

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM (HYBRID HEARING)**

**श्रीदुव्वूरु 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. 292/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)**

Manpreet Singh Lamba 54-20-212, Jawahar Auto Nagar II nd Cross Road Vijayawada – 520007 NTR District, Andhra Pradesh [PAN: AAMPL1721D] (अपीलार्थी/ Appellant)	v.	Income Tax Officer – Ward-3(3) Central Revenue Buildings Bandar Road Vijayawada – 520002 (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri K. Siva Ram Kumar, AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि / Date of Conclusion of Hearing	:	05.09.2024
घोषणा की तारीख / Date of Pronouncement	:	06.09.2024

आदेश / O R D E R

PER SHRI DUVVURU RL REDDY, JUDICIAL MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), [hereinafter in short “Ld.CIT(A)”], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/106055717(1) dated 06.02.2024 arising out of order

passed under section 143(3) of Income Tax Act, 1961 (in short 'Act') dated 19.12.2019 for the A.Y. 2017-18.

2. At the outset, it is noticed from the appeal record that there is a delay of 107 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. Authorised Representative [hereinafter "Ld.AR"] drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under: -

"1. The petitioner is the Appellant in the appeal mentioned above. The Order in dispute, i.e., the Appellate Order of the learned CIT(Appels), NFAC, Delhi was passed and also served on your petitioner-appellant on 6.2.2024.

2 The petitioner-appellant is thus obliged to file an appeal against the said order before the Hon'ble Tribunal by 6.4.2024. But, the Appeal Memorandum is being presented in the office of the Hon'ble Tribunal on 19.6.2024, i.e., with a delay of 107 days (estimated date of receipt in ITAT office: 22.7.24 - by the time the Appeal Memorandum reaches the Hon'ble Tribunal's Office, the delay would be 107 days).

3. The appellant's AR in the assessment proceedings CA. Agnihotram Srinivas underwent cardio thoracic surgery on 9.12.2023 and was discharged on 15.12.2023. He didn't attend his office as it took almost four months to recover. A copy of his Surgery and Discharge Certificate is attached.

4. Even after he returned to normalcy also, he couldn't take charge of the pending tasks immediately as he had been on a go-slow mode to avoid pressure and impact on his health. He has initiated the filing of the present appeal after some time and thus the present appeal is being presented now with genuine cause for the delay.

5. It is humbly and respectfully submitted that the Appeal couldn't be filed in time, view of the above genuine difficulty. Thus, there is an unintended delay of 107 days only in filing the Appeal (the Appeal before the Hon'ble Tribunal was due by 6.4.2024).

6. *It is prayed that the Hon'ble Tribunal be pleased to condone the delay and pray that the Appeal be admitted and taken on record, as otherwise great hardship and insufferable injustice will be caused to the petitioner herein. The inconvenience caused in this regard to the Honourable Tribunal is sincerely regretted. The petitioner also hereby undertakes to ensure proper representation before the Honourable Tribunal in the above appeal on its admission and an opportunity of hearing is granted thereafter."*

3. On perusal of the contents of the affidavit filed by the assessee and medical records as well as the submission of the Ld. AR, we found that the assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 107 days. Therefore, we hereby condone the delay of 107 days in filing the appeal before the Tribunal.

4. Briefly stated facts of the case are that, assessee is an individual and derives income from house property, business or profession and other sources. Assessee filed his return of income for the A.Y. 2017-18 on 29.11.2017 declaring income of Rs 9,65,790/-. The case was selected for limited scrutiny through CASS with a reason to verify "Capital gains on sale of property and Cash deposit during demonetization period". During the course of scrutiny proceedings certain information was called for with respect the capital gains on sale of the property during the F.Y. 2016-17 and cash deposited in the bank accounts during the demonetization period. In response, assessee has submitted that there was no sale of any property during the F.Y. 2016-17 but he has entered into a development agreement for the property of 1600.92 sq. yd which is at Kanuru, Vijayawada with M/s S.K Enterprises, Vijayawada vide document dated 19-06-2016 which

was registered with joint Sub Registrar, Patamata, Vijayawada. Subsequently, assessee has filed a revised return of income on 12.002.2019 in which the assessee has offered long term capital gains on immovable property of Rs 76,86,063/-. Notice under section 142(1) and 143(2) of the Act were issued from time to time seeking relevant information / documents. In response to the notices, assessee has furnished the relevant details as called for. After considering the submissions of the assessee, Assessing Officer proceeded to complete the assessment under section 143(3) of the Act by determining the total income of the assessee at Rs.2,08,11,105/- after making addition of Rs.1,98,45,313/- under income from Capital gains.

5. On being aggrieved, assessee preferred an appeal before Ld. CIT(A) and filed his submissions. After considering the submissions of the assessee, Ld.CIT(A) has dismissed the appeal of the assessee observing that assessee has opted for “Vivad SeViswas Scheme”.

6. On being aggrieved, assessee preferred an appeal before the Tribunal and raised following grounds of appeal: -

“1. In the facts and circumstances of case, learned CIT (Appeals) erred in holding that if the appellant couldn't get Form.3 under DTVSV Scheme, a fresh appeal can be filed, since the same is not permitted in law.

2. In the facts and circumstances of 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 exparte.

3. *Learned CIT (Appeals) erred in not considering the computational details of the capital gains raised in the Grounds of Appeal; the appellant attaches a total income computation for the previous year including long term capital gain computation as per the facts on record.*

4. *The appellant craves leave or add or amend any ground of appeal.”*

7. At the outset, Ld. AR submitted that Ld.CIT(A) dismissed the appeal of the assessee observing that assessee has opted for “Vivad SeViswas Scheme” without going into the merits of the case and passed exparte order. Therefore, Ld.AR pleaded that the matter may be remitted back to the file of the Ld. CIT(A) considering additions/disallowance made by the Assessing Officer.

8. On the other hand, Ld. Departmental Representative [hereinafter in short “Ld. DR”] relied on the order of the Ld.CIT(A).

9. We have heard both the sides and perused the material available on record. On a perusal of the Ld. CIT(A) order, it is observed that Ld. CIT(A) has dismissed the appeal of the assessee observing that assessee has opted for “Vivad SeViswas Scheme” without going into merits of the case. Ld. CIT(A) while dismissing the appeal of the assessee observed as under: -

7. Decision:

On the perusal of the response of the appellant dated 12/12/2020 as well as response dated 09/04/2021, I find that the request of the appellant for opting for Vivad Se Vishwas Scheme is rejected or withheld by the concerned Pr. CIT on the basis of appeal filed before CIT(A) is beyond time limit and condonation of delay and admitting of appeal is pending with CIT(A). The appellant has put his reliance upon the decision of Hon'ble Delhi High Court in the case of Shyam Sunder Sethi vs PCIT-10 & Ors in

*support of his claim for opting VSVS. Apart from the above, it is an admitted fact that the appeal was filed beyond limitation by the appellant with the request of condonation of delay. In the paras 3.1 to 3.4 (supra), the delay in filing appeal is condoned and appeal is admitted. **Further, the present appeal is being dismissed based on the facts that the appellant has opted VSVS but PCIT has not issue Form No. 3 due to pendency for condonation of delay. The appellant is being facilitated with right that if his already filed application for VSVS is rejected by the concerned PCIT on merit, he shall be free to file fresh appeal before CIT (A).***

10. After careful consideration of the submissions of the Ld. AR and also considering totality of facts and keeping in view the additions / disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Therefore, considering the facts and circumstances of the case and in order to meet the principles of natural justice, we are of the view that it is a fit case to remit the matter back to the file of the Ld.CIT(A) for fresh consideration and the assessee is directed to cooperate with the proceedings before the Ld. CIT(A) and in turn Ld. CIT(A) call for remand report, if necessary, and dispose off the case on merits. Therefore, the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06th September, 2024.

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

Dated :. 06.09.2024

Giridhar, Sr.PS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रति लिपिअग्रेषित / Copy of the order forwarded to :-

1. निर्धारिती / The Assessee : Manpreet Singh Lamba
54-20-212, Jawahar Auto Nagar
IInd Cross Road
Vijayawada – 520007
NTR District, Andhra Pradesh
2. राजस्व / The Revenue : Income Tax Officer – Ward-3(3)
Central Revenue Buildings
Bandar Road
Vijayawada – 520002
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam