

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.104/Viz/2023

(निर्धारणवर्ष/ Assessment Year : 2017-18)

The Andhra Pradesh Mercantile
Mutually Aided Cooperative Thrift
& Credit Society Limited,
D.No. 11-13-1, Subbarammayya
Street, Janda Chettu Road,
Vijayawada – 520001.
PAN: AADAT 6013 C

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of
Pronouncement

Vs. The Income Tax Officer,
Ward-1(1),
Vijayawada.

(प्रत्यर्थी/ Respondent)

Sri M.V. Prasad, AR

Dr. Satyasai Rath, CIT-DR

21/03/2024

26/03/2024

ORDER

PER S. BALAKRISHNAN, Accountant 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/250/2022-23/1049959186(1), dated 21/02/2023

arising out of the order passed U/s. 143(3) 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 Association of Persons [AoP] and a Mercantile Cooperative Credit Society filed its return of income for the AY 2017-18 on 31/3/2018 admitting NIL income. Subsequently, the case was selected for scrutiny through CASS. Accordingly, notice U/s. 143(2) of the Act was issued on 24/09/2018 and it was duly served on the assessee. During the assessment proceedings, it was observed by the Ld. AO based on the information / data gathered during 'operation clean money' by the Department, the assessee has deposited cash of Rs. 88,34,98,500/- in its bank accounts during the demonetization period. Thereafter, the assessee was asked to furnish the details and evidences for the said cash deposits along with its books of account, nature of income earned, source for cash deposits, bills and vouchers etc. But the assessee did not comply with the statutory notices issued and served U/s. 143(2) & 142(1) and also failed to furnish the details as called for by the Ld. AO. Therefore, the Ld. AO issued a show cause notice on 26/12/2019 requesting the assessee to show cause as to why the amounts deposited in the bank account

should not be treated as unaccounted income of the assessee society. However, the assessee did not respond to the show cause notice issued. Therefore, the Ld. AO came to a conclusion that the cash deposited by the assessee during the demonetization period is nothing but unexplained money and from undisclosed sources and therefore the same was not offered for taxation. Further, the Ld. AO also observed that the assessee has failed to prove its normal business activities. Accordingly, the Ld.AO treated the cash deposits amounting to Rs. 88,34,98,500/- as unexplained money U/s. 69A of the Act and assessed the income U/s. 115BBE of the Act. Thus, the Ld. AO determined the total income of the assessee at Rs. 88,34,98,500/- and passed the assessment order U/s. 143(3) of the Act on 30/12/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. While filing the appeal before Ld. CIT(A)-NFAC, there was a delay of 546 days. With respect to the belated filing of the assessee's appeal, the Ld.CIT(A)-NFAC observed that the assessee has not filed any proof to substantiate the claim for filing the appeal beyond the prescribed time limit. Accordingly, the Ld. CIT(A)-NFAC did not condone the delay 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. *On the facts and in the circumstances of the case, the order passed by the Ld. CIT(A) U/s. 250 of the Act is bad in law as well as facts.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in dismissing the appeal and treating it as in limine by rejecting the petition for condonation of delay on a just vague ground that no evidence were produced for such delay.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) is not justified in not considering the delay in filing of appeal even though the reasons for the delay were well explained in Form-35 itself. Also not justified in stating that the appeal Form No. 35 is defective without pointing out any defect.*
4. *On the facts and circumstances of the case, the Ld. CIT(A) is not justified in dismissing the appeal without affording a reasonable time and opportunity to appellant to explain which is against the principles of natural justice.*
5. *On the facts and circumstances of the case, the Ld. CIT(A) ought to have considered the case on merits even though the delay was not condoned as many judicial pronouncements held that even if the application for condonation of delay is rejected, the appeal should have been disposed of on merits. Therefore, it is required that the assessment may annulled and restored back to the file of the Ld. AO for consideration.*
6. *Any other ground or grounds that may be urged at the time of hearing.”*

4. At the outset, the Ld. Authorized Representative [AR] submitted that the appeal before the Ld. CIT(A)-NFAC was filed with a delay of 546 days. The Ld.AR further submitted that in

Column No. 15 of Form-35, the assessee has given the grounds for condonation of delay which was not considered by the Ld. CIT(A)-NFAC while rejecting the appeal. The Ld. AR further submitted that the Ld. CIT(A)-NFAC has erred in treating that the petition for condonation of delay was not filed.

5. Per contra, the Ld. Departmental Representative relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The Ld. CIT(A)-NFAC dismissed the appeal in-limine since the appeal was not filed within the limitation period and without considering the merits of the case. Further, on perusal of the order of the Ld. AO we find that several opportunities have been provided to the assessee whereas the assessee has failed to represent his case. The Ld. AO therefore proceeded to conclude the proceedings based on the material available on record. However, the Ld. AR pleaded that one more opportunity may be provided to the assessee to represent his case before the Ld. AO following the principles of natural justice. On assurance from the Ld. AR, we find it deem fit to remit the file back to the Ld. AO to

consider the case afresh and pass appropriate orders in accordance with law after considering the submissions made by the assessee. On the same breath, we also direct the assessee to cooperate before the Ld. AO in the assessment proceedings, otherwise the Ld. AO is at liberty to pass the order based on the material available on record. It is ordered accordingly.

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

Pronounced in the open Court on 26th March, 2024.

Sd/-

(दुव्वूरु आर. एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 26.03.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–The Andhra Pradesh Mercantile Mutually Aided Cooperative Thrift & Credit Society Limited, C/o. CA MV Prasad, Chartered Accountant, D.No. 60-7-13, Ground Floor, Siddhartha Nagar, 4th Lane, Vijayawada, Andhra Pradesh – 520010.

2. राजस्व/The Revenue –The Income Tax Officer, Ward-1(1), O/o. ITO, MG Road, Vijayawada, Andhra Pradesh – 520010.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam