

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.27/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Venkata Satyanarayana Gunda
1-70B, Main Road
A.Konduru
NTR Dist.

[PAN : ATRPG0224C]

(अपीलार्थी/ Appellant)

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

(प्रत्यर्थी/ Respondent)

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

: Shri K.Sivas Ram Kumar, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 21.03.2024

घोषणा की तारीख/Date of Pronouncement

: 26.03.2024

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/250/2023-24/1055573524(1) dated 30.08.2023, arising out of order passed u/s 144 of the Income Tax Act, 1961 (in short 'Act') dated 29.12.2019 for the Assessment Year (A.Y.) 2017-18 with the delay

of 92 days. The assessee filed petition for condonation of delay and submitted that the assessee got his appeal filed through a Chartered Accountant Mr.Gabbita Satya Narayana, Vijayawada. As the assessee is uneducated, the communication in respect of the appeal had been looked after by the said AR. The AR has gone to Australia on 15.12.2022 and passed away in Australia on 23.02.2023. the notices of hearing were served through email of the of the said AR after his demise. The assessee came to know of the order passed by the Ld.CIT(A), dismissing the appeal of the assessee for non-response, only after he received a call from the income tax department to pay the taxes due for the A.Y.2017-18. The assessee produced the death certificate of the said Ld.AR issued at Australia before us and pleaded to condone the delay and admit the appeal for hearing in the interest of justice, as the reasons for the delay in filing the appeal was only due to the serious difficulty faced by the assessee.

2. We have gone through the condonation petition and death certificate of the AR produced by the assessee. In the instant case, appeal against the order of the Ld.CIT(A) dated 30.08.2023 ought to have been filed before the Tribunal by 30.10.2023, but the assessee could file appeal before the Tribunal on 29.01.2024 with the delay of 92 days. We find

there is a reasonable and sufficient cause for the assessee to file appeal belatedly. We, therefore, condone the delay and admit the appeal for hearing in the interest of justice.

3. Brief facts of the case are that the assessee is an individual, has not filed his return of income. The assessment was completed and the Assessing Officer(AO) passed order u/s 144 of the Act on 29.12.2019, by making an addition of Rs.4,91,040/- as unexplained income, addition of Rs.14,80,820/- as 8% of business income and Rs.44,69,500/- as unexplained cash deposit u/s 69A of the Act, 1961.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee ex-parte, as the assessee neither responded to the notices nor filed any documents in support of the grounds raised before the Ld.CIT(A).

5. 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 circumstance of case, the learned CIT(Appeals) ought to have considered the facts and the Grounds of Appeal before dismissal ex-parte.

2. The appellant's appeal against before NFAC was filed by a Chartered Accountant and as the appellant is uneducated, the communication in that respect had been made to and by the AR. But, the said AR passed away on 23.02.2023 in Australia, after he went

there in December, 2022 and hence the hearing notices sent by NFAC to his email address were not served and remained unanswered and the appellant prays for reconsideration of his appeal by the first appellate authority in view of the aforesaid exceptional circumstances.

3. The appellant, a dealer in parent birds, bought chicks from hatcheries, sold them in retail and paid the ENTIRE purchase consideration to hatcheries through his bank account, the cash deposits in his Bank Account being part of his regular business transactions wouldn't have been treated as unexplained cash deposits.

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

5. At the outset, the Ld.AR submitted that the assessee could not respond to the notices before the Ld.CIT(A) served on the email address of the said AR who expired at Australia and the Ld.CIT(A) dismissed the appeal of the assessee ex-parte due to non-response of the assessee. The Ld.AR further submitted that the assessee has source for cash deposits in his bank account, being part of his regular business transactions. The Ld.AR, therefore, pleaded for affording an opportunity of being heard before the Ld.CIT(A) to substantiate assessee's case with credible material evidences available in the interest of justice.

6. Per contra, the Ld.DR submitted that the assessee was given enough opportunities before the Ld.CIT(A), but the assessee neither appeared before the Ld.CIT(A) nor filed any submissions, information or

documents in support of the grounds raised before the Ld.CIT(A). She, therefore, submitted that the Ld.CIT(A) is justified in dismissing the appeal of the assessee ex-parte. She, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

7. We have heard both the parties and perused the material available on record. In the instant case, it is undisputed fact that the AO made addition of Rs.4,91,940/- as unexplained income, addition of Rs.14,80,820/- as 8% of business income and Rs.44,69,50/- as unexplained cash deposit u/s 69A of the Act and the appeal before the Ld.CIT(A) was dismissed ex-parte due to non-response from the assessee. We find that the assessee has sufficient and genuine reason for his non response to the notices issued by the revenue authorities. The assessee has pleaded for affording an opportunity of being heard before the Ld.CIT(A) to substantiate assessee's case with credible material evidences available. In view of the foregoing facts and circumstances of the case and keeping in view the principles of natural justice, we are inclined to remit the matter back to the file of the Ld.CIT(A) for giving an opportunity of being heard to the assessee. The assessee is also directed to adhere to the notices issued and cooperate with the revenue

authorities during the proceedings. 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 26th March, 2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 26 .03.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

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

1. निर्धारिती/ The Assessee- Venkata Satyanarayana Gunda, 1-70B, Main Road, A.Konduru, NTR Dist.
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