

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.189/Viz/2024

(निर्धारणवर्ष/ Assessment Year : 2013-14)

Chiranjeevi Sahini,  
Srikakulam.

PAN: AMWPS2552F

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

Vs. Income Tax Officer,

Ward-1,

Srikakulam.

(प्रत्यर्थी/ Respondent)

Smt. A. Aruna, AR

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

: 10/06/2024

: 13/06/2024

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1062040529(1), dated 5/3/2024

arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 [“the Act”] for the AY 2013-14.

2. Briefly stated the facts of the case are that the assessee, an individual, has not filed his return of income for the AY 2013-14. As per the information available in Actionable Information Monitoring Systems (AIMS) of ITBA Portal, the Ld. AO noticed that the assessee has made deposits aggregating to Rs. 84,31,000/-. Considering these facts, the Ld. AO reopened the case of the assessee and notice U/s. 148 was issued on 31/3/2021. In response, the assessee filed the tax return on 13/5/2021 admitting an income of Rs. 3,65,100/-. Thereafter, notice U/s. 143(2) was also issued to the assessee on 26/8/2021. However, the assessee did not respond to the notices issued by the Ld. AO. Considering the assessee’s no reply to the notices issued and in the absence of any material to explain the cash deposit of Rs. 84,31,000/- during the year under consideration, the Ld. AO proceeded to complete the assessment U/s. 144(1)(b) of the Act. Accordingly, the Ld. AO completed the assessment U/s. 147 r.w.s 144 r.w.s 144B of the Act and assessed the income at Rs. 83,41,000/- vide order dated 28/03/2022. The Ld. AO also initiated the penalty proceedings U/s. 271(1)(c) of the

Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC with a delay of 125 days.

3. On appeal, in the absence of any cogent explanation / reason to substantiate the belated filing of the appeal, the Ld. CIT(A)-NFAC did not condone the delay and dismissed the appeal of the assessee in limine. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Ld. CIT(A) is not justified in refusing to condone the delay of 125 days in filing the appeal and dismissing the appeal in limine.*
- 3. Any other ground that may be urged at the time of appeal hearing.”*

4. At the outset, the Ld. Authorized Representative [AR] submitted that the Ld. CIT(A)-NFAC ought to have considered the explanation of the assessee with respect to the condonation of delay in filing the appeal before the Ld. CIT(A)-NFAC as the assessee was prevented by a reasonable and sufficient cause i.e., ill health of the assessee. The Ld. AR further submitted that in support of the reasons advanced by the assessee for filing of the appeal beyond the prescribed time limit before the Ld. CIT(A)-

NFAC, the assessee has also produced the Medical Certificate evidencing the treatment taken by the assessee. The Ld. AR further submitted that the delay in filing the appeal is not on account of negligence or any deliberate act of the assessee. Ld. AR also submitted that without considering the explanation and the submissions of the assessee, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee by denying the condonation petition filed before him. The Ld. AR also submitted that the case laws relied on by the Ld. CIT(A)-NFAC are not applicable to the case of the assessee as the assessee is not negligent / deliberate but prevented by a reasonable and sufficient cause while filing the belated appeal before the Ld. CIT(A)-NFAC. The Ld. AR therefore pleaded that the matter may be remitted back to the file of the Ld. CIT(A)-NFAC to decide the appeal on merits.

5. On the other hand, the Ld. Departmental Representative [DR] heavily relied on the orders of the Ld. Revenue Authorities. The Ld. DR further submitted that while passing the ex-parte order the Ld. AO has given sufficient opportunities to the assessee and sought to find out the sources of cash deposits made by the assessee. Therefore, the Ld. AO is right in his action in making the addition of Rs. 84,31,000/- as unexplained

money U/s. 69A of the Act. The Ld. DR further submitted that before the Ld. CIT(A)-NFAC even though there is a delay, the onus is on the assessee to explain each day's delay with proper evidence. The Ld. DR also submitted that since the assessee has not discharged his onus, the Ld. CIT(A)-NFAC has rightly dismissed the appeal of the assessee as inadmissible. In toto, the Ld. DR supported the decision of the Ld. Revenue Authorities and pleaded to uphold the decision of the Ld. AO.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is a fact that on being aggrieved by the addition made by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC with a delay of 125 days. It is also a fact that with respect to the belated filing of the appeal, the assessee has explained his reasons by stating that due to ill health suffered by the assessee the appeal could not be filed within the stipulated time before the Ld. CIT(A)-NFAC. Further, in support of the reasons advanced by the assessee, the assessee has also produced the Medical Certificate before the Ld. CIT(A)-NFAC and a copy of the same is also produced before us. In our considered opinion, the Ld. CIT(A)-NFAC ought to have considered the

explanation given by the assessee for belated filing of the appeal and ought to have disposed of the appeal on merits. Instead, the Ld. CIT(A)-NFAC dismissed the appeal in-limine. This Bench cannot appreciate the decision of the Ld. CIT(A)-NFAC while dismissing the appeal of the assessee. Therefore, considering the facts and circumstances of the case and the reasons advanced by the Ld. AR as to why the assessee could not file the appeal within the stipulated time before the Ld. CIT(A)-NFAC and also on careful perusal of the documentary evidence ie., Medical Certificate submitted by the assessee before the Ld. CIT(A)-NFAC, we have no hesitation to set-aside the order passed by the Ld. CIT(A)-NFAC and thereby remit the matter to the file of the Ld. CIT(A)-NFAC with a direction to dispose of the appeal on merits. Further, we also hereby caution the assessee to cooperate before the Ld. CIT(A)-NFAC in their proceedings, otherwise Ld. Revenue Authorities are at liberty to pass orders in accordance with law based on the material available on record. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open Court on 13<sup>th</sup> June, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)  
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 13.06.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Chiranjeevi Sahini, D.No. 6-303, Kota Burga Street, Palakonda, Srikakulam, Andhra Pradesh – 532103.
2. राजस्व/The Revenue – The Income Tax Officer, O/o. Income Tax Office, Palakonda Road, Srikakulam, Andhra Pradesh – 532103.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam