

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.233/Viz/2021

(निर्धारण वर्ष / Assessment Year : 2010-11)

M/s. Sri Vijaya Visakha Milk
Producers Co. Ltd,
Visakhapatnam.
PAN: AAJCS 7398 P
(अपीलार्थी/ Appellant)

Vs. Joint Commissioner of
Income Tax (OSD),
Central Circle-2,
Visakhapatnam.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 08/05/2024

घोषणा की तारीख/Date of
Pronouncement

: 28/05/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals)-3, Visakhapatnam ["Ld. CIT(A)"] in appeal No. 31/2018-19/CIT(A)-3/VSP/2019-20, dated 30/07/2019 arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 ["the Act"] for the AY 2010-11.

2. At the outset, it is noticed from the record that there is a huge delay of 775 days in filing the appeal before the Tribunal. Before us, the assessee filed a petition along with affidavit seeking condonation of delay. The assessee has explained the reasons for delay in his condonation petition and they are extracted here in below for reference:

“.....

2. *That the time for filing of the appeal before the Tribunal was to expire on 29/09/2019.*

3. *That CA Venubabu Inturi was informed to file the appeal before the Hon'ble ITAT, Visakhapatnam and due to miscommunication, the appeal before the Tribunal was not filed.*

4. *That later I was advised by a legal consultant to file an appeal before the Hon'ble ITAT for relief but the appeal has already become barred by time limitation. Nevertheless, the appeal was filed before this Hon'ble ITAT on 11/11/2021 accompanied by an application for condonation of delay as provided under section 5 of the Limitation Act, 1963.*

5. *That in this way there is a delay of 773 days for which an application under section 5 of the Limitation Act has been filed along with memorandum of appeal.*

6. *That delay in filing the appeal is because of genuine belief of the applicability of a particular provision of the Income Tax Act, 1961 which was not accepted by the original authority.*

7. *That I had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal.”*

3. Before us, the Ld. AR therefore pleaded that the delay in filing the appeal is beyond the control of the assessee and therefore

taking a lenient view the delay of 775 days in filing the appeal before the Tribunal may be condoned and the appeal may be admitted for adjudication on merits.

4. On the other hand, Ld. DR submitted that the delay of 775 days involved in this appeal and the reason given by the assessee does not constitute 'sufficient cause'. The Ld. DR further submitted that the assessee is not interested in pursuing its appeal otherwise the assessee would have followed up the matter effectively with due diligence. Therefore, she prayed that the delay should not be condoned on the reasons given by the assessee.

5. We have heard the rival contentions and perused the material available on record and the affidavit filed by the assessee seeking condonation of delay. It is apparent from the record that there is an inordinate delay of 775 days in filing the appeal before the Tribunal. On perusal of the petition filed by the assessee seeking condonation of delay, explaining the reasons for such delay, we find that assessee has mentioned that *CA Venubabu Inturi was informed to file the appeal before the Hon'ble ITAT, Visakhapatnam and due to miscommunication the appeal before the Tribunal was not filed.* In our opinion, the 'miscommunication' itself between the Chartered Accountant and the assessee is not at all sufficient

cause to condone the huge delay of 775 days. Before us, the assessee has not explained how the 'miscommunication' was happened between the Chartered Accountant and the assessee and therefore, we are of the view that simply mentioning the cause for the delay in filing the appeal is "due to miscommunication" cannot be considered as a 'sufficient cause' to condone the huge delay of 775 days and it is nothing but negligence on the part of the assessee in pursuing his appeal and then in filing the appeal before the Tribunal. It is apparent in the case of the assessee that there is no due diligence on his part in pursuing the matter. Therefore, we are of the considered opinion, the reasons advanced by the assessee do not constitute a 'reasonable / sufficient cause' for filing the appeal beyond the prescribed time limit. It is a settled principle that in each case of the delay it has to be examined on its individual merits and jurisprudence does not extend to accommodating and condoning all inordinate delays. As per section 5 of the Limitation Act, 1963, *any appeal or any application,may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.* It implies that the delay of each day needs to be justified and there must be

sufficient cause for not preferring the appeal which is lacking in the instant case. Therefore, in the instant case, in our considered opinion, since there is no valid reason for filing the appeal before the Tribunal beyond the prescribed time limit and with a delay of 775 days, we hereby reject the condonation of delay. We strongly rely on the recent judgment of the Hon'ble Supreme Court in the case of PATHAPATI SUBBA REDDY (DIED) BY L.Rs. & ORS vs. THE SPECIAL DEPUTY COLLECTOR (LA) in SPECIAL LEAVE PETITION (CIVIL) NO. 31248 OF 2018, dated APRIL 8, 2024 wherein the Hon'ble Apex Court has observed as under:

“26.

(i).....

(ii).....

(iii).....

(iv).....

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay.....

6. Respectfully, following the decision of the Hon'ble Supreme Court in the case of PATHAPATI SUBBA REDDY (DIED) BY L.Rs. & ORS vs. THE SPECIAL DEPUTY COLLECTOR (LA) (supra) as well as considering the

absence of any cogent reason which constitutes a sufficient and reasonable cause that is required to condone the huge inordinate delay of 775 days in the case of the assessee, we are of the considered view that this is not a fit case to condone the delay in filing the appeal and accordingly we hereby dismiss the petition for condonation of delay filed by the assessee. Accordingly the appeal filed by the assessee is dismissed.

7. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open Court on 28th May, 2024.

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

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

Dated :28/05/2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – M/s. Sri Vijaya Visakha Milk Producers Co. Ltd, D.No.1, Visakha Dairy Building, Opp. BHEL, Akkireddypalem, Visakhapatnam, Andhra Pradesh – 530012.

2. राजस्व/The Revenue – Joint Commissioner of Income Tax (OSD), Central Circle-2, Visakhapatnam, Andhra Pradesh – 530017.
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