आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बाला कृष्णन, 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.108/Viz/2024**
(निर्धारण वर्ष / **Assessment Year : 2017-18)**

Sri Sai Balaji Transport d.No.41-2-22/8, Koppula Street Budampet Kakinada **[PAN : ACRFS3673C]**	Vs.	Income Tax Officer Ward-1 Kakinada
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri G.V.N.Hari, AR
प्रत्यार्थी की ओर से / Respondent by	:	Dr.Aparna Villuri, DR
सुनवाई की तारीख / Date of Hearing	:	28.05.2024
घोषणा की तारीख/Date of Pronouncement	:	31.05.2024

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), Delhi, vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1060433914(1) dated 02.02.2024, arising out of order passed u/s 144 of the Income Tax Act, 1961 (in short 'Act') dated 29.03.2022 for the Assessment Year (A.Y.) 2017-18.

2. Brief facts of the case are that the assessee is a firm engaged in the transport business and not filed it's return of income for the year under consideration. During the course of assessment proceedings, the AO observed that the assessee had withdrawn an amount of Rs.4.4 crores during the A.Y.2017-18 from the current account and the assessee was also in receipt of interest income of Rs.74,532/ on which TDS u/s 194A was affected at Rs.7,454/-. Proceedings u/s 147 was initiated and notice u/s 148 of the Act was issued. In response, the assessee filed its return of income. Subsequently, notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. No response was made by the assessee and the AO completed the assessment u/s 147 r.w.s. 144B by assessing the total income of Rs.4,47,74,530/- and raised tax demand of Rs.7,08,25,539/-.

3. On being aggrieved, the assessee preferred an appeal before the CIT(A) with the delay of 98 days and the Ld.CIT(A) dismissed the appeal of the assessee, observing that the delay of 98 days in filing of appeal in this case is not condoned as no "sufficient cause" is attributed as prescribed u/s 249(3) of the Income Tax Act, 1961 for the assessee's failure to file the appeal within the stipulated period of limitation u/s

249(2) of the Income Tax Act, 1961 read with Section 5 of Limitation Act, 1963.

3. On being aggrieved, the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

> *1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
>
> *2. The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal on the ground that the appellant did not file any petition for condonation of delay.*
>
> *3. The learned Commissioner of Income Tax(Appeals) ought to have granted an opportunity to the appellant duly informing the defect.*
>
> *4. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the failure to file the delay condonation petition was only due to inadvertence.*
>
> *5. Any other grounds may be urged at the time of hearing.*

4. The only contention of the Ld.AR is that the Ld.CIT(A) is not justified in dismissing the appeal of the assessee on the ground that the assessee did not file any petition for condonation of delay. The Ld.AR submitted that the delay in filing the appeal before the Ld.CIT(A) was neither intentional nor deliberate and the assessee would not gain anything by filing the appeal belatedly. The Ld.AR further submitted that the Ld.CIT(A) ought to have informed the defect to the assessee and given

an opportunity of being heard. He, therefore, pleaded for an opportunity of being heard before the Ld.CIT(A) in the interest of justice, otherwise, the assessee would suffer great financial loss.

5. Per contra, the Ld.DR submitted that the assessee failed to adduce sufficient cause for filing the appeal belatedly before the Ld.CIT(A), hence, the Ld.CIT(A) is justified in dismissing the appeal of the assessee as time barred. The Ld.DR therefore, pleaded to uphold the order passed by the Ld.CIT(A).

6. We have heard both the parties and perused the material available on record. In the instant case, assessment in the case of the assessee was completed u/s 147 r.w.s. 144B and the total income of the assessee was assessed at Rs.4,47,74,530/-. On appeal before the CIT(A), the Ld.CIT(A) dismissed the appeal of the assessee as the assessee did not file any petition for condonation of delay. As contended by the Ld.AR the Ld.CIT(A) treated the appeal filed by the assessee as time barred on the ground that the assessee failed to explain the delay in filing appeal with sufficient cause and pleaded for an opportunity of being heard before the Ld.CIT(A) in the interest of justice. Keeping in view the aforesaid facts and circumstances of the case and in order to meet the principles of natural justice, we are inclined to remit the matter back to the file of the

Ld.CIT(A) with a direction to condone the delay and afford an opportunity of being heard to the assessee to present it's case. The assessee is also directed to adhere to the notices issued by the revenue authorities and cooperate during the proceedings.

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

Order pronounced in the open court on 31st May, 2024.

Sd/-	Sd/-
(एस बाला कृष्णन)	**(दुव्वूरु आर.एल रेड्डी)**
(S.BALAKRISHNAN)	**(DUVVURU RL REDDY)**
लेखा सदस्य/ACCOUNTANT MEMBER	**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– Sri Sai Balaji Transport, d.No.41-2-22/8, Koppula Street, Budampet, Kakinada
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, Deepthi Towers, Main Road, Kakinada
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam