

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.280/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2015-16)**

Vattikuti Veera Venkata Prasad
Shop-03, Ramachandra Puram
Ramachandrapuram Mandal
East Godavari

**[PAN : AKQPV2779M]
(अपीलार्थी/ Appellant)**

Vs. Income Tax Officer
Ward-1
Kakinada

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Yashwanth (staff of Shri
C.Subrahmanyam,AR)

प्रत्यर्थी की ओर से / Respondent by

: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 31.01.2024

घोषणा की तारीख/Date of Pronouncement

: 31.01.2024

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) in DIN & Order No.ITBA/NFAC/S/250/2023-24/1054293993(1) dated 11.07.2023, arising out of order passed u/s 147 r.w.s.144 of the Income Tax Act, 1961 (in short 'Act') dated 25.03.2022 for the Assessment Year (A.Y.) 2015-16, with the delay of 58

days. The assessee filed a petition for condonation of delay, submitting that the appeal against the order of the Ld.CIT(A) dated 11.07.2023 ought to have been filed on or before 10.09.2023, but the appeal could be filed before the Tribunal only on 05.11.2023 with the delay of 56 days due to the fact that, the day before the assessee was required to sign appeal papers in his counsel's office, he slipped and fell down on the steps in his relatives house while attending a function, fracturing his left ankle. Immediately, thereon, he got medical treatment and he was advised bed rest for four weeks. In this process, signing of appeal papers in counsel's office slipped out of assessee's mind, but he realized this fact when he received a phone call from income tax office for payment of taxes. Without any further delay the appeal papers were signed and the appeal was filed before the Tribunal on 06.11.2023, causing delay of 56 days. He, submitted that the delay in filing the appeal belatedly was not as a result of any negligence or lack of diligence, but solely due to the unfortunate and unforeseen circumstances surrounding his health. He attached doctor's certificate in support of his petition, pleaded to condone the delay and admit the appeal for hearing.

2. We have heard the Ld.AR gone through the condonation petition and medical certificate filed by the assessee. It is evident from the

records that the order of the Ld.CIT(A) was passed on 11.07.2023 and the assessee ought to have filed appeal before the Tribunal on or before 10.09.2023, but the assessee could file appeal only on 06.11.2023 with the delay of 58 days. We find that there is reasonable cause for filing the appeal belatedly. We, therefore, condone the delay in the interest of justice and admit the appeal for hearing.

3. Brief facts of the case are that the assessee, an individual, had not filed return of income for A.Y.2015-16. It was noticed by the department that the assessee had made cash deposits amounting to Rs.80,45,200/- in his bank account No.048301500633 maintained with ICICI bank during the F.Y.2014-15. The case was reopened u/s 147 of the Act and notice u/s 148 was issued on 06.01.2021 Notices u/s 142(1) of the Act were issued to the assessee calling for details, documents and evidences in support of income earned during the year, but the assessee has not submitted any details and supporting evidences as called for. Accordingly, the assessing officer(AO) treated the amount of Rs.80,45,200/- as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee.

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

5. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an 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 Commissioner of Income-tax(Appeals) (in short, CIT(A)) u/s 250 of IT Act dated 11.07.2023 is not in accordance with the provisions of law.*

2. *The Ld.CIT(A) by not giving sufficient opportunity, could not have dismissed the case ex-parte, thus violating the provisions of principles of natural justice..*

3. *The action of Learned CIT(A) in dismissing the appeal filed by the appellant, for non-appearance, is not sustainable in view of the provisions of section 250(6) of the IT Act when it is obligatory for the CIT(A) to pass a speaking order.*

4. *The Learned CIT(A) by virtue of provisions of section 250(6) of the IT Act could not have upheld the orders of AO wherein additions made therein was contested before him.*

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 Learned CIT(Appeals) u/s 250 of the Act are to be set aside.*

6. The only contention of the Ld.AR is that the Ld.CIT(A) is not justified in dismissing the appeal of the assessee *ex-parte* without giving sufficient opportunity of being heard. He pleaded before the Tribunal to

afford an opportunity before the CIT(A) to substantiate his case with supporting evidences.

7. Per contra, the Ld.DR submitted that the assessee was given several opportunities, but no details, documents or submissions have been provided to arrive at any conclusion by the Ld.CIT(A). Hence, the Ld.CIT(A) is justified in dismissing the appeal of the assessee. She, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

8. We have heard both the parties and perused the material available on record. The appeal of the assessee was dismissed ex-parte before the Ld.CIT(A) due to non prosecution of the appeal by the assessee with cogent material evidences in support of the grounds of appeal raised. But, the contention of the Ld.AR is that he was not given sufficient opportunity before the Ld.CIT(A) and therefore, pleaded for another opportunity of being heard before the Ld.CIT(A) to substantiate his case, keeping in view the principles of natural justice. It is observed from the records that the assessee was given several opportunities, but the assessee failed to respond to the notices for prosecution of his appeal with evidences and hence, the appeal was dismissed ex-parte by the

Ld.CIT(A). When the assessee files appeal before the appeal authorities, the onus is on the assessee to adhere to the notices and appear before the authorities for prosecution of his case and controvert the findings of the revenue authorities with supporting material evidences. However, keeping in view the principles of natural justice, we are inclined to remit the matter back to the file of the Ld.CIT(A) and direct the Ld.CIT(A) to afford the assessee, another opportunity of being heard before the Ld.CIT(A). The assessee is also directed to adhere to the notices issued by the Ld.CIT(A) and furnish relevant material evidences to substantiate his case. Accordingly, the grounds filed by the assessee are allowed for statistical purpose.

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 31st January,2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 31.01.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

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

1. निर्धारिती/ The Assessee- Shri Vattikuti Veera Venkata Prasad, Shop-03, Ramachandra Puram, Ramachandrapuram Mandal, East Godavari
2. राजस्व/The Revenue - The Income Tax Officer, Ward-1, 3rd Floor, Deepthi Towers, Main Road, Kakinada
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam