

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM
(through Hybrid Hearing)**

**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.98/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)**

The Andhra Pradesh State Handloom Weavers Co-operative Society Ltd. D.No.29-11-9/1, APCO Bhavan, Venkateswara Rao Street Governorpet, Vijayawada [PAN : AABAT3780A] (अपीलार्थी/ Appellant)	Vs. Asst. / Dy.Commissioner of Income Tax Circle-1(1) Vijayawada (प्रत्यर्थी/ Respondent)
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अपीलार्थी की ओर से/ Appellant by	:	Shri M.V.Prasad, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr.Satyasai Rath, CIT(DR)
सुनवाई की तारीख / Date of Hearing	:	15.04.2024
घोषणा की तारीख/Date of Pronouncement	:	19.04.2024

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) in ITBA/NFAC/S/250/2023-24/1060896222(1) dated 14.02.2024, arising out of order passed u/s 147 r.w.s. 144 of the Income Tax Act, 1961 (in short 'Act') dated 22.03.2022 for the Assessment Year (A.Y.) 2015-16.

2. Brief facts of the case are that as per the assessment order under section 147 r.w.s. 144 r.w.s. 144B of the Act, it is stated that the assessee has not filed the return of income and the AO has computed the total income at Rs.11,13,01,850/- and tax payable at Rs.9,98,75,161/- which includes the advance tax payable by the assessee as well as the interest on account of delayed payment of advance tax.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) and during the appellate proceedings, as there is a deficiency in the appeal filed in Form No.35, deficiency letter was issued on 25.01.2024 on the following grounds: *"Tax on returned income not paid/particulars of payment not mentioned"*. The assessee has not complied and has not furnished any reply to the above said deficiency letter. As per the deficiency letter dated 25.01.2024, the assessee was required to comply within 5 days of receipt of this letter, but the assessee did not comply till the date of the order passed by the Ld.CIT(A). Therefore, as per the provisions of Section 249(4), the Ld.CIT(A) dismissed the appeal filed by the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

i. The order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi is erroneous and opposed to the facts of the case and law.

ii. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not admitting the appeal in view of violation of the provisions of Section 249(4) of the I.T.Act.

iii. On the facts and circumstances of the case and in law, the Ld.CIT(A) is not justified in rejecting the admittance of appeal just by giving only one opportunity to clarify the deficiencies within 5 days which is against the principles of natural justice.

iv. On the facts and circumstances of the case and in law, the Ld.CIT(A) would have afforded another opportunity of being heard to the appellant to furnish good and sufficient reasons for exemption from operation of the provisions of clause.

v. On the facts and circumstances of the case and in law, the Hon'ble ITAT may restore back the appeal to the Ld.CIT(A) to admit and adjudicate the case on the grounds of appeal submitted.

vi. Any other legal and factual ground that may be urged at the time of hearing of the appeal.

5. The only contention of the assessee is that the Ld.CIT(A) is not justified in not admitting the appeal of the assessee just by giving only one opportunity to clarify the deficiencies within 5 days, which is against the principles of natural justice. He submitted that during the previous year i.e, 2014-15, relevant to assessment year under consideration due to Telangana movement and bifurcation of state of Andhra Pradesh into two

states i.e, state of Telangana & Andhra Pradesh, the organisation was demerged into 2 divisions, state wise on 02.06.2014 i.e, Andhra Pradesh state handloom weavers cooperative society (“APCO”) and the Telangana state handloom weavers cooperative society (“TSCO”), in terms of personnel recourse, books of accounts, powers, assets etc. Thus concerned staff managing the accounts & books were moved to the other state’s division due to which lack of personnel resource arose. Therefore, assessee was handicapped with timely finalisation of books of account and filing return of income. Further being a government organisation, the personnel could not be recruited without government notification, which was a practical limitation back then, since there is lack of concerned management to look after the financial and taxation aspects books of account could not get audited as per the provisions of income-tax act 1961 within time. Books of account were also not finalised within due date and thus Income Tax Returns were also not filed. However, the fact remains that requisite tax amount(approximately) was already remitted in the form of TDS. The Ld.AR further submitted that the assessee’s books of account were audited under Cooperative societies Act subsequently but return of income was not filed since the time limit to furnish even the belated return expired by that time. He, therefore, pleaded before the

Tribunal to afford an opportunity of being heard before the Ld.CIT(A) to substantiate it's case.

6. Per contra, the Ld.DR argued that the Ld.CIT(A) is justified in dismissing the appeal of the assessee as per the provisions of section 249(4) of the Act as the assessee has not complied with the provisions of the Act, though it was given sufficient time. He, 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. It is undisputed fact that the assessee had received rent and TDS, amounting to Rs.11,13,01,856/- and deposited in the bank, but has not filed the return of income. The AO disallowed the entire amount as the assessee failed to file any explanation with documentary evidence in support of the deposits made in the bank account. On appeal before the CIT(A), the Ld.CIT(A) dismissed the appeal filed by the assessee ex-parte due to non compliance to the deficiency letter issued. The assessee submitted the reasons for non-compliance and pleaded before the Tribunal for giving one more opportunity of being heard before the Ld.CIT(A). Keeping in view the principles of natural justice, we are

inclined to afford an opportunity of being heard before the CIT(A) to substantiate assessee's case with credible evidences. We, therefore, remit the matter back to the file of the Ld.CIT(A) to afford an opportunity of being heard to the assessee. The assessee is also directed to adhere to the notices issued by the revenue authorities and cooperate 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 19th April, 2024.

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 19.04..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– The Andhra Pradesh State Handloom Weavers Co-operative Society Ltd., D.No.29-11-9/1, APCO Bhavan, Venkateswara Rao Street, Governorpet, Vijayawada
2. राजस्व/The Revenue – Asst. / Dy.Commissioner of Income Tax, Circle-1(1), C.R.Building, 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