

**आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No. 252/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2015-16)

Mr. Ramesh Mannava,  
5-60-213/1, MSR Cotton  
Corporation, 4/4 Ashok Nagar,  
Guntur, Andhra Pradesh-522007.  
PAN: AGDPM 8289 Q

(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. Income Tax Officer,  
Ward-2(1),  
Guntur.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Sri Madhukar Aves, Sr. AR

28/11/2023

01/12/2023

**ORDER**

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

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1054686283(1), dated 28/07/2023

arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 [the Act] for the AY 2015-16.

2. At the outset, the Ld. AR submitted that there is a delay of 15 days in filing the appeal. The Ld. AR drew my attention to the petition, along with an affidavit, filed by the assessee seeking condonation of delay wherein the assessee explained the reasons for belated filing of the appeal before the Tribunal. The relevant portion of the affidavit is extracted herein below for reference:

"1 .....

2. *Assessee being senior citizen and suffering from other ailments, recovery time took longer time and finally could sign the papers on 10/10/2023 and appeal was filed on 11/10/2023 causing a delay of 14 days.*

3 *It is submitted that there was no malafide intention in not filing the appeal within due date except for the reasons stated herein above.*

4 ....."

3. On perusal of the reasons advanced by the assessee for filing the appeal before the Tribunal beyond the prescribed time limit with a delay of 15 days, I find that due to ill health of the assessee the assessee was prevented to file the appeal within the stipulated time. In my considered opinion, the explanation given by the assessee constitutes 'reasonable and sufficient cause' and

therefore I hereby condone the delay of 15 days in filing the appeal and proceed to adjudicate the appeal on merits.

4. Brief facts of the case are that the assessee is an individual. The assessee filed his return of income for the AY 2015-16. Based on the information available with the Department, the Ld. AO observed that the assessee has purchased immovable property at a consideration less than the value of the stamp duty. Accordingly, the Ld. AO formed his satisfaction about the escapement of income and accordingly recorded the reasons to believe that an income chargeable to tax has escaped assessment and issued notice U/s. 148 of the Act dated 20/03/2020. Thereafter notice U/s. 142(1) was also issued on the assessee. In response, the assessee did not file his ITR to the notice U/s. 147/148 of the Act. Further, the Ld. AO also issued notices U/s. 142(1) dated 30/09/2020; 30/01/2021; 16/02/2021 and 7/9/2021 wherein the assessee was asked to furnish / file the explanation / reply regard the source of the sale consideration for calculation of the capital gains for the AY 2015-16 but the notices were not complied with by the assessee. Accordingly, the Ld. AO proceeded to complete the assessment U/s. 144 of the Act based on the material available on record. Thus, the Ld. AO

completed the assessment U/s. 147 r.w.s 144 of the Act and passed the assessment order dated 27/09/2021 wherein the Ld. AO made an addition of Rs. 15 lakhs being the difference between stamp duty value and the sale consideration of the immovable property [Rs. 33,34,000 – Rs. 18,34,000] by invoking the provisions of section 56(2)(vii)(b) of the Act. Aggrieved by the order of the Ld. AO, the assessee carried the matter in appeal before the Ld. CIT(A)-NFAC.

5. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee ex-parte as the assessee did not comply with the notices issued on the dates of hearing and sustained the addition made by the Ld. AO. 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 by the AO U/s. 147 r.w.s 144, dated 27/09/2021 and confirmed by the Ld. CIT(A) vide order passed U/s. 250 dated 28/07/2023 is not in accordance with the provisions of law.*

*2. The notice issued U/s. 148 of the Act on 20/03/2020 is not a valid notice in the eyes of law as much as there was no fulfillment of conditions contemplated in the said section for issue of such notice.*

*3. Whereas, the impugned addition was made U/s. 56(2)(vii)(b) of the Act pertaining to purchase of*

*immovable property, alleged to be purchased at lesser value than stamp duty, in this regard lower authorities failed to take note that the assessee has jointly purchased the property having 50% share in its in which case the entire difference in consideration could not have been assessed in the hands of the assessee alone.*

*4. For these and such other grounds, that may be urged at the time of hearing of subject appeal, the appellant prays that the order of the Ld. CIT(A) U/s. 250 of the Act is to be set aside."*

6. At the outset, the Ld. AR submitted that the Ld. Revenue Authorities ie., the Ld. AO as well as the Ld. CIT(A)-NFAC have passed the ex-parte orders without affording reasonable opportunity of being heard to the assessee as per the principles of natural justice. Therefore, the Ld. AR requested that the matter may be remitted back to the file of the Ld. AO in order to provide one more opportunity to the assessee to substantiate its claim otherwise a meritorious case will be thrown out causing grave financial difficulty to the assessee.

7. On the other hand, the Ld. Departmental Representative vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative appeared / made submissions either before the Ld. AO or before the Ld. CIT (A)-NFAC. It was further submitted that the Ld. AO and the Ld. CIT

(A)-NFAC had no other option but to pass ex-parte orders based on the materials available on record. Hence, it was pleaded that the orders passed by the Ld. AO and the Ld. CIT(A)-NFAC do not call for any interference.

8. I have heard both the parties and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is apparent from the orders of the Ld. AO as well as the Ld. CIT(A)-NFAC, the Ld. Revenue Authorities have passed the ex-parte orders. On going through the facts and circumstances as well the issues involved in the appeal, I am of the considered view that the Ld. Revenue Authorities instead of passing the ex-parte orders ought to have decided the case on merits by providing one more opportunity to the assessee in accordance with the principles of nature justice. It is also apparent from the order of the Ld. CIT(A)-NFAC that the assessee's case was dismissed by the First Appellate Authority in the absence of any evidence to substantiate the claim of the assessee. Now, before the Tribunal the Ld. AR submitted that if the assessee has been provided one more opportunity before the Ld. AO, the assessee can produce the documentary evidence to substantiate his claim. Considering the prayer of the Ld. AR as

well as the issues involved in the appeal of the assessee, I hereby remit the matter back to the file of the Ld. AO in order to provide one more opportunity to the assessee in accordance with the principles of natural justice. Accordingly, the Ld AO is hereby directed to decide the issues involved in the appeal denovo on merits after affording a reasonable opportunity to the assessee of being heard. It is ordered accordingly.

9. In the result, appeal of the assessee is allowed for statistical purposes as mentioned herein above.

Pronounced in the open Court on 01<sup>st</sup> December, 2023.

Sd/-  
(दुव्वूरु आर. एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 01/12/2023  
OKK - SPS

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

1. निर्धारिती/ The Assessee– Mr. Ramesh Mannava, 5-60-213/1 MSR Cotton Corporation, 4/4 Ashok Nagar, Guntur, Andhra Pradesh – 522007.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(1) O/o. ITO, Lakshmipuram Main Road, Guntur, Andhra Pradesh – 522006.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam