

आयकर अपीलियअधिकरण, 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.183/Viz/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Sitarama Raju Penumatsa,
9-363-1443, Santhoshimatha
Nagar, Jarajapeta, Nellimarla,
Vizianagaram District-535217,
Andhra Pradesh.

PAN: AWFPP2521A

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,
Ward-2,
Vizianagaram.

(प्रत्यार्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 16/10/2024

: 24/10/2024

ORDER

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 ["Ld.CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1062493748(1), dated 12/03/2024 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual. As per the information available with the Department, the Ld. AO observed that the assessee made substantial cash deposits in his bank account in the FY 2016-17 during demonetization period. Accordingly, notice U/s. 142(1) of the Act was issued on 28/11/2017 and called for the return of income of the assessee for the AY 2017-18. But the assessee failed to furnish the return of income for the AY 2017-18 either U/s. 139 (on or before 31/3/2018) or in response to the notice U/s. 142(1) of the Act. Thereafter, the Ld AO as per the provisions of section 133(6) of the Act and obtained the information from the bank authorities. On verification of the information gathered by the Ld. AO, the Ld. AO observed that the assessee made cash deposits amounting to Rs. 31,69,500/- during demonetization period. Accordingly, in view of the provisions of section 144(1)(b) of the Act and considering the assessee's failure to furnish the return of income for the AY 2017-18 in response to the notice U/s. 142(1) of the Act dated 28/11/2017, the Ld. AO proceeded to complete the assessment as 'best judgment assessment'. Accordingly, during the course of e-assessment proceedings, the Ld. AO issued notices U/s. 142(1) of the Act on various dates as mentioned in the assessment order

however, the assessee did not comply with the notices. Therefore, a final show-cause notice dated 10/09/2019 was issued and served on the assessee. In response to the show cause notice, the assessee submitted his reply manually and stated that he need to collect some data from third party and sought for some more time to file income tax return for the AY 2017-18. Thereafter, another notice U/s. 142(1) of the Act was issued to the assessee and sought certain information. However, there was no response to the said notice and therefore, the Ld. AO considering the assessee's non-compliance to the notices issued and in the absence of any explanation with respect to the source of cash deposits of Rs. 31,69,500/- in his bank account during demonetization period, the Ld. AO treated the entire cash deposits as unexplained money U/s. 69A of the Act and added to the same to the total income of the assessee and taxed the same U/s. 115BBE of the Act @ 60% of the Tax. Thus, the Ld. AO completed the assessment U/s. 144 of the Act and assessed the total income at Rs. 31,69,500/- and passed the assessment order dated 13/11/2019. Against the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. Before the Ld. CIT(A)-NFAC, the assessee filed appeal with a delay of 84 days. With reference to the belated filing of the appeal, while seeking for condonation of delay, the assessee filed his submissions before the Ld. CIT(A)-NFAC and explained as under:

“The delay was not at all intentional or willful and it occurred under the unavoidable and exceptional circumstances beyond the control of the appellant. The appellant solely depended on his accountant who is a professional accountant. Because of his professional pre-occupation he missed the attention on appellant case and hence could not respond in this regard. The impugned assessment order was received in his mail inbox only and the accountant overlooked this order also when a letter was received by the appellant with regard to the tax demand then the accountant realized the mistake and in action at his end. So the delay occurred because of accountant negligence and hence the delay of 70 days may kindly be condoned in the interest of justice.”

However, the Ld. CIT(A)-NFAC did not consider the submissions of the assessee on the issue of condonation of delay of 84 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 impugned appellate order dated 12/03/2024 passed U/s. 250 of the Act by the Ld. CIT(A)-NFAC for the AY 2017-18 is unjust and uncalled for.
2. The Ld. CIT(A) ought to have afforded one more opportunity to the appellant to comply with the notices and proceedings and ought not have dismissed the appeal.
3. The Ld.CIT(A) ought to have appreciated the fact that the appellant was prevented by reasonable and sufficient cause from filing the impugned appeal in time and also from responding to the notices and proceedings.

4. *It is pertinent to submit that the appellant is not acquainted with the computer system and he is not habituated to login into the login portal or into his emails etc., and moreover the appellant has got no knowledge about the provisions and consequences of the IT Act hence he was not aware of the notices and proceedings. So the delay and non-response are not at all intentional or willful and they occurred under the unavoidable and exceptional circumstances beyond the control of the appellant.*
5. *The Ld. CIT(A) ought to have appreciated the fact that the impugned cash deposits in the bank account of the appellant are not all unexplained and they were clearly emanated from the regular sales of business of the appellant and they were duly reflected in the books of account of the appellant. So the impugned cash deposits could not be termed as unexplained money U/s. 69A of the Act by any stretch of imagination or any in any view of the matter.*
6. *The Ld. CIT(A) ought to have appreciated the fact that the provisions of section 69A r.w.s 115BBE of the Act are not applicable to the impugned cash deposits in the bank account of the appellant in view of the facts and circumstances of the case.”*

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 without condoning the delay of 84 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.

5. 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.

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 while passing the ex-parte order and 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 negligence on the part of his professional account who is looking after the assessee's tax matters. However, the Ld. CIT(A)-NFAC rejected the assessee's submissions and denied his explanation for condonation of delay. Considering the facts and circumstances of the case and also considering the fact that the delay of 84 days in filing the appeal before the Ld. CIT(A)-NFAC

was caused due to the negligence on the part of the assessee's professional Accountant which cannot be attributable to the assessee, I am inclined to condone the delay of 84 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.

7. 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 – Sitarama Raju Penumatsa, 9-363-1443, Santhoshimatha Nagar, Jarajapeta, Nellimarla, Vizianagaram District-535217, Andhra Pradesh.

2. राजस्व/The Revenue – Income Tax Officer, Ward-2, Koppu Guruna Building, Siddardhanagar, Lower Tank Bund Road, Vizianagaram-535002, Andhra Pradesh.
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