

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" 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.216/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Leelavathi Beesetty
D.No.4-3, Near Sivalayam Temple
Gavarapeta Veedhi
Tummapala
Visakhapatnam
[PAN : AORPB5576P]

Vs. Income Tax Officer
Ward-1
Anakapalle

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri C.Subrahmanyam, AR
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 07.12.2023

घोषणा की तारीख/Date of Pronouncement

: 21.12.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

Condonation of Delay :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC) vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1043575647(1) dated 27.06.2022, arising out of order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 05.06.2017 for the Assessment Year (A.Y.) 2015-16 with the delay of 346 days. The

assessee filed a petition for condonation of delay and submitted that the order of the Ld.CIT(A) was passed on 27.06.2022 and the appeal before the Tribunal ought to have been filed on or before 26.08.2022, however, the appeal was filed on 07.08.2023 with the delay of 346 days. The assessee submitted that the reasons for the delay are that the assessee was not aware of the order of the Ld.CIT(A) which was uploaded on IT Portal on 27.06.2022 and she was advised by her ITP to approach a senior counsel only in November 2022 to file appeal before the Tribunal. When the ITP was confronted why he has informed the assessee after lapse of the period, he stated that as he has become old and got affected with covid, he stopped pursuing tax practice since 2021. The assessee further submitted that while the assessee was trying to engage a counsel, she met with a scooter accident on 30.12.2022. She was under medical treatment till 04.01.2023 and advised bed rest till 04.02.2023 and the filing of appeal has slipped out of her mind. The assessee came to know of the fact about filing of appeal when she received a call on 07.07.2023 from the banker, Indian Overseas bank stating that on account of receipt of notice from IT dept., her bank account was attached and frozen. The assessee, out of panic, approached the present counsel in the second week of July 2023 and she was informed that their office is busy with

filing of returns till 31.07.2023 and she was promised that she will be helped with filing of appeal in the first week of August 2023, accordingly, the appeal was filed on 07.08.2023 causing delay of 346 days. The assessee further submitted that she has no malafide intention in not pursuing the appeal and does not gain anything by postponing the event of filing the appeal. She, therefore, pleaded to condone the delay and admit the appeal for hearing and it's disposal.

2. I have gone through the condonation petition filed by the assessee and find there is a justifiable cause for filing the appeal belatedly before the Tribunal. I, therefore, condone the delay and admit the appeal for hearing.

3. Brief facts of the case are that the assessee is an individual, engaged in the business of retail trade in liquor, under the name and style of M/s Sri Lakshmi Wines. The assessee filed her return of income for the A.Y.2014-15 on 29.09.2015, declaring total income at Rs.6,56,800/-. The case was selected for scrutiny and assessment order u/s 143(3) was passed by the AO on 05.06.2017, assessing the total income at Rs.17,86,590/-, wherein addition of Rs.11,29,791/- was made by the Assessing Officer(AO), estimating the profit @5% on purchases put to sale.

4. Aggrieved by the order of the Ld.AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal ex-parte for non-prosecution.

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

1. *That under the facts and circumstances of the case, the orders passed u/s 143(3) of IT Act dt.05.06.2017 confirmed by Commissioner of Income Tax Appeals, NFAC (in short 'CIT(A)) dt.27.06.2022, is not in accordance with provisions of law.*

2. *The Ld.CIT(A) ought not to have dismissed the case of assessee ex-parte without giving sufficient opportunity to the assessee to represent her case, this in violation of principles of natural justice, therefore, such order is liable to be set aside.*

3. *The Ld.CIT(A) ought to have given a finding by holding that the assessing officer is not correct in rejecting the books of accounts and estimating the profits in an arbitrary manner and at the same time estimating the profit as high as 5% on purchases put to sale.*

4. *The Ld.CIT(A) ought to have given a finding that in similar cases the Hon'ble ITAT has estimated the profit at 3% which he ought to have given directions to the AO to follow the same.*

5. *For these and such other grounds that may be urged at the time of hearing of subject appeal the appellant prays that the orders of the CIT(Appeals) is to be set aside, in the interest of justice.*

6. The only grievance of the assessee is that the assessee's appeal was dismissed ex-parte by the Ld.CIT(A) without giving sufficient opportunity. The Ld.AR further contended that on similar set of facts, ITAT, Hyderabad in the case of ITO Vs. M/s Kanaka Durga Wines,

estimated the profit of the assessee at 3% of the purchases or stock put for sale during the year against the estimation of 5% made by the CIT(A). Therefore, he pleaded that the profit of the assessee may also be estimated at 3% of the purchases put to sale.

7. Per contra, the Ld.DR submitted that estimation of profit at 8% is appropriate as several forums have estimated the profit at 8% on similar set of facts. However, the AO considered liberally and estimated the profit at 5%. He, therefore, pleaded to uphold the order of the Ld.CIT(A).

8. I have heard both the parties and perused the material available on record. Considering the facts and circumstances of the case, I am of the view that estimation of profit of the assessee @4% is reasonable. I, therefore, direct the AO to estimate the profit of the assessee @4% instead of 5%. Therefore, all the grounds raised by the assessee are partly allowed.

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

Order pronounced in the open court on 21st December, 2023.

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

Dated : 21.12.2023
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Ms.Leelavathi Beesetty, D.No.4-3, Near Sivalayam Temple, Gavarapeta Veedhi, Tummapala, Visakhapatnam
2. राजस्व/The Revenue - The Income Tax Officer, Ward-1, Anakapalle
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam