

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
(Through Hybrid Hearing)

आयकर अपील सं./ I.T.A. No.241/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2015-16)

Amma Vayovrudha Sevasada Nam, Kesarapalli. PAN: AAATA 4192 R (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer (Exemptions), Rajahmundry. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri M. Madhusudan, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	06/03/2024
घोषणा की तारीख/Date of Pronouncement	:	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/NFAC/S/250/2023-24/1055044692(1), dated 10/08/2023 arising out of the order passed U/s. 143(1) of the Income Tax Act, 1961 [the Act] for the AY 2015-16.

2. Briefly stated the facts of the case are that the assessee, a charitable society registered U/s. 12A of the Act under the name and style of “Amma Vayovrudha Seva Sadanam” filed its return of income for the AY 2015-16 on 26/03/2017 wherein the assessee declared its receipts through donations / contributions aggregating to Rs. 8,24,829/- and the expenditure of Rs. 8,19,317/-. The return was processed by the CPC, Bengaluru and issued a Deficiency Letter U/s. 139(9) of the Act by stating that *the Audit Report in Form No. 10B was not filed along with the return of income*. Thereafter, the assessee-society complied with the notice U/s. 139(9) of the Act and filed ‘Rectified Return of Income’ 12/6/2017. After considering the rectified return of income filed by the assessee, the CPC, Bengaluru passed Intimation U/s. 143(1) of the Act on 8/9/2017 wherein the assessee’s claim of exemption U/s. 11 of the Act was denied and thereby determined the total income at Rs.8,25,600/-. Thus, a demand of Rs. 1,39,870/- was raised by the revenue in the case of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. However, the assessee filed its appeal with a huge delay of 1797 days before the Ld. CIT(A)-NFAC. With respect to the belated filing of the appeal before the Ld. CIT(A)-NFAC, it was the submission of the assessee that the delay was caused due to various circumstances which

includes mainly because of the death of Accountant of the assessee-society. The assessee also relied on various case laws in support of its claim that the assessee-society was prevented by a reasonable cause while filing the appeal before the Ld. CIT(A)-NFAC within the stipulated time. After considering the submissions of the assessee as well as relying on various case laws of various High Courts and various Benches of Income Tax Appellate Tribunal, the Ld. CIT(A)-NFAC came to a conclusion that the explanation submitted by the assessee-society does not satisfy the test of 'sufficient cause' as required U/s. 5 of Limitation Act, 1963 and accordingly rejected the condonation petition filed by the assessee and dismissed the appeal *in-limine*. 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. *The order /s. 250, dated 10/08/2023 passed by the Ld. CIT(A)-NFAC for the AY 2015-16 may be erroneous both in law and also on facts of the case.*
2. *The Ld. CIT(A) grossly erred in rejection of the prayer for condonation of delay about 1797 days in filing the appeal U/s. 246A of the Act relying upon decisions may have no relevance, taking cognizance of the fact that the appellant was confronted by reasons beyond his control as enumerated in the Notarized Affidavit filed with appeal petition in Form No. 35.*
3. *The Ld. CIT(A) ought to have noticed that the adjustment made by CPC, Bengaluru U/s. 143(1)(a) may not appear to be in consonance with the provisions contained in the statute vis-à-vis the judicial precedents existing on the*

issue which speak to the effect “that the audit report in Form No. 10B could be filed even at the stage of assessment proceedings and that the impugned adjustments resorted to by the CPC may not be liable to be made U/s. 143(1)(a) as the same did not represent ‘Arithmetical Errors’.

4. *Taking cognizance of the aspect that there patently emerges substantial justice; in that there may appear a strong case on merits as recorded in the statement of facts and the associated documents referred to therein, the Ld. CIT(A) ought not have squarely relied upon the technical issues and such adjudication may be against the judicial precedents propounded by the Hon’ble Supreme Court, brought to his notice.*
5. *That in the context of grant of registration U/s. 12A and 80A of the Act which are still in force as of now and also considering the fact that it spent its receipt beyond the threshold limit of 85% as stipulated by law, the Ld. CIT(A) ought to have noticed that there is no income chargeable to tax as per the mandatory provisions contained in the statute and his basic legal issue was brushed aside in limine denying the substantial justice.*
6. *That in the facts and circumstances of the case as recorded in the memorandum of written submissions dated 26/7/2023, reiterated in the appeal petitions, the order of the Ld. CIT(A) dismissing the appeal in limine and confirming the adjustments made by CPC may be void ab initio.*
7. *For the reasons and other reasons which may be advanced during the course of hearing of appeal, it is prayed that the reliefs sought for may be allowed.”*

3. At the outset, it was the submission of the Ld. Authorized Representative [AR] that the Ld. CIT(A)-NFAC did not condone the delay of 1797 days in filing the appeal before the Ld. CIT(A)-NFAC even though the reason for the delay was explained by the assessee. It was further submitted by the Ld. AR that the delay was occurred due to death of the Accountant of the assessee-

society and therefore it is prayed that since the delay was caused by the reason beyond the control of the assessee, the Ld. AR pleaded to condone the delay in filing the appeal before the Ld. CIT(A)-NFAC and prayed for remitting the matter back to the file of the Ld. CIT(A)-NFAC with a direction to dispose of the case on merits.

4. On the other hand, the Ld. Departmental Representative [DR] submitted that there is a huge delay of 1797 days in the case of the assessee and the reason advanced by the assessee to substantiate such inordinate delay is the death of assessee-society's Accountant. The Ld. DR further submitted that even prior to the death of the assessee-society's Accountant there was a huge delay and even after the death of the Accountant, the appeal was filed with a further delay of more than one year. The Ld. DR also submitted that the assessee has not even filed the return of income within prescribed time limit. Therefore, the Ld. DR submitted that the Ld. CIT(A)-NFAC has rightly dismissed the appeal of the assessee and hence the Ld. DR pleaded that the order of the Ld. CIT(A)-NFAC does not call for any interference.

5. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It

is a fact that on being aggrieved by the decision of the Ld. AO with regard to the denial of exemption claimed by the assessee, the assessee-society preferred an appeal before the Ld. CIT(A)-NFAC with a huge delay of 1797 days. The reason given by the assessee for the belated filing of the appeal before the Ld. CIT(A)-NFAC is *various circumstances including the death of Accountant of the assessee-society*. Even before the Bench, the only contention of the assessee is that the huge delay was caused only due to the death of Accountant of the assessee-society. However, the assessee did not produce the death certificate of the Accountant explaining on which date the accountant passed away. On this aspect, the contention of the Ld. DR is that even much prior to the death of the Accountant, there was a huge delay and for that also the assessee has not given any explanation. Further, even after the death of the Accountant, there was a further delay of one year to prefer 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. But, in the present case, the assessee simply mentioned that the reason for the delay is only due to death of the Accountant. 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, it is apparent that while the filing of the assessee's appeal before the Ld. CIT(A)-NFAC, the assessee took nearly more than one year after the death of the Accountant and quite considerable time was also there even before the death of the Accountant to file the appeal. Therefore, considering the facts and circumstances of the case, the Ld. CIT(A)-NFAC has rightly dismissed the condonation of delay petition by holding that the reasons stated by the assessee do not constitute 'reasonable and sufficient cause'. For the sake of immediate

reference, the relevant paras from the order of the Ld. CIT(A)-NFAC are reproduced herein below:

“5.1. It is seen that there is an inordinate delay of 1797 days in filing of appeal. The assessee has attributed this delay to various circumstances including the death of accountant in 2021. The appellant has tried to explain the delay by submitting the Notarized Affidavit outlining the circumstances to the delay in filing of appeal. The argument by the appellant does not hold good as there is further delay of more than a year after death of the accountant, as the appeal is filed only on 9/9/2022.....

5.2.....

5.3. Thus, on the basis of the above and after duly considering all the submission made by the appellant including the Notarized Affidavit the delay of 1797 days in filing the appeal cannot be condoned. The other issue of merit of the case is not adjudicated as the appellant’s appeal is not admitted.”

6. On perusal of the above observation of the Ld. CIT(A)-NFAC, I find that the Ld. CIT(A)-NFAC has rightly appreciated the facts and circumstances of the case and discussed the issue at length while dismissing the condonation petition filed by the assessee. Therefore, I am of the view that there is no infirmity in the order of the Ld. CIT(A)-NFAC and hence the same does not call for any interference. Accordingly, all the grounds raised by the assessee are dismissed.

7. In the result, appeal of 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 – Amma Vayovrudha Sevasada Nam, D.No. 1/89, Vijayawada Road, Kesarapalli, Krishna District -521102, Andhra Pradesh 521102.
2. राजस्व/The Revenue – ITO (Exemptions), Aayakar Bhawan, Veerabhadrapuram, Rajahmundry – 533105.
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