

आयकर अपीलीयअधिकरण, 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.355/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)

The Pulimeru Large Size Co-op Credit Society Limited, Peddapuram. PAN: AACAT2023M (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-1, Kakinada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri KSS Sarma, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	14/10/2024
घोषणा की तारीख/Date of Pronouncement	:	17/10/2024

ORDER

PER DUVVURU RL REDDY, Judicial 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/250/2024-25/1067065053(1), dated 26/07/2024 arising out of the order passed U/s. 147 r.w.s 144 of the Income Tax Act, 1961 ["the Act"] for the AY 2015-16.

2. Briefly stated the facts of the case are that the assessee has not filed its return of income for the AY 2015-16. As per the information available with the Department, the Ld. AO noted that the assessee has deposited cash of Rs. 83,72,986/- in its bank accounts maintained with the District Cooperative Central Bank Ltd., during the year under consideration. Thereafter, the Ld. AO issued notice U/s. 148 of the Act on 29/03/2022. The assessee was asked to furnish the source of cash deposit of Rs.83,72,986/- in its bank accounts along with documentary evidence, copy of cash book, cash flow statement for the AY under consideration, copy of bank account statements maintained with the District Cooperative Central Bank Ltd for the AY 2014-15 and other details. Since there was no response from the assessee to the notices issued U/s. 142(1) of the Act and the show cause notice dated 24/02/2023, the Ld. AO has obtained information from the bank authorities as per the provisions of section 133(6) of the Act. On perusal of the material available before him, the Ld. AO observed that the assessee made cash deposits in its savings bank account aggregating to Rs. 40,92,456/- out of which an amount of Rs. 36,72,488/- has been deposited in cash during the FY 2014-15. In the absence of any reply to the notices as well as the show cause notice issued, the

Ld. AO came to the conclusion that the total cash deposits / credits of Rs. 40,92,456/- made in the bank account of the assessee during the year is treated as 'unexplained money' U/s. 69A r.w.s 115BBE of the Act and added the same to the total income of the assessee. Thus, the Ld. AO assessed the total income of the assessee at Rs. 40,92,456/- and passed the assessment order U/s. 147 r.w.s 144 r.w.s 144B of the Act, dated 16/03/2023. The Ld.AO also initiated the penalty proceedings while passing the assessment order. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC observed that there is an inordinate delay of 72 days in filing the appeal before the First Appellate Authority. Before the Ld. CIT(A)-NFAC, the assessee has filed a petition for condonation of delay and explained the reasons that prevented the assessee in filing the appeal beyond the prescribed time limit. The assessee also pleaded before the Ld. CIT(A)-NFAC that since the assessee society is situated in a remote location of Andhra Pradesh, until the assessee received the notice of demand in June, 2023, the assessee was not aware of the assessment proceedings. However, the Ld. CIT(A)-NFAC,

did not consider the submissions of the assessee and dismissed the assessee's appeal by observing that *the appeal is not admitted for adjudication as it is delayed and not filed within the time limit provided and the reason provided by the assessee does not fall within the ambit of sufficient cause for the delay [para 2.10].*

Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following the grounds of appeal:

- “1. *The order of AO, NFAC is arbitrary and unjust.*
2. *The Ld. CIT (A) ought to have condoned the delay of 72 days as all the members of the society are uneducated and farmers.*
3. *The Ld. CIT(A) failed to see that the notice U/s. 148 is itself invalid as it is barred by limitation. To avoid this issue the Ld. CIT(A) simply dismissed the appeal on the ground of condonation of delay.*
4. *The Ld. CIT(A) failed to see the notice served on June, 2023 only. As the appellant verified the 147 order on that date which is the date of service of notice.*
5. *The Ld. AO, NFAC is not justified in making addition of entire cash deposit of Rs. 40,92,456/- as income under section 69A of the Act which were recorded in the books of accounts and were also audited by the Registrar of Cooperative Societies.*
6. *The Ld. CIT(A) failed to see the income of the appellant is exempt U/s. 80P(2)(ia) of the Act.*
7. *The Ld. CIT(A) ought to have gone on the merits of the case instead of condonation of delay as justice should be rendered even though belatedly.*
8. *The Ld. CIT(A) failed to see that the appellant is exempt from filing the return of income as the income arose from its own members and hence no need to file the return of income as income is exempt under principle of mutuality.*
9. *The appellant craves leave to add to, amend, alter, delete all or any of the above grounds of appeal.”*

4. At the outset, the Ld. Authorized Representative ["Ld. AR"] submitted that the Ld. CIT(A)-NFAC has passed the ex-parte order and dismissed the appeal of the assessee even though the assessee has explained the reason for filing the appeal beyond the prescribed time limit. The Ld. AR further submitted that without affording property opportunity of being heard to the assessee, the Ld. CIT(A)-NFAC passed the ex-parte order arbitrarily which is unsustainable in law. 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.

5. 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 its 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, the onus is on the assessee to give cogent reason with documentary evidence while seeking condonation of delay which is lacking in the case of the assessee. Under these circumstances, the Ld. CIT (A)-NFAC had no other option but to pass the 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.

6. I have heard the both the sides and carefully perused the materials available on record. On examining the facts of the case, I find that the Ld. CIT (A)-NFAC had posted the case on several 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)-NAFC was left with no other option except to adjudicate the appeal ex-parte and dismissed the appeal. Further, I have also observed that while dismissing the appeal of the assessee, the Ld. CIT(A)-NFAC did not consider the submissions of the assessee with regard to the belated filing of the appeal before the Ld. CIT(A)-NFAC. In this situation, I am of the view that even though the ignorance of law is not acceptable as pleaded by the assessee before the Ld. CIT(A)-NFAC, considering the facts and circumstance of the case, the Ld. CIT(A)-NFAC ought to have consider the assessee's plea for condonation of delay and decide the case on merits instead of dismissing the appeal as not maintainable and pass the ex-parte order. Therefore, I hereby condone the delay of 72 days in filing appeal before the Ld. CIT(A)-NFAC. Further, considering the issues involved in the appeal and also considering the prayer of the Ld. AR, in

the interest of justice as well as strictly following the principles of natural justice, I 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, I 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.

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

Pronounced in the open Court on 17th October, 2024.

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

Dated :17/10/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – The Pulimeru Large Size Coop Credit Society Limited, Peddapuram, Pulimeru-533433, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, Kakinada, Andhra Pradesh-533401.
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