against intimation however, the instant appeal is filed against letter denying the waiver of late filing fees and directing the assessee to pay the outstanding demand. After discussing the issue at length, in concluding paragraph No. 7.2 of the Ld. CIT(A)-NFAC order, while dismissing the assessee's appeal, the Ld. CIT(A)-NFAC held that since the grounds of appeals being agitated are primarily directed against the order passed U/s. 200A/234E wherein penalty / late filing fee was levied, whereas the appeal is filed against the letter dated 10/05/2019 issued by the ITO (TDS), Ward-1, Visakhapatnam.

Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in further appeal before the Tribunal.

7. Before us, at the outset, the Ld. AR submitted that the assessee on receiving the intimation raising demand of late filing fee U/s. 234E and interest thereon U/s. 220(2), immediately responded to the same and filed a letter on 24/01/2019 seeking waiver for late fee and rectification U/s. 154 before the Ld. AO. But, the Ld. ITO (TDS), Ward-1, Visakhapatnam sent a letter on 10/05/2019 stating that it is out of his scope to waive-off the late filing fee. Therefore, the assessee has filed an appeal before the Ld. CIT(A)-NFAC based on the letter issued by the Ld. ITO. The Ld. AR further submitted that the section 200A of the Act has been amended by the Finance Act, 2015 which came into effect from 01/06/2015 and certain new clauses (c) & (d) were inserted in section 200A of the Act. He further contended that prior to the amendment U/s. 200A of the Act w.e.f 1/6/2015, levy of fee U/s. 234E was not tenable. Therefore, the Ld. AR submitted that the Ld. Revenue Authorities are erred in levying the late filing fee and on appeal the Ld. CIT(A)-NFAC ought to have deleted the demand of late filing fee. Therefore the Ld. AR

pleaded that the entire demand of late filing fee U/s. 234E and interest levied U/s. 220(2) may be deleted.

8. On the other hand, the Ld. DR heavily relied and supported the order of the Ld. CIT(A).

9. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is a fact that the assessee has filed e-TDS return belatedly for the respective quarters of the impugned AY under consideration which was processed U/s. 200A of the Act and a demand was raised towards late filing fee U/s. 234E of the Income Tax Act, 1961. Later on, the assessee filed a letter on 24/01/2019 seeking waive-off of late fee and rectification U/s. 154 before the Ld. AO. The Ld. AO did not pass any rectification order since it is not a petition U/s. 154. However, the Ld. ITO (TDS), Ward-1, Visakhapatnam responded to the assessee's letter stating that the waive-off of the late filing fee is out of his scope. In our view the assessee ought to have filed a petition seeking rectification of the order passed by the Ld. AO instead of filing a letter. However, the assessee filed an appeal based on the letter issued by the Ld. ITO (TDS), Ward-1, Visakhapatnam instead of filing the appeal against the intimation. Considering these facts

and circumstances of the case, the Ld. CIT(A)-NFAC, following the provisions of section 246A of the Income Tax Act, 1961 dismissed the appeal of the assessee in limine as the same is not a maintainable appeal. The decision of the Ld.CIT (A)-NFAC is given in para 7.2 of his order and it is extracted herein below for reference:

"7.2. Bare perusal of the above section shows that letter issued for recovery of dues is not appealable. Letter dated 10/05/2019 has been issued by Income Tax Officer (TDS), Ward-1, Visakhapatnam. As per Form 35 column-2(c), it has been received on 10/05/2019 and appeal has been filed. It should be carefully noted that cause for grievance arose when order U/s. 200A/234E was passed which is appealable. Consequently, grounds of appeals being agitated, are primarily directed against order passed U/s. 200A/234E wherein penalty / late filing fees was levied, whereas appeal has been filed against letter dated 10/05/2019. In view of the above facts, grounds of appeal cannot be decided on merits and are being dismissed in limine."

10. In this situation, we find it relevant to extract the provisions of section 246A of the Act which reads as under:

'246A. Appealable orders before Commissioner (Appeals).—(1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

- (a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;*
- (b) an order of assessment, re-assessment or re-computation under section 147 or section 150;*

- (c) *an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;*
- (d) *an order made under section 163 treating the assessee as the agent of a non-resident;*
- (e) *an order made under sub-section (2) or sub-section (3) of section 170;*
- (f) *an order made under section 171;*
- (g) *an order made under clause (B) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;*
- (h) *an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;*
- (i) *an order made under section 237;*
- (j) *an order imposing a penalty under—*
 - (A) *section 221; or*
 - (B) *section 271, section 271A, section 271F, section 272AA or section 272BB;*
 - (C) *section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;*
- (k) *an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;*
- (l) *an order imposing a penalty under sub-section (2) of section 158BFA;*
- (m) *an order imposing penalty under section 271B or section 271BB;*
- (n) *an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;*
- (o) *an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;*
- (p) *an order made by a Deputy Commissioner imposing a penalty under section 272AA;*
- (q) *an order imposing a penalty under Chapter XXI;*
- (r) *an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or classes of person, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.*

Explanation—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner"

and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:

Provided *that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.*

Explanation.—For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.'

11. A plain reading of the above section and applying the same to the facts of the instant appeal, one can clearly understand that the letter issued by the Ld. ITO, Ward-1, Visakhapatnam dated 10/05/2019 is nothing but a response to the letter filed by the assessee seeking waive-off of late filing fee imposed by the Ld. AO. Therefore it is not an appealable order before the Appellate Authorities as described in the provisions of the IT Act, 1961. Considering this fact and following the provisions of the Act, the Ld. CIT(A)-NFAC has rightly concluded that the grounds of appeal raised by the assessee cannot be adjudicated on merits since the appeal itself is not maintainable and therefore dismissed in limine. Considering the above facts and circumstances of the instant case, we have no hesitation to come to a conclusion that the Ld. CIT(A)-NFAC's order holds good as there is no infirmity in

the order of the Ld. CIT(A)-NFAC and accordingly no interference is required. It is ordered accordingly.

12. In the result, appeal filed by the assessee in **ITA No.236/Viz/2022 is dismissed.**

13. With respect to **ITA Nos. 237 & 238/Viz/2022** (AYs: 2014-15 & 2015-16), since the grounds of appeal raised by the assessee in these appeals as well as the facts and circumstances of the case are similar to that of the ITA No. 236/Viz/2022 (AY 2013-14), which is adjudicated by us in above paragraphs of this order, our decision given thereon mutatis mutandis applies ITA Nos. 237 & 238/Viz/2022 (AYs: 2014-15 & 2015-16) to these appeals also. Accordingly, both the appeals in ITA Nos. 237 & 238/Viz/2022 filed by the assessee **are dismissed.**

14. In the result, all the three appeals filed by the assessee are dismissed.

Pronounced in the open Court on the 21st April, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 21.04.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Balajee Constructions, D.No. 1-43 Hospital Road, Rambilli Road, Rambilli Mandalam, Visakhapatnam-531061.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, TDS, Aayakar Bhawan, 1st Floor, Daba Gardens, Visakhapatnam, Andhra Pradesh – 530020.
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