

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM "SMC" BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.31/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Baji Shaik
11/200-1 Near Fish Market
Nuzvid, Eluru
[PAN : CJGPS5389M]

Vs. Income Tax Officer
Ward-3(1)
Vijayawada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri Siva Ram Kumar, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 05.03.2024

घोषणा की तारीख/Date of Pronouncement

: 14.03.2024

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/250/2023-24/1056410664(1) dated 22.09.2023, arising out of order passed u/s 147 r.w.s.144 of the Income Tax Act, 1961 (in short 'Act') dated 22.09.2023 for the Assessment Year (A.Y.) 2017-18 with the delay of 70 days. The assessee filed petition for condonation of

delay, submitting that the assessee is uneducated and hence got his appeal filed through a Chartered Accountant/AR, Shri Gabbita Satya Narayana, Vijayawada. The AR has gone to Australia on 15.12.2022 and passed away in Australia on 23.02.2023. The assessee submitted a copy of death certificate issued in Australia and submitted that only one notice of hearing in 2021 was served in the lifetime of the said AR and subsequent notices were served through email only after the demise of the AR on 23.02.2023 in Australia. The deceased AR was a practising individual CA and he had no successors in his profession. As such, the dismissal order of the Ld.CIT(A) passed on 22.09.2023 was not known to the assessee. The assessee came to know of the Ld.CIT(A)/NFAC order of dismissal of his appeal for non-response only after the income tax department has asked the assessee to pay taxes due for A.Y.2017-18. Immediately, the assessee took steps to file present appeal before the Tribunal. The assessee submitted that the reason for delay in filing the appeal was neither intentional nor deliberate. He, therefore, prayed to condone the delay and admit the appeal for hearing, which would otherwise cause great hardship and insufferable injustice to the assessee.

2. In the instant case, the order of the Ld.CIT(A) was passed on 22.09.2023 and the appeal against the order ought to have been filed

before the Tribunal by 21.11.2023, but the assessee could file appeal only on 29.01.2024 with the delay of 70 days due to the aforementioned reasons cited by the assessee. I find there is a reasonable cause for the assessee to file appeal belatedly, hence, I condone the delay and admit the appeal for hearing in the interest of justice.

3. Brief facts of the case are that the assessee, an individual, filed his return of income after completion of the relevant A.Y.2017-18, admitting total income of Rs.2,93,680/- under the head "other sources". As the assessee had filed his return of income belatedly after completion of the A.Y.2017-18, the return was treated as invalid. The Assessing Officer(AO) observed that the assessee had made large cash deposits in his bank account(s) during demonetisation period from 09.11.2016 to 30.12.2016. The assessee's case was reopened u/s 147 of the Act and notice u/s 148 was issued on 29.03.2021 and served on the assessee, asking the assessee to file return of income. However, the assessee did not file return of income in response to notice u/s 148 within due date mentioned therein. Further notice u/s 142(1) dated 23.06.2021 was issued and served. Since the assessee had not complied with the notices issued u/s 148 and 142(1) of the Act, the assessee was asked to submit details required vide notice u/s 142(1) of the Act dated 23.06.2021 in

addition to the details of source for the cash deposits of Rs.2,48,317/- in ICICI Bank Account No.198205002270 and Rs.11,72,800/- in Indian Overseas Bank account No.296601000000291 during the demonetization period with supporting documentary evidences. However, since the assessee failed to comply with the aforesaid notices, a show cause notice u/s 144 of the Act dated 07.03.2022 was given to the assessee to show cause as to why the assessment should not be completed ex-parte u/s 144 of the Act on the basis of material available on record. The AO observed that the assessee had made total credit (cash / other) amounting to Rs.25,72,918/- including cash deposit of Rs.14,21,177/- during the demonetization period. Since the assessee failed to furnish the source of the credits made in the bank account, inspite of various opportunities of being heard given to the assessee, the AO treated the amount of Rs.25,72,918/- as unexplained money u/s 69A of the Act, arrived at a total taxable income of Rs.28,56,600/- and initiated penalty proceedings u/s 271AAC of the Act separately.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A). The Ld.CIT(A) upheld the order passed by the AO and dismissed the appeal of the assessee ex-parte due.

4. 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. *In the facts and circumstances of case, learned CIT(Appeals) ought to have considered the facts of the case and the Grounds of Appeal before dismissal ex parte.*

2. *The appellant's appeal against before NFAC was filed by a Chartered Accountant (Mr.Gabbita Satya Narayana, CA, Vijayawada) and the communications in that respect had been made to and by the AR. But, the said AR passed away on 23.02.2023 in Australia, a few months after he went there in December, 2022 and hence the hearing notices sent by NFAC to his e-mail address were not served and remained unanswered; the appellant prays for reconsideration of his appeal by the first appellate authority in view of the aforesaid exceptional circumstances.*

3. *The appellant craves leave to add or amend any Ground of Appeal.*

5. At the outset, the Ld.AR submitted that the assessee's appeal against the order of Ld.CIT(A)/NFAC was filed by a Chartered Accountant / AR (Mr.Gabbita Satya Narayana, CA, Vijayawada) and the communications in that respect had been made to and by the AR. But, the said AR passed away on 23.02.2023 in Australia, a few months after he went there in December, 2022 and hence the hearing notices sent by NFAC to his e-mail address were not served and remained unanswered. The Ld.AR therefore, submitted that the reason for non-compliance to the notices issued by the department was solely because the hearing notices sent by NFAC to the email address of the said AR were not served. The Ld.

AR therefore pleaded for reconsideration of his appeal and afford an opportunity of being heard before the Ld.CIT(A) in view of the aforesaid exceptional circumstances.

6. Per contra, the Ld.DR relied on the order of the Ld.CIT(A). She pleaded to uphold the order passed by the Ld.DR and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material placed on record. It is an undisputed fact that during the course of appellate proceedings, the Ld.AR of the assessee expired on 23.02.2023 in Australia and the assessee was neither aware of the notices sent to the email address of the deceased AR nor the order passed by the Ld.CIT(A) on 22.09.2023. The assessee submitted a copy of death certificate of the Ld.AR issued at Australia and pleaded for reconsideration of the appeal by granting one more opportunity of being heard before the Ld.CIT(A). In view of the aforesaid facts and circumstances of the case and keeping in view the principles of natural justice, I am inclined to remit the matter back to the file of the Ld.CIT(A) with a direction to afford another opportunity of being heard to the assessee. The assessee is also directed to adhere to the notices issued and served by the revenue authorities and

produce supporting documentary evidence to substantiate his claim. Accordingly, the grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 14th March, 2024.

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

Dated : 14.03.2024
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Shri Baji Shaik, 11/200-1 Near Fish Market, Nuzvid, Eluru
2. राजस्व/The Revenue - The Income Tax Officer, Ward-3(1), CR Buildings, Vijayawada
3. The Principal Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam