

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.26/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2012-13)**

Sri Venkateswara Enterprises
D.No.3-347, Moarampudi Road
Rajahmundry
[PAN : ABCFS1918A]
(अपीलार्थी/ Appellant)

Vs. Assistance Commissioner of
Income Tax
Circle-2(1)
Rajahmundry
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : 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 :

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/250/2023-24/1058313236(1) dated 29.11.2023, arising out of order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 09.03.2015 for the Assessment Year (A.Y.) 2012-13.

2. In the instant case, during the first round of litigation, the assessee preferred an appeal before the Tribunal against the order of the Ld.CIT(A) dated 14.11.2019, who dismissed the appeal of the assessee as time barred. The Tribunal vide ITA No.37/Viz/2020 dated 22.09.2020 passed an order, directing the assessee to file condonation petition before the Ld.CIT(A) and also directed the Ld.CIT(A) to consider the condonation petition filed by the assessee. As directed by the Tribunal, the assessee filed petition for condonation of delay before the Ld.CIT(A), but the Ld.CIT(A) passed order dated 29.11.2023, dismissing the appeal of the assessee.

3. 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. *The order passed by the learned Commissioner of Income Tax (Appeals), NFAC is bad in law and is not pronounced based on facts.*
2. *The Learned Commissioner of Income Tax (Appeals), NFAC has considered the submissions manually made by the Assessee regarding condonation of delay before the Commissioner of Income Tax (Appeals), Rajahmundry.*
3. *The Learned Commissioner of Income Tax (Appeals), NFAC, has also not considered the submissions made by the Assessee during the course of appellate proceedings;*
4. *The Learned Commissioner of Income Tax (Appeals), NFAC, should have afforded an opportunity as a last resort to the Assessee firm before disposing off the appeal.*

5. The Learned Commissioner of Income Tax (Appeals), NFAC, should have appreciated that the appeal cannot be just disposed off on the issue of absence of any explanation for condonation of delay or sufficient cause in filing condonation of delay.

6. Any other Grounds that may be urged during the course of the hearing of the Appeal.

4. At the outset, the Ld.AR submitted that as directed by the Hon'ble Tribunal, the assessee filed petition for condonation of delay before the Ld.CIT(A). The Ld.CIT(A) has not considered the condonation petition filed and submissions manually made by the assessee, but passed order dismissing the appeal of the assessee, which is bad in law. The Ld.AR further submitted that the Ld.CIT(A) should have afforded an opportunity as a last resort to the assessee firm before disposing off the appeal. He, therefore, pleaded us to afford an opportunity of being heard to the assessee before the Ld.CIT(A) in the interest of justice.

5. Per contra, the Ld.DR submitted that the assessee was given sufficient opportunities of hearing, in view of the order of Hon'ble ITAT. However, despite various opportunities of hearing being given, no condonation petition for explaining the delay in filing of appeal was filed by the assessee. 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.

6. We have heard both the parties and perused the material available on record. It is an admitted fact that the assessee has filed condonation petition before the Ld.CIT(A) as directed by the ITAT in the first round of litigation. But the Ld.CIT(A) has not looked into the condonation petition filed by the assessee and dismissed the appeal *in-limine*. Therefore, we set aside the orders passed by the Ld.CIT(A) and remit the matter back to the file of the Ld.CIT(A) and dispose of the condonation petition and also dispose the appeal on merits.

7. 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)

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

1. निर्धारिती/ The Assessee- M/s Sri Venkateswara Enterprises, D.No.3-347, Moarampudi Road, Rajahmundry
2. राजस्व/The Revenue - The Assistance Commissioner of Income Tax, Circle-2(1), Rajahmundry
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam