

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM 'SMC' BENCH, VISAKHAPATNAM

श्रीदु व्वुळारएलरेड्डी, न्यायिकसदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकरअपीलसं./ I.T.A. No.03/Viz/2023

(निर्धारणवर्ष/ Assessment Year: 2017-18)

Mrs. Ruth Mamidi,
3-45 Ananthapalli,
Ramalayam Veedhi, Nallajerla
Mandal, West Godavari,
Andhra Pradesh – 534111.
PAN: CXMPM 2888 M

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Appellant by

प्रत्यार्थीकीओरसे/ Respondent by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

Vs. Income Tax Officer,
Ward-1,
Tadepalligudem,
Andhra Pradesh-534101.

(प्रत्यार्थी/ Respondent)

Sri C. Subrahmanyam, AR

Sri ON Hari Prasada Rao,
Sr. AR

21/06/2023

17/07/2023

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1043242493(1), dated 30/05/2022 arising out of the order passed U/s. 144 of the

Income Tax Act, 1961 [the Act], dated 19/12/2019 for the AY 2017-18.

2. At the outset, it is noticed from order sheet that there is a delay of 159 days in filing the appeal before the Tribunal. In this regard, the Ld. AR drawn the attention of the Bench to the affidavit filed by the assessee wherein the explained the reasons and sought for condonation of delay and the relevant portions from the affidavit are extracted herein below:

- "1.
2. *However, on 22/07/2022, assessee slipped while climbing the steps and injured herself. Immediately thereon went for medical treatment upon which it was diagnosed that the assessee fractured her left leg for which she was treated and the Doctor advised the assessee to take complete bed rest for 6 weeks.*
3. *In the meanwhile filing of appeal slipped out of assessee's mind. Whereas, during the third week of December, 2022, assessee received a phone call from the Income Tax Officer to pay the tax demand outstanding for the subject AY. Immediately, thereafter assessee realized that an appeal against the impugned order passed U/s. 271(1)(c) of the Act which she was contemplating to file could not be filed. Thereupon, assessee approached the Counsel on 27/12/2022 who said he shall do the needful within a week's time accordingly, the appeal was filed on 4/01/2023 as against the due date i.e., 289/07/2022 causing a delay of 206 days.*
5. *But for the reasons stated herein above, assessee has no malafide intentions in filing the appeal within the due date as provided in the statute.*
- 6"

3. From the above contents of the affidavit filed by the assessee, I am of the considered view that there is a reasonable and sufficient cause that prevented the assessee in filing the appeal before the Tribunal within the prescribed time limit. Therefore, in my view, it is a fit case to condone the delay and hence I hereby condone the delay of 159 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

4. Brief facts of the case are that on the basis of data analytics and information gathered during the phase of online verification under 'Operation Clear Money', the Income Tax Department gathered a list of assessees who had deposited substantial cash in bank account(s) but not filed their return of income for the AY 2017-18. In such assessee's list, the Department found that the assessee (Smt. Mamidi Ruth) has made cash deposits of Rs. 41,50,000/- in her bank accounts during the Financial Year 2016-17 besides other credits through transfers / cheques at Rs. 4,63,635/- the details of which are tabulated by the Ld. AO in his order at page 2. As per the data available before the Ld. AO, it is noted by the Ld. AO that the assessee has made cash deposits of Rs. 41,50,000/- during the AY under consideration but not filed

her return of income for AY 2017-18 U/s. 139 of the Act. Accordingly, the Ld. AO issued notice U/s. 142(1) of the Act on 12/3/2018 and served on the assessee on 15/3/2018 and called for the assessee to file her return of income as per the relevant provisions of the Act. But the assessee failed to furnish the return of income either U/s. 139 of the Act or in response to the notice issued U/s. 142(1) of the Act. However, the assessee was given an opportunity vide letter dated 21/8/2019 and served on the assessee on 24/8/2019. Considering the non-compliance of the assessee, the Ld. AO issued a show cause letter dated 20/09/2019 and served on the on 21/9/2019 manually and another show cause letter on 03/12/2019 and requested her to furnish the information called for and asked as to why the cash deposits made by the assessee during the demonetization period should not be treated as her undisclosed cash credits made into her bank accounts. Since the assessee did not furnish the information and explanation with evidence with respect to the cash deposits made, the Ld. AO invoked the provisions of section 144(1)(b) of the Act and completed the assessment proceedings ex-parte and passed the assessment order U/s. 144 of the Act dated 19/12/2019. In the assessment, the Ld. AO made an addition of Rs. 46,13,635/- U/s. 69A of the Act and determined

the total income at Rs. 46,13,635/- against the NIL income returned by the assessee. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), NFAC. On appeal, the Ld. CIT(A)-NFAC considered the submissions of the assessee and partly allowed the appeal of the assessee by granting relief to the assessee to the extent of Rs. 6,50,000/-. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in further appeal before the Tribunal by raising the following Grounds of Appeal:

- "1. That under the facts and circumstances of the case the orders passed under the provisions of section 250 of the Act is contrary to the provisions of law.*
- 2. The Ld. CIT(A)-NFAC having given relief to the extent of Rs. 6,50,000/- erred in confirming the balance amount of Rs. 39.80 lakhs U/s. 69A of the Act.*
- 3. The Ld. CIT(A)-NFAC failed to consider the submissions made before him and the evidence filed but concluded the proceedings in a summary and casual manner, therefore such order is not legally tenable and liable to be dismissed.*
- 4. The Ld. CIT(A)-NFAC failed to adjudicate the ground wherein the assessee challenged the applicability of the amendment brought into section 115BBE of the Act which is operational from 15/12/2016 and cannot be made applicable for deposits made prior to this date.*
- 5. For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the additions made are*

unwarranted, therefore the same may be deleted in the interest of justice and fair play."

5. At the outset, the Ld. AR submitted before me that the assessee's parents were holding 8.30 acres of agricultural land in West Godavari District of Andhra Pradesh and also gold jewellery of 6 Tulas. After the demise of assessee's parents, the assessee and her sister inherited 8.30 acres of agricultural land out of which the assessee got 5.07 Acres as her share and assessee's sister got 3.23 Acres. After the division of shares, the Revenue records were also accordingly got mutated in the case of the assessee. Thereafter, assessee decided to dispose off the existing dry land and to buy agricultural wet land and therefore the assessee sold out her agricultural land vide registered document dated 28/12/2016 for a sale consideration of Rs. 25,71,000/-.. During the time registration, the purchaser of the land made a request to get the signatures of the assessee's sister and assessee's son & daughter. Since, the said three individuals are no way concerned with the ownership of the land, they have agreed and signed the sale document. The assessee's children and her sister have confirmed the same by submitting their confirmation letters stating that they are only signatories in the document and no way concerned with the land disposed off by

the assessee. Though these facts are placed before the Ld. AO during the assessment proceedings, the Ld. AO did not consider them and came to an arbitrary conclusion that since there are 4 co-owners to the impugned land sold as per the sale deed including the assessee, only 1/4th of the assessee's share of sale consideration / cash is available with the assessee for depositing into the bank account. Accordingly, the Ld. AO disallowed 3/4th of the sale consideration and considered the proportionate cash deposit by the assessee as unexplained cash before, during and after demonetization period. Further, the Ld. AR also submitted that since the value of the land proposed to be purchased by the assessee is around Rs. 40 lakhs to Rs. 50 lakhs, the assessee required some additional funds to purchase the land, apart from the sale consideration received towards sale of agricultural land. Therefore, keeping the mother's situation in mind, the assessee's son Mr. R. Kanaka Rao gifted Rs. 15 lakhs in cash of Rs. 5 lakhs each on three occasions. The assessee also accumulated her past saving and the receipts / proceeds from the sale of agricultural activity and pooled up the total money to purchase the proposed agricultural wet land. Since the deliberations were going on pending purchase of the land, the assessee was holding the pooled up cash, as explained above but in the meanwhile on

8/11/2016 demonetization was announced and therefore the assessee has deposited an amount aggregating to Rs. 41,50,000/- on various dates [Rs. 7/11/2016-Rs. 10,00,000/-; 10/11/2016-Rs. 30,00,000/- and on 23/02/2017-Rs. 1,50,000/-]. The Ld. AR further submitted that out of the above deposits, the assessee deposited Rs. 10,00,000/- to her son's account through bank transfer and Rs. 30,00,000/- was also deposited by way of transfer. Even though these facts were explained to the Ld. AO, he did not consider the same and brought the amount of Rs. 41,50,000/- along with cash credit of Rs. 4,63,635/- to tax and made addition U/s. 69A of the Act. The Ld. AR further submitted that on appeal to the First Appellate Authority, the Ld. CIT(A)-NFAC did not consider the above facts and granted a part relief to the assessee. Before me Ld. AR pleaded that with regard to the sale of the agricultural land, gift received by the assessee and the receipts from the agricultural activity, the documentary evidence were produced before the Bench by way of paper book containing 29 pages. He further pleaded that the deposits are fully explained by the assessee, the additions made by the Ld. Revenue Authorities may be deleted and the assessee may be granted relief.

6. On the other hand, the Ld. DR vehemently argued in support of the orders of the Ld. Revenue Authorities and supported the decision taken by them.

7. I have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. From the record available before me, it is apparent that the assessee made cash deposits aggregating to Rs. 46,13,635/- during the period from 7/11/2016 to 29/12/2016. With respect to these cash deposits, it was explained by the assessee's Ld. AR that the source for the said cash deposits is as under:

- (i) With respect to Rs. 15 lakhs the Ld. AR submitted that this amount was received by the assessee as a gift on three occasions from the assessee's son Mr. R. Kanaka Rao on various dates i.e., 25/09/2017; 10/10/2016 and 29/10/2016 (Rs. 5 lakhs on each date).
- (ii) On 26/10/2016 the assessee entered into an agreement of sale of immovable property valued at Rs. 25,71,000/- out of which the assessee has received Rs. 22 lakhs on 26/10/2016 and the balance amount of Rs. 3,71,000/- on 31/10/2016 as sale consideration.

(iii) On 28/12/2016 and 29/12/2016 the assessee deposited Rs. 4 lakhs and Rs. 60,000/- as the same are the receipts from agricultural activities and past savings.

8. Explaining the cash deposit of Rs. 10,00,000/- on 7/11/2016, the Ld. AR brought my attention to the bank statements filed in the paper book (Pages 9 to 10) and demonstrated that the assessee had deposited Rs. 10,00,000/- [Rs. 5,00,000 + Rs. 5,00,000] on 07/11/2016 and the source for the same is out of the gift received from the assessee's son as explained above. This deposit was made by the assessee since the assessee's proposal to purchase agricultural wet land did not materialize and therefore the assessee returned the gift amount of Rs. 10,00,000/- received from his son. Before me, it is the pleading of the Ld. AR that the assessee has received the gift of Rs. 10,00,000/- from his son but on the same day the assessee deposited the same amount and transferred the sum of Rs. 10,00,000/- to her son's account before demonetization period, and therefore this sum of Rs. 10 lakhs should not be added as an income of the assessee. On perusal of the bank statement and the relevant documents placed before me, I am of the opinion that the argument of the assessee holds merit on this issue and in my view the deposit of Rs. 10 lakhs is properly explained by

the assessee with evidence. Therefore, I hereby delete the addition of Rs. 10 lakhs made by the Ld. Revenue Authorities as unexplained cash deposit made by the assessee before the demonetization period. It is ordered accordingly.

9. With respect to cash deposit of Rs. 30,00,000/- the Ld. AR submitted that Rs. 30,00,000/- was deposited by the assessee on 10/11/2016. The source for the same is out of the sale proceeds of agricultural land for Rs. 25,71,000/- by executing a registered sale deed coupled with agreement of sale. He further submitted that in the assessment, the Ld. AO made addition of Rs. 30 lakhs as unexplained cash deposits during the demonetization period. On appeal, the Ld. CIT(A)-NFAC observed that since there are 4 co-owners of the impugned land sold by the assessee as per the sale deed, 1/4th of the sale consideration of the agricultural land shall only be the available cash to deposit into the bank account. Therefore, the Ld. CIT(A)-NFAC granted relief to the extent of Rs. 6,27,500/- [mentioned as Rs5,50,000/- in the Ld. CIT(A)-NFAC order]. On this aspect, the contention of the assessee is that the assessee herself is the absolute owner of the immovable property while the other three individuals are assessee's sister, assessee's son & daughter only signatories to the document. He also

explained that while executing the sale deed, the purchaser requested the assessee to get the signatures of the above three individuals as the agricultural land was inherited property from the parents of the assessee. Therefore, it was submitted that the said three individuals viz., assessee's sister, assessee's son & daughter are no way concerned with the land and due to the request made by the purchaser they have also signed on the document as sellers of the property. To this effect, they have also furnished the confirmation letters before the Ld. AO and the Ld. CIT(A)-NFAC and even before the Tribunal. Apart from that, the assessee also filed Revenue records showing the land holdings i.e., Pattadar Pass Book, Adangal and IB Record wherein it was clearly mentioned that the assessee is the sole owner of the property. Therefore, considering the above facts and circumstances of the case as well as the evidence produced before Tribunal, I have no hesitation to come to a conclusion that the assessee is the sole owner of the property and therefore the entire sale consideration of Rs. 25,71,000/- should be treated as the source of the assessee. Thus, the assessee's cash deposit of Rs. 25,71,000/- into the bank account i.e., Rs. 22,00,000/- on 26/10/2016 and Rs. 3,71,000/- on 31/10/2016 is treated as explained and the balance of Rs.4,29,000 [Rs. 30,00,000 – Rs.

25,71,000 = Rs.4,29,000] is treated as unexplained and I hereby confirm the action of the Ld. Revenue Authorities to this extent. It is ordered accordingly.

10. So far as the deposits of Rs. 4,00,000/- on 28/12/2016 and Rs. 60,000/- on 29/12/2016 are concerned, the contention of the assessee is that the assessee sold the agricultural proceeds on the date of sale of agricultural land and thereby the assessee received an amount of Rs. 4,60,000/- which includes personal saving also. To this extent the assessee has not produced any convincing and satisfactory documentary evidence before the Bench. However, the assessee being a woman agriculturist and having agricultural holdings, in the absence of any evidence, I deem it reasonable to allow Rs. 2,00,000/- as the assessee's source for her deposit and the balance of Rs. 2,60,000/- [Rs. 4,60,000 – Rs. 2,00,000] is hereby confirmed.

11. So far as Rs. 1,50,000/- deposited on 23/02/2017 is concerned the assessee contended before me that this amount is accumulated from her savings in the past years. During the proceedings before the Ld. Revenue Authorities, the assessee has not produced either documentary evidence or proper explanation on this issue. However, the Ld. CIT(A)-NFAC was of the view that

since the assessee is an old aged women agriculturist, the assessee must be having some cash for her medical expenses and therefore taking a lenient view, the Ld. CIT(A)-NFAC considered Rs. 1,00,000/- as the assessee's Stridhan/Pin money and confirmed the amount of Rs. 50,000/- as unexplained cash deposit. In this situation, considering the facts and circumstances of the case relatable to this issue, I am of the view that the Ld. CIT(A)-NFAC has rightly adjudicated this issue and therefore there is no infirmity in the order of the Ld. CIT(A)-NFAC. Accordingly, the sustenance of addition of Rs. 50,000/- is hereby confirmed.

12. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on 17th July, 2023.

Sd/-

(दुव्वूरु एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 17th July, 2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-Mrs. Ruth Mamidi, 3-45 Ananthapalli, Ramalayam Veedhi, Nallajerla Mandal, West Godavari, Andhra Pradesh - 534111.

2. राजस्व/The Revenue – Income Tax Officer, Officer of the Income Tax Department, Ward-1, Aayakar Bhawan, D.No. 2-1-56/1, Opp. Punjab National Bank, K.N. Road, Tadepalligudem, Andhra Pradesh – 534101.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam