

**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  
(Through Hybrid Hearing)

आयकर अपील सं./ I.T.A. No. 234/Viz/2022

(निर्धारण वर्ष / Assessment Year : 2018-19)

Kiran Kumar Kammili,  
30-87-11, Kranthi RH Colony,  
Duvvada, Visakhapatnam,  
Andhra Pradesh.  
PAN: AMQPK 3056 L  
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer,  
Ward International Taxation,  
Visakhapatnam,

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri Kumar Pal

प्रत्यर्थी की ओर से / Revenue by

: Dr. Satyasai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 23/01/2024

घोषणा की तारीख/Date of

: 31/01/2024

Pronouncement

**ORDER**

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

This appeal filed by the assessee against the final assessment order of the Ld. Income Tax Officer, Ward - International Taxation, Vizag passed U/s. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 in DIN & Order No.

ITBA/AST/S/143(3)/2022-23/1042983138(1), dated 9/5/2022 for the AY 2018-19.

2. At the outset, at the time of hearing of the appeal i.e., on 23/01/2024, we find from the record that there is a delay of 145 days in filing the assessee's appeal before the Tribunal. Further, the Bench has also noted that the assessee has not filed any petition seeking condonation of delay explaining the reasons for belated filing of the appeal. When the Bench raised this issue and sought clarification from the Ld. Authorized Representative, the Ld. AR pleaded for apologies from the Bench and sought for time for filing the petition for condonation of delay. Considering the Ld. AR's plea, the Hon'ble Bench has taken a lenient view and directed the assessee to file the condonation petition along with necessary documents and affidavit of the assessee explaining the reasons for belated filing of the appeal on or before 24/01/2024.

3. However, on 24/01/2024 the Ld. AR has sent an e-mail to the Hon'ble ITAT forwarding the assessee's petition for condonation of delay. On perusal of the petition for condonation of delay, we find that the Ld. AR has simply forwarded a letter titled as "Petition for Condonation of Delay" wherein it was stated that the assessee being a Non-Resident was not available in India

at the time of passing of Final Assessment Order and therefore the appeal could not be filed within the time as prescribed U/s. 253(3) of the IT Act, 1961. It is pertinent to mention here that if an appeal/application is barred by time, or if there are reasons to believe that it may be barred by time, an application for the condonation of delay should be made well in advance before the hearing of the appeal, which is not done in the present case. Such an application should, if necessary, be supported by documentary evidence, e.g., a medical certificate or an affidavit. Further, in the present case, even after the Hon'ble Bench has taken a lenient view and has given time to the assessee for filing the condonation of delay petition and specifically directed the Ld. AR that such condonation petition should clearly mention the reasons that prevented the assessee in not filing the appeal within the stipulated time limit and should be filed in a proper format enclosing necessary documentary evidence along with an affidavit duly notarized, however, the assessee has simply filed "Petition for Condonation of Delay" in a letter format without enclosing any documentary evidence as well as the affidavit of the assessee. At this juncture, we find it relevant to mention the Rule-10 of the Income Tax (Appellate Tribunal) Rules, 1963 which reads as under:

*"Filing of Affidavits*

*10. Where a fact which cannot be borne by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit."*

4. In the present case, though the assessee has filed a petition seeking condonation of delay by stating that he was not available in India while passing the Final Assessment Order and therefore the appeal was filed belatedly with a delay of 145 days, the said condonation petition is not supported by an affidavit which is required to be produced for a legitimate claim along with supporting documents and evidences whatsoever the reason mentioned therein. The assessee should be reasonably diligent while filing the Petition for Condonation of Delay. Further, we make it clear that the Tribunal cannot appreciate the lackadaisical approach either by the assessee or by the revenue. Hence, we are of the considered opinion that it is a fit case to dismiss the appeal as not maintainable since it is barred by limitation as discussed above. It is ordered accordingly and the appeal of the assessee is dismissed in limine.

5. In the result, appeal of the assessee is dismissed

Pronounced in the open Court on 31<sup>st</sup> January, 2024.

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

Sd/-  
(एस बालाकृष्णन)  
(S.BALAKRISHNAN)  
लेखा सदस्य/ACCOUNTANT MEMBER

Dated :31.01.2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Kiran Kumar Kammili, 30-87-11, Kranthi RH Colony, Duvvada, Visakhapatnam, Andhra Pradesh-530046.
2. राजस्व/The Revenue – Income Tax Officer, Ward-International Taxation, Visakhapatnam, Andhra Pradesh.
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