

आयकर अपीलिय अधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM **SMC** BENCH, VISA KHAPATNAM

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. 92/Viz/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Janaki Ram Babji Rao Annam, Vijayawada. PAN: AECPA4464Q (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-3(1), Vijayawada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri C. Subrahmanyam, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	09/10/2024
घोषणा की तारीख/Date of Pronouncement	:	24/10/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1060236891(1), dated 29/01/2024 arising out of the order passed U/s. 271AAC1 of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. At the outset, it is observed from the record available before me that there is a delay of 11 days in filing the appeal before the

Tribunal. With respect to belated filing of the appeal, the assessee filed a petition for condonation of delay along with affidavit and the relevant paras of the affidavit are extracted herein below for reference:

“.....

I am presently staying with my son Sri Anil Kumar Annam at United States of America due to ill health. I have authorized my brother Sri Sarveswara Rao Annam to represent in the Income Tax proceedings with Authorization. My brother Sri Sarveswara Rao Annam met with an accident on 18/02/2024 and in Coma. Due to his medical condition he could not pursue my income tax proceedings and could not file the appeal before the ITAT, Visakhapatnam in time. After getting the information about the appellate order I approached Tax Consultant and there is a delay of 11 days in filing the appeal. As the delay is not intentional and due to my brother's health condition whom I have given power of Attorney I request the Hon'ble ITAT to condone the delay and admit the appeal.

.....”

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, I find that the assessee was in abroad during the relevant period and has given Power of Attorney to his brother to look after the assessee's tax matters. However, the assessee's brother met with an accident and was hospitalized and therefore the assessee filed the appeal beyond the stipulated time limit and with a delay of 11 days. Therefore, I am of the view that this is a fit case to condone the delay since the reason adduced by the assessee constitutes a reasonable and sufficient cause. Accordingly, I hereby condone the delay of 11 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 filed his return of income electronically on 09/12/2017 declaring a total income of Rs. 3,49,950/- for the AY 2017-18. The return was processed U/s. 143(1) of the Act by the CPC on 24/12/2017. The case was selected for limited scrutiny through CASS to examine the sources for cash deposits made during the demonetization period. Thereafter, notice U/s. 143(2) of the Act dated 14/08/2018 was issued and the same was duly served on the assessee on 03/09/2018 through mail. Subsequently, notice U/s. 142(1) of the Act dated 20/05/2019 was issued to the assessee calling for certain details. As there was no response to the notices issued U/s. 142(1) of the Act, Ld. AO obtained the information from the Bank authorities U/s. 133(6) of the Act with regard to the cash deposits made in the assessee's bank accounts. On verification of the bank account copies and the other material available before him, the Ld AO noticed that the assessee made cash deposits amounting to Rs. 24,31,000/- by way of Specified Bank Notes ["SBNs"]. Accordingly, another notice U/s. 142(1) of the Act was issued on

17/10/2019 however there was no compliance from the assessee. Considering the assessee's no reply to the notices issued, the Ld. AO observed that he was left with no option but to finalize the assessment based on the information available on record as per the provisions of section 144 of the Act. During the assessment proceedings, in the absence of any explanation from the assessee with respect to the source of cash deposits made during the demonetization period, the Ld. AO treated the entire amount of Rs. 24,31,000/- deposited in his bank accounts during demonetization period as income of the assessee from unexplained sources as per the provisions of section 69A of the Act. Accordingly, the Ld. AO determined the assessed income of the assessee at Rs. 27,80,950/- and completed the assessment U/s. 143(3) of the Act, and passed the assessment order dated 19/12/2019. Further, the Ld. AO also initiated the penalty proceedings U/s. 271AAC of the Act for under reporting of income. Accordingly, show cause notice U/s. 271AAC(1) of the Act dated 23/12/2019 was issued to the assessee however there was no compliance from the assessee. Considering the assessee's no response to the notices issued, the Ld. AO has computed the penalty as under:

Addition U/s. 69A as per order

Rs. 24,31,000

Tax U/s. 115BBE(1)(i) on the above addition	Rs. 14,58,600
Penalty U/s. 271AAC@10% of the Tax payable U/s. 115BBE(1)(i)	Rs. 1,45,860

Thus, the Ld. AO levied the penalty U/s. 271AAC(1) of the Act of Rs. 1,45,860/- and passed order dated 7/1/2022. Aggrieved by the penalty order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

5. Before the Ld. CIT(A)-NFAC, the assessee filed the appeal with a delay of 351 days. With reference to the belated filing of the appeal, the assessee sought for condonation of delay and filed submissions wherein the assessee explained before the Ld. CIT(A)-NFAC that the delay was due to suffering of assessee with Bipolar disorder for which treatment is being taken from 2017 onwards. The assessee further submitted that due to acuteness of his health problem and as his residence in USA, he could not attend the notices and also could not file the appeal against the assessment order within the prescribed period. The assessee further submitted that considering his health problems, he has given Power of Attorney to his brother Sri Annam Lakshmajji Sarveswara Rao, who approached a tax consultant and filed appeal and hence there was a delay. However, the Ld. CIT(A)-NFAC did not consider the submissions of the assessee on the

issue of condonation of delay of 351 days and dismissed the 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 order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in not condoning the delay of 351 days; the Ld. CIT(A) ought to have provided an opportunity before reject the condonation of delay sought for.*
3. *The Ld. CIT(A) ought to have considered and decided the grounds of appeal filed by the appellant against levy of penalty U/s. 271AAC(1) of the Act on merits without dismissing the appeal in limine.*
4. *The Ld. CIT(A) ought to have seen that rejecting the appeal on technical grounds, the appellant is deprived of substantial justice.*
5. *Any other ground / grounds that may be urged at the time of hearing.”*

6. At the outset, the Ld. Authorized Representative [“Ld. AR”] submitted that the Ld. CIT(A)-NFAC has dismissed the appeal of the assessee without condoning the delay of 351 days in filing the appeal 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 dismissed the assessee’s appeal 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.

7. Ld. Departmental Representative ["Ld. DR"], on the other hand, vehemently opposed to the submissions of the Ld. AR and argued 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.

8. 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 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. On perusal of the Ld. CIT(A)-NFAC's order, it appears that the assessee has explained before the Ld. CIT(A)-NFAC that the delay was due to his illness with Bipolar disorder for which treatment is being taken from 2017 onwards and as his residence in USA, he could not attend the notices and also could not file the appeal against the assessment order within the prescribed period. The assessee further submitted that considering his health problems, he has given Power of Attorney to his brother Sri Annam Lakshmajji

Sarveswara Rao, who approached a tax consultant and filed appeal and hence there was a delay. However, the Ld. CIT(A)-NFAC rejected the assessee's submissions and denied the explanation for condonation of delay. Considering the facts and circumstances of the case and also consider the health condition of the assessee, I am inclined to condone the delay of 351 days and 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.

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

Pronounced in the open Court on 24th October, 2024.

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

Dated :24/10/2024
OKK - SPS

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

1. निर्धारिती/ The Assessee – Janaki Ram Babji Rao Annam, 26-2-89, Annam Building, Andhra Ratna Road, Gandhinagar, Vijayawada-520003, Andhra Pradesh.
2. राजस्व/The Revenue – Income Tax Officer, Ward-3(1), CR Building, Vijayawada, Andhra Pradesh-520003.
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