

आयकरअपीलीयअधिकरण, विशाखापटणम "SMC" पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" 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.72/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Ramy Vadlamudi
10-154, Opp. E-seva
Rajendra Nagar
Gudiwada, Krishna Dist.
[PAN : AJNPV4972A]

Vs. Income Tax Officer
Ward-2
Gudiwada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri K.Siva Ram Kumar, AR
: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 28.03.2024

घोषणा की तारीख/Date of Pronouncement

: 19.04.2024

आदेश /ORDER

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 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059460749(1) dated 08.01.2024, arising out of order passed u/s 144 of the Income Tax Act, 1961 (in short 'Act') dated 17.12.2019 for the Assessment Year (A.Y.) 2017-18.

2. Brief facts of the case are that the assessee is an individual. As per the information available with the department, the assessee has made cash deposits of Rs.26,93,000/- during demonetization period. The assessee was issued notice u/s 142(1)(i) dated 27.11.2017 electronically, to file return of income for the A.Y.2017-18 by 31.03.2018. Since the assessee has not filed any return of income till the end of the assessment year, another notice u/s 142(1) dated 18.08.2019 was issued and served on the assessee to furnish information regarding the sources of cash deposits made during the F.Y.2016-17 and also to explain the reasons for non-filing of return of income. Since there was no response, the assessee was issued show cause dated 16.09.2019 and a final show cause notice dated 13.12.2019 was also issued to the assessee to show cause on or before 17.12.2019 as to why cash deposits made in the bank during the demonetization period at Rs.26,93,000/- should not be treated as unexplained income u/s 69A r.w.s. 115BBA for A.Y.2017-18. The assessee has not availed the opportunity to explain the sources of cash deposits so made and hence, the AO treated the cash credits / deposits as undisclosed income of the assessee for the F.Y.2016-17, relevant to the A.Y.2017-18 and accordingly brought to tax u/s 69A of the Act under the head "other sources" as per the provisions of section 115BBE of the Act

and passed assessment order u/s 144 of the Act dated 17.12.2019, dismissing the appeal of the assessee ex-parte.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee ex-parte due to non-prosecution of the appeal by the assessee, despite giving multiple opportunities.

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 :

1. In the facts and circumstances of the case, learned CIT(Appeals) ought to have considered the facts of the case and the Grounds of Appeal taken in the Appeal Memorandum, before dismissal of the appeal ex-parte.

2. In the facts and circumstances of case, learned CIT(Appeals) ought to have observed that learned AO has not demonstrated in the assessment order that she had the 'reason to believe' that income escaped assessment before the issue of Notice u/s 148. In its absence, the basis for Notice was only AIR information, in which case, a reassessment to make roving inquiries has already been held as not legitimate to issue notice u/s 148.

*3. The appellant's appeal against before NFAC was filed by a Chartered Accountant (Mr.M.S.R.Prasad, CA, Vijayawada)** and the AR passed away in March, 2022. The hearings were posted after his demise and the appeal was decided / dismissed ex-parte after his demise and non-representation. In this background, the appellant prays for re-consideration of his appeal by the first appellate authority in view of the aforesaid exceptional circumstances.*

4. The appellant craves leave to add or amend any Ground of Appeal.

5. The Ld.AR contended that the assessee is a NRI, residing in South Carolina of USA and none of the pre-assessment notices stated in the assessment order were ever served on the assessee due to which assessee was unaware of any such notices for prosecution of appeal. The Ld.AR further contended that the said notices were generated electronically and sent through the designated e-mail id of the assessee and at no point of time, the email address was communicated to the IT department by the assessee to enable e-mailing of any notice to her. The assessee came to know of the assessment order dated 17.12.2019 when it was served on the father of the assessee on 10.01.2020 by the notice server, which was communicated to her for filing of appeal before the forums. The Ld.AR further submitted that the appeal before NFAC was filed by a Chartered Accountant Mr.M.S.R.Prasad, CA, Vijayawada and he passed away in March, 2022. The hearings were posted after his demise and the appeal was decided and dismissed ex-parte after his demise and for non-representation. The Ld.AR further submitted that the assessee was not provided any opportunity of being heard before making assessment u/s 144 of the Act. He, therefore, pleaded to afford an opportunity of being heard before the Ld.CIT(A) for substantiating her case with credible material evidences in the interest of justice.

6. Per contra, the Ld.DR submitted that the assessee was given sufficient opportunities to prosecute her case, but the assessee never complied with the notices issued and served. Hence, the revenue authorities are justified in dismissing the appeal of the assessee for non prosecution. The Ld.DR, therefore, pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

7. I have heard both the parties and perused the material available on record. In the instant case, it is evident that the assessee had made cash deposits of Rs.26,93,000/- in the ICICI account No.61101075163 during the demonetization period. It is undisputed fact that the assessee is a NRI and as submitted by the Ld.AR, no notice was served on the assessee to comply with the notices for prosecution of the appeal before the appellate authorities. The reasons for non prosecution of the appeal before the Ld.CIT(A) was due to the demise of the Ld.AR who filed appeal before the NFAC. The Ld.AR submitted that the assessee has sources for depositing the cash in her account and pleaded for an opportunity before the Ld.CIT(A) to substantiate her case with evidences. Keeping in view the aforesaid facts and circumstances of the case and in order to meet the principles of natural justice, I am inclined to remit the matter back to the file of the Ld.CIT(A) to afford an opportunity of being heard to the

assessee and direct the Ld.CIT(A) to pass order after verification. The assessee is also directed to adhere to the notices issued by the revenue authorities and cooperate with the department during the proceedings.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 19th April, 2024.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 19.04.2024
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Ramya Vadlamudi, 10-154, Opp. E-seva Rajendra Nagar, Gudiwada, Krishna Dist.
2. राजस्व/The Revenue - The Income Tax Officer, Ward-2, Gudiwada, Krishna Dist.
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