

**आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**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.312/Viz/2019

(निर्धारण वर्ष / Assessment Year : 2012-13)

Manne Krishna Kishore,  
D.No. 80-26-13/1, Jayasree  
Gardens, A.V. Appa Rao Road,  
Rajahmundry, E.G. Dist,  
Andhra Pradesh-533001.  
PAN: AGNPM 7858 B

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. Assistant Commissioner of  
Income Tax, Circle-2(1),  
Rajahmundry,  
Andhra Pradesh.

(प्रत्यर्थी/ Respondent)

Sri Md. Afzal, AR

Dr. Aparna Villuri, Sr. AR

04/01/2024

10/01/2024

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad in Appeal No. 10280/2017-18, dated 27/12/2017

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2012-13.

2. Briefly stated the facts of the case are that the assessee is an individual, filed his return of income for the AY 2012-13 on 10/08/2013 declaring total income of Rs. 4,02,000/-. Subsequently, on 18/03/2014 the assessee filed his revised return of income declaring total income of Rs.46,49,430/- consequent upon the survey conducted U/s. 133A of the Act on 19/08/2011. The return was selected for scrutiny on Manual-Compulsory basis. Thereafter, notice U/s. 143(2) of the Act was issued on 19/09/2014 and duly served on the assessee on 24/09/2014. Further, notices U/s. 142(1) of the Act were issued on 2/1/2015 and 20/01/2015 and called for certain information. In reply, the Authorized Representative of the assessee has appeared before the Ld. AO from time to time and furnished the relevant information. On perusal of the assessee's explanation and submissions of the assessee, the Ld. AO came to a conclusion that the explanations of the are not fully acceptable considering the facts and circumstances of the case as well as the documentary evidences furnished before the Ld. AO and therefore, the Ld. AO made two additions viz., (i) addition of Rs.

4,28,347/- towards differential amount between the revised income and the gross total income as per the Ld. AO (Rs. 51,54,000 – Rs. 47,25,653/-); (ii) addition of Rs. 4,59,250/- being undisclosed investment towards purchase of three plots at Yandada and Rajahmundry and the payment of stamp duty. Thus, the Ld. AO completed the assessment U/s. 143(3) of the Act and assessed the total income at Rs. 56,13,250/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-12, Hyderabad.

3. On appeal, the Ld. CIT(A) considered the submissions of the assessee to some extent and granted part relief to the assessee and partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The Ld. CIT(A) ought to have considered the explanation submitted by the assessee towards the differential amount of Rs. 4,28,347/-.*
- 2. The Ld. ACIT, Circle-2(1) without considering the explanation submitted by the assessee made the addition that is unjustified towards differential amount of Rs. 4,28,347/-."*

4. At the outset, it is observed from the record that the assessee has filed the present appeal with a delay of 455 days.

On the issue of belated filing of the appeal, at the outset, the Ld. Authorized Representative of the assessee drew our attention to the affidavit dated 17/05/2019 filed by the assessee seeking condonation of delay and submitted that due to severe ill health the assessee could not file the appeal within the stipulated time. The Ld. AR further submitted that in support of the assessee's claim, a Medical Certificate is also enclosed along with the affidavit filed by the assessee. The Ld. AR therefore pleaded that since the delay occurred is due to the circumstances beyond the control of the assessee, the Hon'ble Bench may condone the delay and decide the appeal on merits.

On the other hand, the Ld. Departmental Representative submitted that the huge delay involved in this appeal is 455 days. However, the reason given by the assessee for condonation of delay ie., ill health of the assessee does not constitute 'sufficient cause' because the reason advanced by the assessee is not supported by any authenticated medical reports followed by the Medical Certificate submitted by the assessee. She further submitted that the assessee is not interested in pursuing his appeal otherwise he would have followed up the matter

effectively. Therefore, the Ld. DR prayed that the delay should not be condoned.

5. We have heard the rival contentions and perused the material available on record as well as the affidavit filed by the assessee seeking condonation of delay. It is apparent from the record that there is an inordinate delay of 455 days in filing the appeal before the Tribunal. The assessee filed a petition for condonation of delay along with an affidavit dated 17/05/2019. For the sake of immediate reference, we hereby extract the contents of the affidavit filed by the assessee as under:

- "1. ....
2. *That the time for filing the appeal before the Tribunal was to expire on 27/02/2018.*
3. *That the assessee has suffered from severe ill health and hence could not file the appeal within the statutory time and hence there is a delay of about 455 days.*
4. ...."

Further, in support of the assessee's claim that due to sever ill health filing of the appeal got delayed by 455 days, the assessee filed a Medical Certificate which is as under:

**SRI VENKATARAMANA NURSING HOME**  
Beside Flyover, Sajjapuram, TANUKU-534 211, W.G. Dist., (A.P.), INDIA. ☎ 08819 - 224132

*Dr. Smt. S. Bharathi*  
B.Sc., M.B.B.S.,

*Dr. S. Sirish Aditya*  
M.S. Ortho.

Date : 16/05/2019.

MEDICAL CERTIFICATE

This is to certify that M.K. Kishore s/o Umamaheswararao age 52 years, rajahmundry is suffering from chronic pancreatitis from 25/02/2018 to 16/05/2019. & is under my treatment.

*S. Bharathi*  
**Dr. S. BHARATI**, B.Sc., M.B.B.S  
Regd. No. 17505  
Sri Venkata Ramana Nursing Home  
TANUKU - 534 211

On perusal of the affidavit / petition filed by the assessee seeking condonation of delay, explaining the reasons for such delay as well as the Medical Certificate filed by the assessee, the Bench asked the Ld. AR to produce documentary evidence

substantiating the treatment undergone by the assessee. In this connection, the Ld. AR submitted that he does not have any records evidencing the treatment undergone by the assessee. Considering the above, we are of the opinion, the reasons advanced by the assessee i.e., severe ill health and mere submission of a Medical Certificate without having supportive authenticated medical record., viz., diagnosis report, lab reports etc., do not constitute a 'reasonable / sufficient cause' for filing the appeal beyond the prescribed time limit. It is a settled principle that in each case of the delay it has to be examined on its individual merits and jurisprudence does not extend to accommodate and condone all inordinate delays. As per section 5 of the Limitation Act, 1963, **any appeal or any application, .....may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.** It implies that **the delay of each day needs to be justified and there must be a sufficient cause for not preferring the appeal** and that cause / reason should be supported by a cogent documentary evidence wherever it is necessary, which is lacking in the instant case. Therefore, in the instant case, in the absence of any

cogent supportive documentary evidence for the reasons advanced by the assessee while seeking condonation of delay, we are of the considered view that the reason does not constitute a 'sufficient / reasonable cause' for filing the appeal before the Tribunal beyond the prescribed time limit and with a delay of 455 days, we hereby reject the condonation of delay and accordingly the appeal filed by the assessee is dismissed in-limine.

6. In the result, appeal filed by the assessee is dismissed in-limine.

Pronounced in the open Court on 10<sup>th</sup> January, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

**न्यायिकसदस्य/JUDICIAL MEMBER**

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated : 10.01.2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Manne Krishna Kishore, D.No. 80-26-13/1, Jayasree Gardens, A.V. Appa Rao Road, Rajahmundry, E.G. Dist, Andhra Pradesh-533001.
2. राजस्व/The Revenue – Assistant Commissioner of Income Tax, Circle-2(1), Aayakar Bhavan, Near Kambala Tank, Veerabhadrapuram, Rajahmundry, Andhra Pradesh-533101.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax

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

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam