

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, 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

आयकर अपील सं./ I.T.A. No.04/Viz/2024

(निर्धारण वर्ष / Assessment Year :2007-08)

Apparao Mutchakarla,
Vizag.
PAN: AHVPM 9813 F

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

Vs. Assistant Commissioner of
Income Tax,
Ward-1(4),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri C. Subrahmanyam, AR

Dr. Aparna Villuri, Sr. AR

28/03/2024

19/04/2024

ORDER

PER DUVVURU RL REDDY, Judicial 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/S/250/2023-24/1056503574(1), dated

25/09/2023 arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 [in short 'the Act'] for the AY 2007-08.

2. At the outset, it is noticed from the appeal record that there is a delay of 38 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drawn our 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:

“

Whereas, assessee was having nervous problem affected his left hand and central nervous system (Brain). Thereby he was going for medical checkup, scanning etc. In this view of the matter, the filing of the appeal has left out of mind. However, on 28/12/2023 received a phone call from the Counsel's office and then he realized that appeal is to be filed, accordingly, the appeal fee was paid and same has been filed on 1/1/2024, causing a delay of 38 days.

.....

3. On perusal of the contents of the affidavit filed by the assessee as well as the submission of the Ld. AR, we find that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 38 days. Therefore, we hereby condone the delay of 38 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 an individual was intercepted by the Deputy Director of Income Tax (Inv.) Unit-III-(1), Visakhapatnam at Visakhapatnam Air Port on 28/8/2010 and an amount of Rs. 12 lakhs was found in his custody. A statement was recorded from the assessee U/s. 131 of the Act wherein the assessee stated that he is engaged in real estate business and also a partner in M/s. A.R. Builders and M/s. Sai Padma Developers along with his wife Smt. M. Padmavathi as another partner. Subsequently, a survey U/s. 133A of the Act was conducted in the assessee's case and in the case of M/s. A.R. Builders. Subsequently, during the course of scrutiny proceedings in the case of the assessee for the AY 2008-09 to 2011-12, it was noticed that the assessee has introduced a capital of Rs. 6 lakhs in cash in his business during the FY 2006-07 relevant to the AY 2007-08. Further, it was also noticed that the assessee was in receipt of Rs. 1,20,834/- and Rs. 1,16,506/- as commission and salary income respectively. The Ld. AO by observing that the assessee has not filed his return of income for the AY 2007-08, a notice U/s. 148 of the Act was issued to the assessee after obtaining necessary satisfaction of the competent authority. In response, the assessee has filed his return of

income for the AY 2007-08 admitting a total income of Rs. 1,22,970/- on 4/3/2013. Subsequently, notices U/s. 143(2) and 142(1) of the Act were issued to the assessee and in reply, the assessee's Representative appeared before the Ld. AO and furnished the information from time to time. On perusal of the information submitted before him, the Ld. AO observed that the assessee claimed expenditure towards commission of Rs. 1 lakh. On this issue, the assessee was asked to furnish the proof in support of the claim and in response the assessee furnished the information as called for. However, the Ld. AO did not convince with the explanation given by the assessee and disallowed the assessee's claim of Rs. 1 lakh and added back to the returned income of the assessee. Further, the Ld. AO also disallowed the assessee's claim of Rs. 12,495/- towards vehicle insurance. The Ld. AO further also made addition of Rs. 6 lakhs on account of unexplained cash credit since the assessee could not furnish any supporting documentary evidence to substantiate his claim with regard to capital introduced in his business. Thus, the Ld. AO completed the assessment U/s. 143(3) r.w.s 147 of the Act and determined the assessed income at Rs. 8,35,465/- and passed the assessment order on 28/03/2014. Subsequently, the Ld. AO initiated penalty proceedings and passed the order U/s. 271(1)(c)

of the Act levying penalty of Rs. 2,02,308/- vide order dated 20/02/2019.

5. Aggrieved by the penalty order passed by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee in limine by observing as under:

*“2.7. As per section 249(4)(b) of the Act, the appeal shall not be admitted, unless the appellant has paid an amount equal to the amount of advance tax which was payable. As the applicable advance tax has not been paid by the appellant before filing of the present appeal, the present appeal shall not be admitted. Therefore the present appeal filed is not admitted as per the provisions of section 249(4) of the Act.
.....”*

6. 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. That under the facts and circumstances of the case the orders passed by the Ld. CIT is contrary to the facts of the case and provisions of law.*
- 2. The Ld. CIT dismissed the appeal as not maintainable since the assessee has not paid advance tax, which according to CIT is in violation of provisions of section 249(4)(b) of the Act, which finding is not correct since the section has no application to the assessee’s case and so much so when the impugned appeal relates to penalty appeal.*
- 3. For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the orders passed by the Ld. CIT U/s. 250 of the Act are liable to be cost of in the interest of justice.”*

7. At the outset, the Ld. Authorized Representative [AR] submitted that before the Ld. CIT(A)-NFAC, the assessee has challenged against the penalty order of the Ld. AO passed U/s. 271(1)(c) of the Act. However, the Ld. CIT (A)-NFAC by applying the provisions of section 249(4)(b) of the Act, dismissed the appeal of the assessee *in limine*. Therefore, the Ld. AR pleaded that the assessee may be provided one more opportunity before the Ld. CIT(A)-NFAC with a direction to decide the case on merits with regard to the penalty levied by the Ld. AO.

8. Per contra, the Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

9. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the Ld. CIT(A)-NFAC has not looked into the merits of the case and dismissed the appeal of the assessee *in limine* by stating that the assessee has not complied with the provisions of section 249(4)(b) of the Act. We have also noticed the assessee has contested before the Ld. CIT(A)-NFAC against the penalty order of the Ld. AO passed U/s. 271(1)(c) of the Act. However, the Ld. CIT (A)-NFAC by applying

the provisions of section 249(4)(b) of the Act, dismissed the appeal of the assessee in limine. In our considered opinion, the Ld. CIT(A)-NFAC ought to have considered the submissions of the assessee with regard to the penalty levied by the Ld. AO and pass the orders on merits and in accordance with law instead of dismissing the appeal in limine by invoking the provisions of section 249(4)(b) of the Act. Considering the above facts and circumstances of the case, we are of the view that the question of admitted tax does not arise in the case of the assessee as the assessee has challenged the penalty order passed by the Ld. AO before the Ld. CIT(A)-NFAC. Therefore, we find force in the argument of the Ld. AR. Accordingly, we hereby set-aside the order passed by the Ld. CIT(A)-NFAC and remit the matter back to the file of the Ld. CIT(A)-NFAC with a direction to decide the case on merits after affording a reasonable opportunity of being heard to the assessee 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. 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 materials on the record. It is ordered accordingly.

10. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 19th April, 2024.

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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 – Apparao Mutchakarla, F.No. 302, Seethammadhara, Visakhapatnam, Andhra Pradesh – 530013.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(4), Visakhapatnam, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
- 4.आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam