

**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.277/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2008-09)**

Konathala Rajendra Prasad  
D.No.14-17-9/1  
Rythu Sangam Veedhi  
Gavarapalem  
Anakapalle  
**[PAN : AHUPK0522A]**

Vs. Income Tax Officer  
Ward-1  
Anakapalle

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

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

: Shri G.V.N.Hari, AR  
: Dr.Aparna Villuri,DR

सुनवाई की तारीख / Date of Hearing

: 28.05.2024

घोषणा की तारीख/Date of Pronouncement

: 31.05.2024

**आदेश /ORDER**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

**Condonation of Delay :**

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)]-2, Guntur in ITA No.10248/GNT/CIT(A)-2/2016-17 dated 26.06.2019, arising out of order passed u/s 144 r.w.s.147 of the Income Tax Act, 1961 (in short 'Act') dated 25.01.2016 for the Assessment Year (A.Y.) 2008-09 with the delay of 1459 days. The assessee filed petition for condonation of delay and

submitted that the appeal against the order of the Ld.CIT(A) dated 26.06.2019 ought to have been filed on or before 26.08.2019, but the appeal could be filed only on 03.11.2023 with the delay of 1459 days due to the following reasons as submitted by the assessee are as under :

- 1. The order of the learned Commissioner of Income Tax (Appeals) was passed on 26.06.2019. As such, the appeal against this order ought to have been filed on or before 26.08.2019. However, the appeal could be filed only on 03.11.2023, resulting in a delay of 1459 days in filing the appeal.*
- 2. Originally, assessment order u/s 144 r.w.s. 147 was passed on 25.01.2016 u/s 144 r.w.s.147 of the Act wherein the assessing officer made addition of Rs.21,19,610 towards long term capital gains u/s 50C of the Act in respect of an agricultural land sold by appellant. The appellant filed appeal against the assessment order on 01.04.2016. While the appeal was pending, the assessing officer passed an order u/s 154 of the Act on 02.06.2017 for rectifying the mistake in computation of interest u/s 234A of the Act. The appellant preferred another appeal against the rectification order on 11.01.2018. The appellant construed this appeal as directed against the assessment order and also the rectification order. For this reason only, the appellant mentioned in Form no.35 that the order appealed against is the order dated 11.12.2017 passed u/s 144 r.w.s 147 and 154 of the Act. This latter appeal was disposed of on 31.07.2019 by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad. The learned Commissioner of Income Tax [Appeals] treated the appeal as the one filed against the rectification order and restricted himself to the ground relating to charging of interest u/s 234A. The learned Commissioner of Income Tax [Appeals] confirmed the interest computed by the assessing officer u/s 234A of the Act and the grounds on the merits of the addition was not adjudicated.*
- 3. The appeal filed against the assessment order was disposed by the learned Commissioner of Income Tax [Appeals]-2, Guntur on 26.06.2019. The learned Commissioner of Income Tax (Appeals) upheld the addition of Rs.21,19,610/- made towards capital gains u/s 50C of the Act and did not adjudicate upon the other contention of the appellant that the land sold is an agricultural land and hence capital gains are not applicable. The appellant received this order on 06.09.2019. The appellant immediately filed a rectification petition before the learned commissioner of Income Tax (Appeals) on 11.09.2019 to adjudicate the main contention that the land sold was not capital asset.*
- 4. While this petition for rectification was pending, the appellant left to USA on 14.09.2019 and returned to India on 07.12.2019 (copy of passport of appellant is enclosed). Later on, with the outbreak of COVID, lockdown was imposed in the country from March, 2020 and was followed by severe restrictions on movement of the people till the end of February, 2022. Further, the scheme of faceless assessments and faceless appeals were introduced under the Income Tax Act and the physical contact with the office of the CIT(A) got disconnected. Due to this the appellant could not find out the status of the*

*rectification petition filed by him. The appellant continued to hope that this petition will be favorably considered.*

5. *Subsequently, the appellant received one letter dt.26.09'2023 from the Income Tax officer, Ward-1, Anakapalle by post on 30.09.2023. The assessing officer vide this letter informed that the learned Commissioner of Income Tax [Appeals) vide order dt.18.09.2023 dismissed the appeal of the appellant and required the appellant to pay the outstanding demand raised in the assessment order.*
6. *Without waiting further, the appellant took necessary steps and filed appeal against the order dt.26.06.2019 passed by the learned Commissioner of Income Tax (Appeals) in the appeal filed against the assessment order.*
7. *As submitted above, the appellant was vigilant throughout in contesting the assessment order, the rectification order passed u/s 154 and the order dt.26.06.2019 of the learned Commissioner of Income Tax (Appeals). The only mistake committed was that instead of filing appeal against the order dt.26.06.2019 of the learned Commissioner of Income Tax [Appeals), the appellant had chosen to file a petition for rectification believing that it was only due to oversight that the learned Commissioner of Income Tax (Appeals) did not appreciate his submissions that the land sold was agricultural land. The appellant honestly believed that the addition would be deleted by the learned Commissioner of Income Tax [Appeals). Thus, the entire delay was on account of the alternative remedy pursued by the appellant by filing rectification petition before the learned Commissioner of Income Tax (Appeals).*
8. *Thus, the delay was on account of reasons explained above which were beyond the control of the appellant. The delay is nether intentional nor deliberate. Therefore, the appellant prays the hon'ble ITAT to kindly condone the delay of 1459 days in filing the appeal and to pass appropriate orders in the interest of rendering substantial justice.*

2. I have gone through the condonation petition filed by the assessee and find that the reasons cited in the petition are not convincing and justified to prevent the assessee from filing the appeal with such a huge delay of 1459 days. Therefore, I am of the view that the reasons explained in the petition were not beyond the control of the assessee. In view of the same, the condonation petition filed by the assessee is not allowed and accordingly, the appeal filed by the assessee is dismissed *in-limine*.

3. In the result, appeal of the assessee is dismissed *in-limine*.

Order pronounced in the open court on 31<sup>st</sup> May, 2024.

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

Dated : 31.05.2024  
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Shri Konathala Rajendra Prasad, D.No.14-17-9/1, Rythu Sangam Veedhi, Gavarapalem, Anakapalle
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, Anakapalle
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam