

**आयकरअपीलीयअधिकरण, 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.256/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2014-15)**

Smt.Vardhanapu Manikumari  
L/R of (Late) Earnest Christopher  
Vardhanapu  
D.No.21-16-30A Dora Bangalow  
Mission Compound, West Godavari  
**[PAN : AEEPV0600F]**  
**(अपीलार्थी/ Appellant)**

Vs. Income Tax Officer  
Ward-1  
Bhimavaram  
**(प्रत्यर्थी/ Respondent)**

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

: Shri C.Subrahmanyam, AR  
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 14.02.2024

घोषणा की तारीख/Date of Pronouncement

: 20.02.2024

**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), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1054023226(1) dated 28.06.2023, arising out of order passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'Act') dated 28.06.2023 for the Assessment Year (A.Y.) 2014-15 with the delay of 50 days. The assessee filed petition

for condonation of delay, submitting that when the assessee was to go to counsel's office at Visakhapatnam to sign appeal papers on 22.08.2023, but on 16.08.2023, the assessee slipped and fell down in the bathroom and one of the ligament was effected. Immediately, she got the medical treatment and was advised bed rest for two months and in this process, going to counsel's office for signing the appeal papers slipped out of assessee's mind. The assessee realized that the appeal is to be filed, when she received a phone call from the counsel's office on 13.10.2023 and then, accordingly, the appeal was filed before the Tribunal on 16.10.2023, causing a delay of 51 days. The assessee submitted that this 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 her health. The assessee attached doctor's certificate in support of her petition and pleaded to condone the delay and admit the appeal for hearing.

2. We have gone through the condonation petition and the doctor's certificate filed by the assessee before us. In the instant case, the order of the Ld.CIT(A) was served on the assessee on 28.06.,2023 and the appeal ought to have been filed before the Tribunal by the assessee on or before 26.08.2023. We find that there is a reasonable cause for the assessee to file

the appeal belatedly with the delay of 51 days. We, therefore, condone the delay and admit the appeal for hearing in the interest of justice.

3. Brief facts of the case are that the assessee's husband, Shri Earnest Christopher Vardhanapu stated to have worked as pastor with Andhra Evangelical Luthern Church, Guntur was in receipt of 300 sq.yds of land, valued at Rs.75,00,000/- as gift on 28.05.2013 without any consideration on his retirement, as a token of gratuity for the services rendered by him. The same was registered and supported by a valid registered document and stamp duty of Rs.4,12,400/- was paid by him. The Assessing Officer (AO) held that, since the stamp duty paid was more than Rs.50,000/-, the assessee's husband is liable to offer the entire amount of Rs.75,00,000/- as income from other sources u/s 56(2)(vii)(b) of the Act. Since the assessee's husband did not file any return of income offering the said amount as income from other sources, proposals to reopen the assessment u/s 147 were initiated and notice u/s 148 was issued and served. In response, the assessee's husband filed return of income on 18.09.2018, declaring an income of Rs.2,50,480/-. Accordingly, notices u/s 143(2) and 142(1) were issued from time to time and in response the assessee's husband had offered his explanation, stating that the property was given to him during 2009. He had accepted the property with the strong belief that the society

has registration u/s 12A. The assessee's husband further submitted before the AO that section 56 is not applicable for the transactions relating to 2009 and the property received from the institution having registration 12/A does not attract provisions of section 56. Not being satisfied with the explanation offered by the assessee's husband, the AO completed the assessment and passed order u/s 143(3) r.w.s. 147 of the Act on 20.11.2018, by disallowing the amount of Rs.75,00,000/- as income from other sources u/s 56(2)(vii) of the Act and arrived at a total taxable income of Rs.77,50,480/-.

4. Aggrieved by the order of the AO, the assessee's husband preferred an appeal before the CIT(A) and notices were issued and served on him, but he neither filed written submission filed in support of grounds of appeal nor sought adjournment. During the appeal proceedings before the Ld.CIT(A), the assessee's husband expired on 11.10.2019 and consequently notices were issued and served on her through email, being wife and legal heir, but no response was received from the assessee. Hence, the Ld.CIT(A) dismissed the appeal of the assessee ex-parte.

5. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal and filed a petition to bring on record Smt.Vardhanapu Manikumari as legal representative to pursue the case of

(Late) Earnest Christopher Vardhanapu. The assessee raised the following grounds of appeal :

1. *That under the facts and circumstances of the case, the orders passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the IT Act dt. 20.11.2018 and confirmed by CIT(A) vide order passed u/s 250 dt.28.06.2023 is not in accordance with the provisions of law.*
  2. *The Ld.CIT(A) is not correct in disposing off the appeal ex-parte without giving sufficient opportunity to the assessee, thus violated the principles of natural justice.*
  3. *The CIT(A) ought to have disposed off the appeal in limine which was against the provisions of Section 250(6) of the Act. The Bombay High Court in [2016] 69 taxmann.com 407(Bombay), which was followed by the Jurisdictional Tribunal in I.T.A 172/V/2019, wherein, it was held that appeal dismissed by CIT(A) in limine is against the provisions of section 250(6) of the IT Act.*
  4. *The notice issued u/s 148 of the IT Act on dt.14.09.2017 is not a valid notice in the eyes of law in as much as there was no fulfilment of conditions contemplated in the said section for issue of such notice.*
  5. *The Ld.CIT(A) ought to have held that the impugned addition of Rs.75 lakhs made u/s 56(2)(vii) of the IT Act is not legally sustainable in as much as AO applied the section without appreciating the facts of the case.*
  6. *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 assessee is that that the assessee is not given sufficient opportunity and the Ld.CIT(A) is not justified in upholding the order passed by the AO and disposing off the appeal ex-parte as the AO applied the section 56(2)(vii) of the Act without appreciating the facts of the case. Relying on the ratio laid down by the Hon'ble Bombay High Court

in [2016] 69 taxmann.com 407 (Bombay) which was followed by the jurisdictional Tribunal in ITA 172/V/2019, the Ld.AR argued that the dismissal of appeal by the Ld.CIT(A) *in-limine* is against the provisions of section 250(6) of the Act. The Ld.AR, therefore, pleaded to afford one more opportunity of being heard before the Ld.CIT(A) to substantiate assessee's case in the interest of justice and direct the Ld.CIT(A) to pass order on merits after appreciating the facts of the case.

7. Per contra, the Ld.DR argued that the assessee was given sufficient opportunities but the assessee did not avail the same. The Ld.DR, therefore, pleaded to uphold the order of 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. It is evident that the appeal of the assessee was dismissed *ex-parte* before the Ld.CIT(A) as there was no compliance from the assessee to the notices issued and served on the assessee. The Ld.AR contended that the assessee was not given sufficient opportunities to substantiate her case and therefore, pleaded for another opportunity of being heard before the Ld.CIT(A). However, in view of the foregoing facts and circumstances of the case and 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) and to pass order on merits. The assessee is also directed to adhere to the notices issued by the Ld.CIT(A) and furnish relevant material evidences to substantiate her 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 20<sup>th</sup> February,2024.

Sd/-

(एस बालाकृष्णन)

**(S.BALAKRISHNAN)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated : 20.02.2024

*L.Rama, SPS*

Sd/-

(दुव्वूरु आर.एल रेड्डी)

**(DUVVURU RL REDDY)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

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

1. निर्धारिती/ The Assessee– Smt.Vardhanapu Manikumari, L/R of (Late) Earnest Christopher Vardhanapu, D.No.21-16-30A Dora Bangalow Mission Compound, West Godavari
2. राजस्व/The Revenue – The Income Tax Officer, Office of Income Tax Department, Ward-1, West Godavari, Bhimavaram
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