

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.258/Viz/2023

(निर्धारणवर्ष/ Assessment Year : 2017-18)

Kapil Infra Avenues Private
Limited,
Vijayawada.
PAN: AADCK 4944 P
(अपीलार्थी/ Appellant)

Vs. Deputy Commissioner of
Income Tax,
Circle-1(1),
Vijayawada.
(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थीकीओरसे/ Revenue by

: Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

: 21/03/2024

घोषणाकीतारीख/Date of
Pronouncement

: 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/250/2022-23/1049056331(1), dated 24/01/2023

arising out of the order passed U/s. 147 r.w.s 144B of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. At the outset, we noticed that there is a delay of 209 days in filing the appeal before the Tribunal. With respect to belated filing of the appeal, the assessee has filed a condonation petition stating that due to shifting of office from Vijayawada to Hyderabad, the assessee could not file the appeal on time. In this connection the assessee also enclosed an affidavit stating the above reasons. The Ld. AR therefore pleaded that the delay may be condoned. On perusal of the condonation petition filed by the assessee and the submissions of the Ld. AR, we find that there is a sufficient cause to the assessee which prevented them from filing the appeal on time and thereby we condone the delay of 209 days and proceed to adjudicate the appeal on merits.

3. Briefly stated the facts of the case are that the assessee-company filed its return of income for the AY 2017-18 on 30/10/2017 declaring total income of Rs. 10,32,370/-. Subsequently, the case was reopened after verification of financials of the company and after recording reason for reopening and with prior approval of the competent authority. During the reassessment proceedings, it was observed by the Ld.

AO that the assessee has paid interest on sale advances ranged from 10% to 14% and average interest rate of 12% was applied to arrive at pro rata finance cost disallowance. The interest cost on diverted funds of Rs. 7,44,03,750/- at 12% works out to Rs. 89,28,450/-. It is also observed by the Ld. AO that the assessee has diverted his business funds to non-business purposes. Hence, interest cost of Rs. 89,28,450/- was disallowed by the Ld.AO and added back to the total income of the assessee. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

4. On appeal, the Ld. CIT(A)-NFAC, considering the assessee's non-compliance to the notices issued for hearing of the appeal, dismissed the appeal of the assessee and passed ex-parte order. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following revised grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld.CIT(A) is not justified in deciding the appeal ex-parte.*
3. *Without prejudice to the above, the Ld. CIT(A) ought to have seen that the initiation of proceedings U/s. 148 of the Act is not valid and therefore the consequential order passed is also not justified.*

4. *The Ld. CIT(A) erred in confirming the action of the AO in disallowing the finance cost of Rs. 82,28,450/-.*
5. *Any other ground that may be urged at the time of hearing.”*

5. At the outset, the Ld. AR submitted before the Bench that the Ld. CIT(A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard and with a direction to decide the case on merits.

6. On the other hand, the Ld. DR vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee made any written submissions nor filed any adjournment letter before the Ld. CIT (A)-NFAC. It was further submitted that the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A)-NFAC does not call for any interference.

7. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, no

submissions were made before the CIT(A)-NFAC on the dates of hearing whatsoever the reasons. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte. In this situation, after considering facts and circumstances of the case and also considering the prayer of the Ld. AR, and in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the appeal on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

8. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

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

Sd/-

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

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 26.03.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Kapil Infra Avenues Private Limited, 40-14/31, Chandramoulipuram Near Benz Circle, Labbipet, Vijayawada, Andhra Pradesh – 520010.
2. राजस्व/The Revenue –Deputy Commissioner of Income Tax, Circle-1(1), Vijayawada.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam