

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**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.94/Viz/2023 & 95/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2015-16 & 2016-17)**

Dubasi Babaji Rao  
A1/413, Vaisakhi Skyline  
Geetam College Road  
Yendada  
Visakhapatnam  
**[PAN : ACFPD9977J]**

Vs. Dy. Commissioner of  
Income Tax  
Circle-1(1)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri M.Muralidhar, AR  
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 20.11.2023

घोषणा की तारीख/Date of Pronouncement

: 29.11.2023

**आदेश / O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

These appeals are filed by the assessee against the orders of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide Orders dated 19.01.2023, arising out of orders passed u/s 271(1)(b) of the Income Tax Act, 1961 (in short 'Act') dated 31.01.2022 and 01.02.2022 for the Assessment Year (A.Y.) 2015-16 and 2016-17 respectively. For the sake of convenience these appeals

are clubbed, heard together and a common order is being passed as under. Facts are extracted from I.T.A.No.94/Viz/2023, A.Y.2015-16.

2. Brief facts of the case are that the assessee is retired employee of NALCO, filed his return of income for the A.Y.2015-16 on 27.07.2013 within due date and then revised the same on 23.11.2015, declaring taxable income of Rs.14,02,040/- by claiming a refund of Rs.1,39,030/-. The case was reopened by issuing a notice u/s 148 on 12.02.2020 as per the provisions of section 147 of the Act on the basis of information available with the Assessing Officer (AO). Further notices u/s 142(1) of the Act dated 03.02.2021, 15.02.2021, 02.03.2021, 15.07.2021 were issued, but the assessee could not comply with the notices. Final show cause notice along with draft assessment order was issued on 04.08.2021 as the assessee has not furnished any documents / evidences and not complied with notices. The AO opined that the assessee had under reported the income by showing reduced income under the head "salaries" by comparing the Form 16 obtained from NALCO u/s 133(6) and ITR filed by the assessee and treated the difference amount of Rs.4,50,000/- as under reported income and passed ex-parte assessment order u/s 144 r.w.s.147 on 18.08.2021. A show cause notice u/s 271(1)(c) r.w.s. 274 was served on the assessee on 19.08.2021 to show

cause why penalty should not be imposed for furnishing inaccurate particulars of income, but the assessee could not comply with the notice. The AO levied penalty of Rs.40,000/- @10,000/- for all 4 notices u/s 142(1) for non-compliance and passed order u/s 271(1)(b) of the Act dated 01.02.2022.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the order passed by the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before the Tribunal by raising the following grounds of appeal :

1. *Ld.AO and Ld.CIT(A) erred in the law and facts of the case and also the provisions applicable while passing the penalty order u/s 250.*
2. *CIT(A) erred in levying penalty u/s 271. The sub section 7 of sec.271 clearly carved out a sunset clause which shows that the same is not applicable to "in relation to any assessment for the assessment year commencing on or after the 1<sup>st</sup> day of April 2017. The Ld.AO has levied it wrongly, since the date of penalty order (Assessment made after 01.04.2017) was 01.02.2022.*
3. *When Ld.CIT(A) erred in not considering the fact when complied before him in 1st appeals though being deemed AO.*
4. *The Ld.CIT(A) ought to have considered the facts & all the grounds and additional grounds thereof, and should have deleted the penalty being discretionary too, since the word used as "may" in sec.271(1).*

*5. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any grounds of appeal at the time of or before the hearing of the appeal.*

5. All the grounds of appeal are related to confirming the addition made by the AO u/s 271(1)(b). The assessee filed written explanation of the grounds and clarity against the grounds of appeal filed along with Form 36. Inviting our attention to additional ground No.5 filed before the Ld.CIT(A) vide page No.54 to 58 and ground No.4 filed before the Tribunal along with Form 36 vide page No.63 of the paper book, the Ld.AR contended that there was a reasonable cause as per section 271 r.w.s. 274 r.w.s. 273B due to continuance of Covid 19 in the country in particular apart from all other causes. The Ld.AR filed the relevant CBDT Circulars and prayed to consider his submissions and give relief to the assessee on the merits of the case.

6. Per contra, the Ld.DR relied on the order of the Ld.CIT(A) and contended that the assessee did not comply with the notices despite sufficient opportunities were given to the assessee, hence, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

7. We have heard both the parties and perused the material placed on record. It is evident that the assessee did not respond to the notices u/s

142(1) dated 03.02.2021, 15.02.2021, 02.03.2021 and 15.07.2021 issued and served on the assessee. The assessee did not comply with the notices and submitted that the non compliance was not deliberate, but due to the circumstances beyond the control of the assessee due to covid limitations imposed during the covid pandemic. The Ld.AR submitted the relevant circulars in force extending certain timelines in the light of raging pandemic before the Tribunal and pleaded to consider the same. It is undisputed fact that the covid limitation was extended from 21.03.2020 till 22.03.2022. Therefore, we are of the firm view that there is reasonable cause which was explained by the assessee. We, therefore, direct the AO to delete the penalty levied for non compliance of the notices which was covered under the covid period. In the result, all the grounds raised by the assessee are allowed.

8. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 29<sup>th</sup> November, 2023.

Sd/-

Sd/-

(एस बालाकृष्णन)  
(S.BALAKRISHNAN)

(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 11.2023

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Shri Dubasi Babaji Rao, A1/413, Vaisakhi Skyline, Geetam College Road, Yendada, Visakhapatnam
2. राजस्व/The Revenue - The Dy. Commissioner of Income Tax, Circle-1(1) Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam