

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 246/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2007-08)

Rakesh Constructions, Anantapur [PAN No. AACFR1669Q]	Vs. Income Tax Officer, Ward-2, Anantapur
अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri R. Mohan Kumar, AR  
राजस्व द्वारा/Revenue by: Shri T. Venkanna, DR

सुनवाई की तारीख/Date of hearing: 08/06/2023  
घोषणा की तारीख/Pronouncement on: 22/06/2023

आदेश / ORDER

Aggrieved by the order dated 22/02/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Rakesh Constructions ("the assessee") for the assessment year 2007-08, assessee preferred this appeal.

2. Brief facts of the case are that, assessee is a firm, a civil contractor. For the assessment year 2007-08, it filed its return of income on 31/10/2007 declaring total income at Rs. 25,463/-. Subsequently, the assessment was reopened under section 147 of the Act and the same was taken up for scrutiny. During the course of re-assessment, learned Assessing Officer did not accept the carry forward of loss of assessment year 2005-06 on the ground that the return of income was filed after the due date. Learned Assessing Officer also did not accept the Mavatoor Labour consists of 70 or more persons and each time the payment amount

does not exacted Rs. 20,000/- and at the same time each labourer aggregate payment does not exceed not exceed Rs. 50,000/- p.a. Learned Assessing Officer completed the assessment by adding carry forward loss amount of Rs. 1,83,850/- and Mavatoor Labour & Paver Labour amounting to Rs. 10,93,610/- and assessed the tax liability at Rs. 6,02,050/-.

3. Aggrieved, assessee preferred appeal before the learned CIT(A). Considering the submission made by the assessee, learned CIT(A) sustained the order of the learned Assessing Officer and dismissed the appeal of assessee by stating that the return of income was not filed within the due date.

4. Assessee, therefore, preferred appeal before the Tribunal, stating that the learned CIT(A) erred in upholding the disallowance of Mavatoor labour and Paver Labour payment under section 40(a)(ia) of the Act and also for not getting benefit of set-off of brought forward business loss.

5. At the outset, it is submitted by the learned AR that initially this appeal was disposed of by the Bench of the Tribunal by order dated 22/01/2020 setting aside the impugned order and directing the learned CIT(A) to hear the appeal before him afresh and to take a view after hearing the assessee. Subsequently, the learned CIT(A) disposed-of the appeal but the assessee has not been aware of the proceedings before the learned CIT(A). As could be seen from the impugned order, the notices of hearing were not served on the assessee directly, but it was uploaded to ITBA portal on the registered e-mail ID of the assessee.

6. According to the learned AR, the assessee never knew the issuance of the notices, since the Managing Partner of the assessee is not aware as to how to navigate the ITBA porta, but only depending upon ITP. He further submitted that the assessee did not receive any e-mail from NFAC regarding the posting of the case for hearing, but came to know about the disposal of the appeal when he approached the qualified tax professional

at Hyderabad, who verified the ITBA portal. Learned AR, therefore, submits that because of this ignorance of technology on the part of the assessee, the assessee could not participate in the first appellate proceedings. He submitted that this is the reason for delay in filing the appeal. Learned AR further submitted that the details of the payment made to the labourers and according to him, the provisions under section 40(a)(ia) of the Act are not applicable to the facts of the case.

7. Learned DR submits that ITBA portal is made for the purpose of integrating the process under the Act and it is for the assessee to verify the date of hearing from the same.

8. Having considered the submissions made by either side carefully, I am of the considered opinion that it is a fit case to set aside the impugned order and to restore the appeal to the file of the learned CIT(A) for considering the details now submitted by the assessee in respect of the payment to the labourers. Learned CIT(A) may take a call to serve the summons by e-mail also. Since the assessee now acquainted with the operation of ITBA portal, no specific mode of service of notice need be emphasized. This is the last opportunity to the assessee and assessee is directed to co-operate with the disposal of appeal on merits. Grounds are accordingly treated as allowed for statistical purposes.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 22<sup>nd</sup> day of June, 2023.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 22/06/2023

TNMM

Copy forwarded to:

1. Rakesh Constructions, D.No. 6-5-707, Srinagar Colony, Upstairs, Near Satya Sai Water Tank, Anantapur.
2. Income Tax Officer, Ward-2, Anantapur.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD