

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.23/Hyd/2024**  
(निर्धारण वर्ष/Assessment Year: 2017-18)

Shri Tarigonda Shavathali Khan, Chittoor PAN:ALBPT1206F (Appellant)	Vs.	Income Tax Officer Ward 1(1) Tirupati (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Pradeep Raj Kuna, CA	
राजस्व द्वारा/Revenue by::	Shri R. Kumaran, DR	
सुनवाई की तारीख/Date of hearing:	14/02/2024	
घोषणा की तारीख/Pronouncement:	14/02/2024	

**ORDER**

**Per R.K. Panda, Vice-President.**

This appeal filed by the assessee is directed against the order dated 23/11/2023 of the learned CIT (A) NFAC Delhi, relating to A.Y. 2017-18.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT(A)NFAC in confirming the addition of Rs.1,50,03,000/- made by the Assessing Officer u/s 69A being unexplained cash deposits and Rs.1,67,534/-towards interest income as “income from other sources”.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 6.11.2017 declaring total income of Rs.7,86,700/-. On the basis of information available with the Department under the category of High Risk CRIU/VRU information for the A.Y 2016-17, proceedings u/s 147 of the I.T. Act were initiated after recording reasons to believe that income chargeable to tax has escaped assessment. Accordingly, notice u/s 148 of the Act dated 30.03.2021 was issued to the assessee after obtaining necessary sanction u/s 151 of the Act from the competent authority. Subsequently, notices u/s 142(1) were issued to the assessee. However, despite number of opportunities granted, there was no compliance from the side of the assessee for which the Assessing Officer proceeded to complete the assessment u/s 147 r.w.s. 144 of the I.T. Act.

4. On perusal of the e-filing record, the Assessing Officer noticed that the assessee is a regular filer of income tax upto A.Y 2021-22. Despite having got the e-filing portal, the assessee deliberately did not furnish the details. On verification of the Bank details shown in the ITR, the Assessing Officer noted that the assessee has failed to declare the details of cash deposits amounting to Rs.1,50,03,000/- during the demonetization period in his Bank Account No.081711100000645 maintained with Andhra Bank. In absence of any explanation from the side of the assessee to explain the source of such cash deposits, the Assessing Officer

invoking the provisions of section 69A r.w.s. 115BBE made addition to the total income of the assessee.

5. Similarly, the Assessing Officer observed that the assessee is in receipt of interest of Rs.1,66,350/- and Rs.1,004/- from Essar Oil Ltd and Andhra Bank respectively. However, the assessee has not declared the same in his return of income. The Assessing Officer thereafter made addition of the same as income from other sources which is under reported. The Assessing Officer accordingly determined the total income of the assessee at Rs.1,59,56,053/-.

6. Since there was a delay of 75 days in filing of the appeal before the learned CIT (A) NFAC, the learned CIT (A) NFAC rejected the additional evidences filed before him and dismissed the appeal filed by the assessee on account of delay in filing of the appeal.

7. Aggrieved with such order of the learned CIT (A) NFAC the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee at the outset submitted that due to the death of the Accountant of the assessee during the proceedings and the continuous ill health of the assessee, there was a delay in filing of the appeal before the learned CIT (A) NFAC. He submitted that in the interest of justice, the delay in filing of the appeal before the learned CIT (A) NFAC should be condoned and this appeal should be decided on merit.

9. The learned DR, on the other hand, drew the attention of the Bench to Para 3 of the order of the learned CIT (A) NFAC which reads as under:

Decision-

3. I have gone through the application for condonation of delay. The appeal in the present case has been filed late by 75 days and the appellant has requested for condonation of delay in filing of appeal. The appellant has requested for condoning delay in filing of appeal on following grounds –

1. His accountant expired during the course of proceedings,
2. Severe health grounds of his family,
3. Earlier consultant had no knowledge of appeal process, and
4. Gathering information from multiple sources took time.

The explanation, mentioned at sl. no (i), is not acceptable as the accountant has nothing to do with the process of filing of appeal.

The explanation, mentioned at sl. no (ii), is not acceptable as when the appellant had engaged a consultant, health-position of his family-members does not affect process of filing of appeal.

With regard to the explanation, mentioned at sl. no. (iii) above, the appellant has admitted that he had taken services of a counsel and thus he is responsible for the acts of the counsel, engaged by him. This explanation is, therefore, not acceptable. He cannot now avoid the consequences of the acts or omissions of his counsel. The appellant cannot take excuse of omission of his counsel. If this shifting of burden of making compliance is accepted, the person who is supposed to make compliance as per law will use this practice by just producing affidavit(s) from his employee/counsel as these employees and counsel will not have to suffer consequences of non-compliance. Further, No case should be left open for unlimited period when the appellant is taking 105 days in search of a consultant who is aware of the appeal filing process.

The explanation, mentioned at sl. no (iv), is not acceptable as gathering documents from multiple sources is not required for filing of appeal particularly when no additional evidence is filed along-with Form-35. Sl. No. 12 and 12.1. of Form-35 are reproduced below –

12. Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A	Yes
12.1. If reply to 12 is Yes, furnish the list of such documentary evidence.	

S.No.	Document Name	Description	Documentary Evidence
1	Books of Accounts	Computerised Books will be submitted during the course of Appeal Proceedings	
2	License Copy	FUEL Station License Copy will be submitted during the course of Appeal Proceedings	
3	Company confirmations	Company Ledger Copy will be	

		submitted during the course of Appeal Proceedings	
4	Demonetisation Receipts	Explanation to Cash wise Deposit during Demonetization will be submitted during the course of Appeal Proceedings	

In this case, the appellant failed to make compliance to notices, issued by the AO as he had to pass the impugned order ex-parte u/s 144 of Income Tax Act (the Act). This shows that the appellant has been casual in making compliance to the notices, issued by the Income Tax department and failed to adhere to the time and date, mentioned in those notices. There is series of default on part of the appellant in making statutory compliance, as envisaged by the Act. Considering all this, delay in filing of appeal is not condoned and the appeal is dismissed.

10. Referring to the above, the learned DR submitted that the learned CIT (A) NFAC has given justifiable reasons for not condoning the delay, therefore, the appeal of the assessee should be dismissed.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case determined the total income of the assessee at Rs. 1,59,56,053/- as against the returned income of Rs.7,86,700/- on the ground that there was no compliance to the statutory notices issued u/s 142(1) after the case of the assessee was reopened and the assessee did not produce any evidence to substantiate the nature and source of the cash deposits of Rs.1,50,03,000/- made in his bank account during the demonetization period. Similarly, the assessee has not disclosed the interest income of Rs.1,66,350/- received from Essar Oil Ltd and Rs.1004/- from Andhra Bank. We find the assessee filed the appeal before the learned CIT (A) NFAC with a delay of 75 days. It was explained before the learned CIT (A) NFAC that the delay was on account of death of the Accountant during the course of proceedings and severe health grounds of his family, no knowledge of appeal process and gathering information from multiple sources took time. We find the learned CIT (A) NFAC dismissed the appeal filed by the assessee on the ground that the explanation given by the assessee for condonation of delay is not acceptable.

12. It has been held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST Katiji & others reported in 1987 AIR 1353 that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It has further been held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merit after hearing the parties. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the learned CIT (A) NFAC with the direction to condone the delay in filing of the appeal by the assessee and decide the appeal on merit. The assessee is also hereby directed to participate in the appeal proceedings before the learned CIT (A) NFAC and file the requisite details. The CIT (A) NFAC shall decide the issue as per fact and law. We hold and direct accordingly.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court at the time of hearing itself i.e. on 14<sup>th</sup> February, 2024.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 14<sup>th</sup> February, 2024

***Vinodan/sps***

Copy to:

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2	Income Tax Officer Ward 1(1) Chittoor A.P
3	Pr. CIT-, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*