

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

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
(Through Hybrid Hearing)

आयकरअपीलसं./ I.T.A. No.94/Viz/2024

(निर्धारणवर्ष/ Assessment Year : 2017-18)

Medisetty Venkata Rattaiah,
Vijayawada.
PAN: ABYPM 1595 M
(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by
प्रत्यार्थीकीओरसे/ Revenue by

Vs. The Assistant or Deputy
Commissioner of Income Tax,
Vijayawada.
(प्रत्यर्थी/ Respondent)

: Sri M.V. Prasad, AR
: Dr. Satyasai Rath, CIT-DR

सुनवाईकीतारीख/ Date of Hearing
घोषणाकीतारीख/Date of
Pronouncement

: 15/04/2024
: 18/04/2024

ORDER

PERS. 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 [in short 'Ld. CIT(A)-NFAC'] in DIN & Order
No. ITBA/NFAC/250/2023-24/1059100415(1), dated
27/12/2023 arising out of the order passed U/s. 147 r.w.s 144

r.w.s 144B of the Income Tax Act, 1961 [in short 'the Act'] for the AY 2017-18.

2. At the outset, it is noticed from the appeal record that there is a delay of 15 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the assessee filed an affidavit along with a petition seeking condonation of delay and the contents of the said affidavit are as under:

- "1
 2.
 3.
 4. *The reasons for such delay are submitted as under:*
- A. *It is submitted that the assessee is an illiterate and running a rice mill since many years. However, due to lull in the business line and also due to personal health issues and family disturbances, he could not continue the business and closed the rice mill for many years.*
- B. *Thereby he went into financial crisis and trying very hard to pay the amounts due to various business creditors. Finally, he had to dispose off the properties in order to clear all such debts.*
- C. *In this situation and also due to his innocence of the IT provisions, he could not realize the need to go for further appeal.*
- D. *Finally by the time he approached his auditor, entire time of sixty days elapsed and hence there occurred a delay of 15 days in preferring appeal.....]*
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3. On perusal of the contents of the affidavit filed by the assessee, we find that the assessee was prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed limit with a delay of 15 days. Therefore, we hereby condone the delay of 15 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Briefly stated the facts of the case are that the assessee is an individual. As per the information available with the Department, the Ld. AO noted that the assessee has entered into certain transactions during the year totaling to Rs.5,40,21,666/-. The Ld. AO also noted that the assessee has received Rs. 4,06,00,000/-in respect of transfer of immovable property and derived income of Rs. 34,21,666/- by way of rent and dividend. Further, it was also noted by the Ld. AO that the assessee has paid Rs. 1 Crs towards payment to contractor. However, the assessee did not file his return of income for the AY 2017-18 and therefore the Ld. AO after obtaining the necessary approvals from the competent authority, issued a notice U/s. 148 of the Act on 23/3/2021 wherein the assessee was required to file his return of income for the AY 2017-18. Considering the assessee's non-

compliance to the said notice, the Ld. AO issued notice U/s. 142(1) along with questionnaire and called for certain details with regard to the transactions made by the assessee during the year. Since there was no response from the assessee, the Ld. AO completed the assessment U/s. 144 of the Act as best judgment assessment wherein the Ld. AO made certain additions aggregating to Rs. 5,40,21,666/- [Addition of Rs. 4,40,21,666/- U/s. 69A + Rs. 1,00,00,000/- U/s. 69 of the Act]. Accordingly, the Ld. AO, NFAC, Delhi passed the assessment order dated 29/3/2022 and determined the total income at Rs.5,40,21,666/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC passed ex-parte order and dismissed the appeal of the assessee. 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 Ld. CIT(A) is erred in facts and law while passing the order.*
2. *The Ld. CIT(A) ought to have considered the appeal based on merits of the case instead of dismissing the appeal due to non-compliance to the notices issued.*
3. *On the facts and circumstances of the case, the addition of Rs. 5,40,21,666/- as unexplained money and investment U/s. 69A r.w.s 115BBE of the Act is bad in law.*

4. *On the facts and circumstances of the case, the reopening of assessment U/s. 147 and the notice issued U/s. 148 of the Act is invalid in law.*
5. *On the facts and circumstances of the case, the finalization of assessment consequent upon such invalid notice also to be treated as bad in law and void.*
6. *On the facts and circumstances of the case, the assessment completed by bringing the entire sale proceedings to tax as income of the appellant even though the information was in possession that the said property was actually transferred during the FY 2017-18 ie., relevant for the AY 2018-19 and hence resulted in double addition.*
7. *On the facts and circumstances of the case, the Ld. AO erred in bringing the entire sale consideration received to tax on sale of same property in the assessment year 2017-18 and also again in the AY 2018-19 which is bad in law.*
8. *On the facts and circumstances of the case, the assessment made in treating the payment made of Rs. 1,00,00,000/- as income instead of considering it as expenditure is also bad in law.*
9. *On the facts and circumstances of the case, the Ld. AO erred in taxing the entire addition of Rs. 5,40,21,666/- by applying the provisions of section 115BBE treating it as unexplained money without any basis and proving the sources otherwise.*
10. *Any other ground / grounds that may be urged at the time of hearing.”*

5. At the outset, the Ld. Authorized Representative [Ld. AR] submitted before us that the Ld. CIT(A)-NFAC had passed ex-parte order without providing proper opportunity to the assessee of being heard. Ld. AR further submitted that while making the addition of Rs. 5,40,21,666/- the Ld. A.O also did not consider the information which was in his possession and determined the total income of the assessee at Rs. 5,40,21,666/- arbitrarily. It was therefore pleaded that the assessee may

be provided with one more opportunity to pursue his case before the Ld. AO.

6. Ld. DR on the other hand objected to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee, however, on the given dates of hearing, neither the assessee nor his Representative appeared before the Ld. CIT (A)-NFAC. Ld. DR further submitted that even before the Ld. A.O though the assessee got sufficient opportunities to substantiate his case, the assessee failed to do so. Under these circumstances, 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 orders passed by the Ld. Revenue Authorities do not call for any interference and the appeal of the assessee may be dismissed.

7. We have heard the rival submissions and carefully perused the material available 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, none appeared on behalf of the assessee before the Ld. CIT(A)-NFAC on the given dates of hearing. Hence, the Ld. CIT(A)-NFAC left with no other option except to pass ex-parte order based on the material available on record. In this situation, on perusal of the facts and circumstances of the case, we are of the view that the Ld. CIT(A)-NFAC

ought to have considered the submissions made by the assessee which were stated to be not properly appreciated by the Ld. AO and pass a speaking order instead of simply passing ex-parte order. Under these circumstances, considering the prayer and the submissions of the Ld. AR and the nature of issues involved in the appeal, in the interest of justice, we hereby remit the matter back to the file of Ld. AO for de-novo consideration thereby providing one more opportunity to the assessee of being heard. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the material available on the record. It is ordered accordingly.

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

Pronounced in the open Court on 18th April, 2024.

Sd/-

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

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S. BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :18.04.2024
OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Medisetty Venkata Rattaiah, Dr. No. 74-14-49, Krishna Nagar, Patamata, Vijayawada, Andhra Pradesh – 520007.
2. राजस्व/The Revenue –The Assistant / Deputy Commissioner of Income Tax, Circle-2(1), C.R. Building, Vijayawada – 520002.
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