

**आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.11/Viz/2024

(निर्धारण वर्ष / Assessment Year : 2017-18)

Srinivas Balla,  
Visakhapatnam.  
PAN: AHIPB 8232 A

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

Vs. Asst. Commissioner of  
Income Tax, Circle-2(1),  
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Villuri Aparna, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of  
Pronouncement

26/03/2024

19/04/2024

**ORDER**

**PER DUVVURU RL REDDY, Judicial Member :**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-12, Hyderabad in Appeal No. 10193/2019-20, dated 30/10/2023 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. At the outset, it is noticed from the appeal record that there is a delay of 11 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drawn my attention to the affidavit filed by the assessee along with petition seeking for condonation of delay and read out the contents of the affidavit which is as under:

“1 .....

2. *The delay in filing this appeal was entire unintentional and beyond my control. On date 28/12/2023 sustained with viral fever, rendering me temporarily incapacitated and unable to attend to my works. In this period of time the filing of the appeal has slipped out of my mind. However, on 9/1/2023 I received a telephone call from the council's office to pay the tax demand since appeal was to be filed. Immediately at this point of time I realized that appeal was not filed, accordingly, the appeal was filed on 9/1/2023 causing a delay of 13 days.*

3. *In the light of the above, I respectfully submit that this delay in filing the appeal belatedly was not a result of any negligence or lack of diligence. I have attached the Doctor's certificate in support of my petition.*

4. ....

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR and also the Medical Certificate filed by the assessee, I find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed limit with a delay of 11 days. Therefore, I hereby condone the delay of 11 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 deriving income from trading in Indian Made Foreign Liquor [IMFL] filed his return of income for the AY 2017-18 on 17/11/2017 admitting a total loss of Rs. 21,61,484/-. The case was selected for scrutiny under CASS. Accordingly, notice U/s. 143(2) of the Act was issued on 9/8/2018 through ITBA. Subsequently, the case was transferred to the office of ACIT, Circle-2(1) with reference to the order U/s. 127 of the Act vide proceedings of the Ld. Pr. CIT-1, Visakhapatnam. As there is a change in incumbent, a fresh notice U/s. 129 of the Act was issued to the assessee on 11/11/2019 and accordingly notice U/s. 142(1) of the Act was issued to the assessee through ITBA on different dates. During the assessment proceedings, on verification of the assessee's Trading, P & L Account and the Balance Sheet filed by the assessee, the Ld. AO observed that the assessee has taken cost of sales at 27.75% of the purchases which is very high in this line of business. The Ld. AO also noticed that the assessee has undervalued the closing stock as per the balance sheet. Further, the assessee has debited an amount of Rs. 5,13,419/- towards

interest on OD in the P & L Account which is not accepted by the Ld. AO. Further, the Ld. AO also observed that the assessee has claimed indirect expenses at higher values in comparison to his turnover. It is also observed by the Ld. AO that the Trading, P & L Account and Balance Sheet filed along with form 3CD report are not certified by the Chartered Accountant which is mandatory under section 44AB of the Act. In view of the above, the Ld. AO rejected the assessee's books of account and resorted to estimate the income of the assessee. While estimating the income of the assessee, the Ld. AO relied on various decisions of the Benches of the Tribunal at Hyderabad and Visakhapatnam and came to a conclusion that the assessee's profit at the rate of 5% of purchases of the net sales or purchases net of all deduction is reasonable and accordingly the net profit from liquor business @ 5% of net sales made at Rs. 2,27,41,803/- was worked to Rs. 11,37,090/- and added the same to the total income of the assessee under the head business income. Further, the Ld. AO also observed that the assessee has deposited cash to the extent of Rs. 11,36,000/- in his Union Bank of India bank accountants during demonetization period. With respect to the cash deposits, after considering the submissions of the assessee and on verification of the assessee's books of account etc., the Ld. AO treated Rs. 1,50,000/- as

explained and the balance of Rs. 9,86,000/- [Rs. 11,36,000 – Rs. 1,50,000] is treated as unexplained money and made addition U/s. 69A of the Act. Accordingly, the Ld. AO determined the assessed income at Rs. 21,23,090/- and passed the order U/s. 143(3) of the Act, dated 20/12/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). On appeal, none appeared before the Ld. CIT(A) to represent the assessee's case and therefore the Ld. CIT(A) dismissed the appeal of the assessee and passed ex-parte order. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *That under the facts and circumstances of the case, the orders passed U/s. 143(3) of the Act and upheld by the Ld. CIT(A) is contrary to the provisions of law and facts of the case.*
2. *Since the present appeal is not resulting out of search U/s. 132 of the Act or survey U/s. 133A of the Act, the Ld. CIT(A) is not the authority empowered to pass the impugned order.*
3. *The reasons cited by the AL in rejecting the books of accounts, upheld by the Ld. CIT(A) are not valid reasons warranting the rejection of books of accounts, therefore, in the absence of the valid reasons, the rejection of books of account is not correct, consequently the estimation of profit fails.*
4. *The Ld. CIT(A) failed to look into the submissions of the assessee in proper manner and considered the deposits in the bank, in the form of specified bank notes (SBNs) is a violation, liable for addition under section 69A of the Act.*
5. *The Ld. CIT(A) is not correct in relying on the same books of accounts while upholding the addition with regards to SBN*

*deposits in the bank account, U/s. 69A of the Act when the same books of accounts were rejected and income from business was estimated.*

6. *For these and other reasons that are to be urged at the time of hearing the appellant prays that the additions made by the Ld. AO and upheld by the Ld. CIT(A) are liable to be set aside in the interest of justice and fair play.”*

5. At the outset, the Ld. AR submitted before the Bench that the Ld. CIT(A) 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) in order to provide one more opportunity to the assessee of being heard as per the principles of natural justice.

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 appeared before the Ld. CIT(A) nor made any written submissions before the Ld. CIT (A). It was further submitted that the Ld. CIT (A) 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) does not call for any interference.

7. I have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, I find that the Ld.

CIT (A) had posted the case on several occasions. However, neither the assessee appeared before the Ld. CIT(A) nor made any written submissions whatsoever the reasons. Therefore, the Ld. CIT (A) 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, I hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh and decide the appeal on merits after providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) 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 19<sup>th</sup> April, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 19/04/2024  
OKK - SPS

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

1. निर्धारिती/ The Assessee – Srinivas Balla, 49-54-16/1, Ballayasastry, Seethammadhra, Visakhapatnam, Andhra Pradesh – 530013.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax O/o. ITO, Circle-2(1), Infinity Towers, Sankaramatam Road, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam