

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

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.311/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

Sridhar Yarlagadda,
Visakhapatnam.

PAN: ABDPY4072 G

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. Income Tax Officer,

Ward-3(2),

Visakhapatnam.

(प्रत्यर्थी/ Respondent)

None

Dr. Aparna Villuri, Sr. AR

13/03/2024

14/03/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/AST/S/144/2019-20/1020395898(1), dated 14/11/2019 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual having business income and income from other sources filed his return of income on 30/03/2017 for the AY 2017-18 admitting an income of Rs. 34,845/-. Subsequently, the return of income was revised on 30/08/2017 admitting an income of Rs.5,24,450/-. Thereafter, the case was selected for limited scrutiny under CASS to verify the cash deposits during the demonetization period. Subsequently, notice U/s. 143(2) was issued on 09/08/2018 and served on the assessee on 17/08/2018. Since there was no response from the assessee, another notice U/s. 142(1) of the Act was issued on 9/7/2019 and called for certain information viz., details of sources for cash deposit of Rs. 15,42,000/- and the supporting documentary evidences. As there was no response, the Ld. AO issued a show cause notice on 20/10/2019 and the same was served on the assessee on 22/10/2019. The assessee did not comply to any of the above notices issued by the Ld. AO. Therefore, the Ld. AO issued a notice U/s. 133(6) of the Act to the Branch Manager, Corporation Bank, Sainikpuri Branch, Hyderabad and called for the bank statement of the assessee. On perusal of the bank statement furnished by the Bank Authorities, the Ld. AO noted that the assessee made cash deposit of Rs. 15,42,000/- during the demonetization period.

Thereafter, the Ld. AO brought to the notice of the assessee that the assessee's failure to comply with the notices issued would lead to the finalization of the assessment *ex-parte* based on the material available on record. However, the assessee neither comply with the notices not furnished any submissions along with supporting documentary evidences. Accordingly, the Ld. AO treated the cash deposit of Rs. 15,42,000/- as unexplained money and made the addition U/s. 69A of the Act.

3. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT (A)-NFAC belatedly with a delay of 895 days. With respect to the delay in filing the appeal, the assessee made submissions before the Ld. CIT(A)-NFAC. On perusal of the submissions of the assessee and the explanation for belated filing of the appeal, the Ld. CIT(A)-NFAC came to a conclusion that the delay of 895 days cannot be attributed to any reasonable cause other than negligence and deliberate inaction on the part of the assessee. Further, the Ld. CIT(A)-NFAC observed that the reasons explained by the assessee do not constitute 'sufficient cause' and therefore did not condone the delay and dismissed the appeal. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in

appeal before the Tribunal by raising the following grounds of appeal:

- “1. *Your appellant submits that the Commissioner of Income Tax (Appeals), ought to have condoned the delay in filing the appeal for the reasons stated therein, ought to have admitted the appeal and disposed off on merits.*
2. *Your Appellant submits that the entire cash deposited in the bank during the demonetization period is out of the cash withdrawal in the earlier period. Hence, cannot be said to be unexplained under section 68 thereby attracting the provisions of section 115BBE of the Income Tax Act, 1961.*
3. *Your Appellant submits that an explanation was given before the Investigation Wing at Vizag and had filed an application under PMGKY, the cash deposits cannot be considered as unexplained under section 68 of the Income Tax Act, 1961*
4. *Your Appellant submitted that having disclosed under PMGKY scheme, the deposit under the said scheme ought to be considered as explained by the CIT(A) as well as Assessing Officer and not taxed under section 115BBE.*
5. *Your Appellant alternatively submits that cash deposits in the bank account during the demonetization of Rs. 15,42,000 may be considered as business receipts and income may be estimated at 8% as business income as per section 44AD and taxed as per the provisions of the Income Tax Act, 1961.*
6. *For these and such other grounds that may be urged that the time of hearing, the addition may be deleted.*

4. At the time of hearing of the appeal, before me, none appeared on behalf of the assessee. However, considering the nature of matter involved in the appeal, I proceed to adjudicate the appeal on merits.

5. Before me, the Ld. DR submitted that the Ld. CIT(A)-NFAC dismissed the appeal of the assessee since the appeal was filed with a huge delay of 895 days and the assessee has not given any proper explanation. Therefore, the Ld. CIT(A)-NFAC's decision in

dismissing the assessee's appeal cannot be faulted with and the Ld. DR pleaded to uphold the order of the Ld. CIT(A)-NFAC.

6. I have heard the Ld. DR and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Before me, there is no representation on behalf of the assessee to represent the assessee's case and to explain the sufficient cause to condone the delay caused while filing the appeal before the Ld. CIT(A)-NFAC. It is a settled principle that the burden heavily lies on the assessee to explain the sufficient cause which prevented the assessee to file an appeal within the prescribed time limit. As per section 5 of the Limitation Act, 1963, *any appeal or any application,may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.* It implies that the delay of each day needs to be justified and there must be sufficient cause for not preferring the appeal which is lacking in the instant case. The Hon'ble Supreme Court in the case of Ramlal vs. Rewa Coalfields Ltd reported in AIR 1962 SC 361 has held that *the cause for the delay in filing the appeal which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor inaction, or want of bona fides can be imputed to*

the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. In the present case, the assessee took more than two years to file the appeal before the Ld. CIT(A)-NFAC. But, the assessee has not given any plausible reasons before the Ld. CIT(A)-NFAC which constitutes a sufficient cause to condone the delay. Considering these facts and circumstances of the case, I am of the view that the Ld. CIT(A)-NFAC has rightly dismissed the condonation of delay petition filed by the assessee. Therefore, I do not find any infirmity in the order of the Ld. CIT(A)-NFAC and hence it does not call for any interference.

7. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open Court on 14th March, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated :14/03/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Sridhar Yarlagadda, 50-121-20/1/2, Seshu Tower, Balayya Sastry Layout, Visakhapatnam, Andhra Pradesh-530013.
2. राजस्व/The Revenue – Income Tax Officer, Ward-3(2), Infinity Towers, Sankaramatam Road, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,

- 4.आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam