

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. 303/Viz/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Pavan Kranti Nadiminti, Visakhapatnam. PAN: AGXPN5603K (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-4(4), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri M. Muralidhar, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	09/09/2024
घोषणा की तारीख/Date of Pronouncement	:	13/09/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. CIT(A)-NFAC in DIN & Order No. ITBA/NFAC/S/250/2023-24/1053869669(1), dated 22/06/2023 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 for the AY 2017-18.

2. At the outset, it is noticed that there is a delay of 114 days in filing this appeal before the Tribunal. With respect to belated filing of the appeal, the assessee filed petition for condonation of

delay along with the affidavit and the relevant paras of the affidavit is extracted herein below for reference:

- “1. That I would like to request for condonation of delay of 114 days.
2. That Ld. CIT(A) has sent notices 3 times on 22.01.2021, 31.05.2023 and 15.06.2023 respectively. The 1st notice was duly served to mail id of Assessee pavankranthin@gmail.com, but the other 2 notices were served to wrong mail id's aravindgellanki@gmail.com and never served on the assessee. The chance to provide explanations was not possible and remote.
3. That the Order u/s 250 was passed on date 22/06/2023, which was deemed to be issued but there was no communication to me, since the same was sent by the department to a wrong mail.
4. That I am not tech savvy and could not know the order earlier than this. I came to know about passing of the said order only in 1st week of December 2023 and approached a counsel to suggest way out for an appeal. Hence the delay.”

3. On perusal of the explanation given by the assessee with respect to filing of the appeal before the Tribunal beyond the prescribed time limit, we find that the assessee was prevented by a reasonable and sufficient cause to file the appeal within the stipulated time. Therefore, we hereby condone the delay of 114 days in filing the appeal of the assessee before the Tribunal and proceed to adjudicate the appeal on merits.

4. Briefly stated the facts of the case are that the assessee is an individual. As per the information available on record, the Ld. AO observed that the assessee has made cash deposits in his bank accounts aggregating to Rs. 11,07,142/- during the demonetization period. The Ld. AO also observed that the

assessee has not filed his return of income for the AY 2017-18. Therefore, notice U/s. 142(1) of the Act was issued to the assessee on 12/03/2018 and the same was served on the assessee wherein the assessee was required to file his return of income for the AY 2017-18 on or before 31/3/2018. Due change in incumbent, the assessee was also provided opportunity as per the provisions of section 129 of the Act. Since there was no compliance and response from the assessee, the Ld. AO proposed to complete the assessment as per the provisions of clause (b) of sub-section (1) of section 144 of the Act. Accordingly, the Ld.AO called for the relevant information vide notice U/s. 142(1) of the Act. However, there was no response from the assessee and therefore, the Ld. AO obtained the information from the State Bank of India, Madhurawada and Axis Bank, Madhurawada Branch by issuing notices U/s. 133(6) of the Act. Thereafter, as per the directions of the competent authorities, the Ld. AO issued a show cause notice dated 10/12/2019 wherein the assessee was asked as to why the impugned cash deposits of Rs. 11,07,142/- cannot be treated as unexplained money as per the provisions of section 69A of the Act in the absence of any explanation towards the sources of the cash deposits of Rs. 11,07,142/-. Considering the assessee's failure to comply with the notices issued, the Ld.

AO completed the assessment to the best of his judgment U/s. 144 of the Act treating the impugned cash deposits of Rs. 11,07,142/- as unexplained money by invoking the provisions of section 69A r.w.s 115BBE of the Act. The Ld. AO also initiated the penalty proceedings U/s. 271AAC of the Act. Thus, the Ld. AO determined the assessed income at Rs. 11,07,142/- and passed the assessment order U/s. 144 of the Act dated 26/12/2019. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

5. On appeal, considering the assessee's no reply to the hearing notices issued, the Ld. CIT(A)-NFAC, passed ex-parte order based on the material available on record and dismissed the assessee's appeal. 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 assessment order(s) of authorities below were not as per the Facts of the case and as per the law applicable to the provisions, facts under the Income tax act, 1961.

2. Ld CIT (A) of NFAC has erred in not following the prescribed procedure under the act with respect to faceless assessment proceedings u/s 144B(iii), hence impugned Assessment order is bad in eyes of the Law and hence assumed invalid Jurisdiction.

3. Ld CIT (A) of NFAC has erred in following the procedure for transfer etc and hence assumed invalid Jurisdiction, since the same was not as per the CBDT notification as below. The appellant preferred an appeal before the Commissioner of Income Tax (Appeal), Hyderabad-I. Subsequently,

the appeal was migrated to the National Faceless Appeals Centre (NFAC) in terms of Notification No. 76/2020 vide F.No.370142/33/2020-TPL dated 25.09.2020. No approval was taken for the transfer of the impugned appeal with the prior approval of the Board to such Commissioner (Appeals), hence void ab-initio.

4. Just an allegation as Income for the Cash deposited during demonetisation period:

4.1. That the authorities have erred in law and on facts in making the addition of Rs. 13,85,491/- treating them as impugned cash deposits assuming them Cash deposited during demonetisation period as Income. The Ld AO including CIT(A) being quasi-judicial official, nothing brought on record to show that the notes deposited in Bank represented suppressed income or concealed income and is without any basis of proper material.

4.2 The fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the proceedings is neither countenanced, nor sustainable in law. Ld. Officer(s) did not apply their independent mind to the information received from AIR / Bank account statements.

5. In applicability of Sec 69A:

5.1 Addition is not justified since Sec 69A is a Rule of evidence and Authorities to ensure the following :

- 1. All the 3 pre-conditions are not satisfied cumulatively.*
- 2. AO has not examined in depth assessee to be owner of money etc.*
- 3. There is no independent findings / enquiry.*
- 4. The provision is not applicable as assessee who is not a Business assessee and is not mandatory to maintain books of account and recording of transaction is not mandatory hence the income cannot be classified as "Undisclosed income".*

5.2 The Ld CIT(A) as well as the lower authorities had erred in taxing under sec 69A as unexplained money, since the cash deposits are nothing but past savings and Gift received from mother etc. the cash flow statement (vide annexure-1) shows the same clearly. Gift confirmation letter may be produced with KYC in this regard.

6 The Ld. CIT(A) is not justified in confirming the order of DCIT, CPC for initiating the provisions of sec 115BBE of the Income tax act, 1961 without considering the facts, and also erred in applying the tax rate since the provision was inserted wef 15.12.2016 and not from 01.04.2016. Since the date of deposit was 11/12/2016.

7. Ld CIT(A) had erred in computing huge Interests u/s 234 A, B & C amounting to Rs. 5,30,224/- according to the above grounds.

8. The Appellant pleads the permission to add/delete/alter/amend and or modify any of the above grounds at the time of hearing.”

6. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted before us that the Ld. CIT (A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard.

7. Ld. Departmental Representative [“Ld. DR”], on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative has responded to the notices issued nor filed any details / submissions as called for by the Ld. CIT (A)-NFAC. It was further submitted that, under these circumstances, the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A)-NFAC does not call for any interference.

8. We have heard the both the sides and carefully perused the materials available on record. On examining the facts of the case, we

find that the Ld. CIT (A)-NFAC had posted the case on three occasions. However, there was no response on behalf of the assessee before the CIT(A)-NFAC on the dates of hearing with regard to the details / submissions as called for by the Ld. CIT(A)-NFAC. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte and dismissed appeal in-limine. In this situation, considering the issues involved in the appeal, we are of the considered view that the Ld. CIT(A)-NFAC ought to have decided the case on merits instead of dismissing the appeal in-limine. However, considering the prayer of the Ld. AR, and in the interest of justice as well as strictly following the principles of natural justice, we hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. It is ordered accordingly.

9. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 13th September, 2024.

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

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

Dated :13/09/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Pavan Kranti Nadiminti, 1-64/13, GF-103, 1st Floor, Oncyest Cybernest, Bindra Nagar, PM Palem, Visakhapatnam, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-4(4), Visakhapatnam.
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