

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member and

आ.अपी.सं / **ITA No.708/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Shri Nalla Sai Reddy Warangal PAN:ADMPN5346B (Appellant)	Vs.	Income Tax Officer Ward – 2 Warangal (Respondent)
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आ.अपी.सं / **ITA No.713/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Smt. Nalla Pavana Warangal PAN:ADMPN5345C (Appellant)	Vs.	Income Tax Officer Ward – 2 Warangal (Respondent)
निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, Advocate		
राजस्व द्वारा/Revenue by: Shri K. Meghnath Chowhan, Sr. AR and Shri K.N. Suresh Babu, DR		
सुनवाई की तारीख/Date of hearing: 07/11/2024		
घोषणा की तारीख/Pronouncement: 121/11/2024		

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These two appeals by the two related assessees (Husband & Wife) are directed against the separate orders of the

learned CIT (A) (NFAC) Delhi, dated 7/2/2023 and 3/8/2023 respectively, for the A.Y 2017-18. Since the facts and issues involved in these appeals are common, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. There is a delay of 474 days in filing the appeal, in case of the husband Shri Nalla Sai Reddy in ITA No.708/Hyd/2024 and a delay of 298 days in filing appeal by the Wife, Smt. Nalla Pavana in ITA No.713/Hyd/2024. Both the assesseees have filed applications for condonation of delay which are also supported by the affidavits by the respective assesseees. The learned AR of the assesseees submitted that both the husband & wife are doing business, as a commission agent for foodgrain, in Grain Market, Warangal under the license issued by the Market Committee. The Assessing Officer made the addition of the entire deposits made in the Bank Account of the assessee which is nothing, but the turnover of the agricultural produce sold through assesseees by the farmers in the grain market on which income of the assessee in the shape of commission is only 2% of the sale proceeds. The assessee challenged the order of the Assessing Officer before the learned CIT (A). However, the notices as well as the impugned order passed by the learned CIT (A) were sent to the email-ID of the Accountant of the assessee who left the job and therefore, the assessee was not aware about the impugned order passed by the learned CIT (A). The learned AR has referred to the email ID given by the assessee in Form 35 for the purpose of

service of notice as well as the orders which is of the Accountant of the assessee, who left the job and thereafter, the assessee was also undergoing the treatment of serious kidney problems and could not follow up the appeals filed before the learned CIT (A). The learned AR has referred to the medical certificate of Shri Nalla Sai Reddy and submitted that since the assessee was not having the knowledge of the impugned order, which was not sent physically, but was sent only to the email ID of the Accountant of the assessee and therefore, could not take steps for filing the appeal within the period of limitation. Thus, he has submitted that the additions made by the Assessing Officer was confirmed by the learned CIT (A) is highly arbitrary and unjustified and therefore, the appeal of the assessee be admitted for adjudication on merits, instead of deciding on technicalities of delay in filing the appeal.

3. The learned DR, on the other hand, has submitted that sufficient opportunities were given by the Assessing Officer as well as the learned CIT (A) to the assessee, but the assessee failed to comply with the notices issued by the Assessing Officer as well as the learned CIT (A). The learned DR further contended that the conduct of the assessee shows that he did not cooperate with the proceedings before the Assessing Officer as well as the learned CIT (A) which is a gross negligence on the part of the assessee and therefore, the inordinate delay in filing the appeal has not been explained with sufficient cause. Thus, he has opposed to the condonation of delay in filing of the appeal.

4. We have considered the rival submissions as well as the reasons explained by the assessee in the application for condonation of delay as well as the contents of the affidavit filed in support of the application. The assessee has explained the cause of delay that, one Mr. Venu, the employee of the assessee used to deal with the tax matters has abruptly left the job of the assessee and further, the assessee was also suffering from serious kidney disease and was undergoing medical treatment, therefore, the assessee was not having the knowledge of the notices issued by the learned CIT (A) as well as the impugned order passed by the learned CIT (A). The assessee has specifically given reasons for having no knowledge of the impugned order that the impugned orders were not served upon the assessee physically but the same were sent to the email-ID of the employee of the assessee Shri Venu. We find that in Form-35, the assessee has given the email ID as “venu.232@reddiffmail.com”. Thus, this fact is emerging from record that the email ID to which the impugned order was sent by the learned CIT (A) belongs to the employee of the assessee, who stated to have left the job and thereafter, the assessee was not aware about the impugned order passed by the learned CIT (A). Though the reasons explained by the assessee may be exact cause for delay in filing of the appeal, however, even before the Assessing Officer as well as before the learned CIT (A), there was no compliance on behalf of the assessee to various notices issued by these authorities. Thus, the assessee cannot be absolved from his negligent conduct which is also to some extent

has contributed the delay in filing the present appeal. However, since the reasons explained by the assessee are factually correct, therefore, keeping in view of the matter that the Assessing Officer has assessed the entire deposits in the Bank Account to tax, instead of taking only the profit element in the shape of commission earned by the assessee on these transactions of sale of agricultural produce of the farmers, as a commission agent. We take a lenient view on condonation of the delay. Hence, in the facts and circumstances of the case, the delay of 474 days in filing of the appeal is condoned subject to cost of Rs.2,500/- to be deposited in the Prime Minister's National Relief Fund and necessary slip should be filed on record with the Registry, within one month from the date of this order. Hence, the delay in filing of the appeal is hereby condoned and the appeal of the assessee is admitted for adjudication on merits.

5. The assessee has raised the following grounds:

“1. The order of the learned CIT (A) is erroneous both on facts and in law.

2. The learned CIT (A) erred in deciding the appeal without providing proper opportunity.

3. The learned CIT (A) erred in not deciding the grounds on merit and further erred in confirming the action of the Assessing Officer in completing the assessment u/s 144 and in determining the total income at Rs.10,07,54,934/-.

4. The learned CIT (A) erred in confirming the action of the Assessing Officer in treating the aggregate of the deposits made into Canara Bank as the income of the appellant assessable u/s 69A of the I.T. Act, and in taxing the

addition by applying the provisions of section 115BBE of the Act,.

5. The learned CIT (A) erred in upholding the order of the assessment and ought to have seen that the deposits represent the commission income on food grains neither the provisions of section 69A nor section 115BBE are applicable.

6. The learned CIT (A) ought to have appreciated the fact that the appellant is a commission agent by profession and derives income solely through commission earnings. And ought to have considered that the appellant earns fixed rate of 2% commission on transaction.

7. Any other ground that may be urged at the time of hearing”.

6. At the time of hearing, the learned AR of the assessee has submitted that due to the medical problems and non-receipt of notices physically, the assessee could not participate in the proceedings before the Assessing Officer as well as before the learned CIT (A). He has further submitted that the addition made by the Assessing Officer of the entire deposits in the Bank Account is highly unjustified and arbitrary when the income of the assessee is only in the form of commission @ 2%. Thus, the learned AR has stated that the assessee may be given one more opportunity to explain its case and file the supporting evidences before the Assessing Officer.

7. On the other hand, the learned DR has not raised serious objection, if the matter is remanded to the record of the Assessing Officer for fresh adjudication, for verification and consideration of the relevant record to be filed by the assessee.

8. Having considered the rival submissions and careful perusal of the impugned orders, we find that the Assessing Officer has made addition of the entire deposits in the Bank Account of the assessee u/s 69A of the Act, for want of any explanation and supporting evidences to explain the source of the said deposits of Rs.10,07,54,944/-. Since the assessee has explained the reasons for non-compliance of the notices issued by the Assessing Officer as well as the learned CIT (A), therefore, in the facts and circumstances of the case and in the interest of justice, we are of the considered view that, the assessee be granted one more opportunity to explain the source of the deposits with supporting evidences before the Assessing Officer. Accordingly, the impugned order of the learned CIT (A) is set aside and the matter is remanded to the record of the Assessing Officer for fresh adjudication after verification and examination of the explanation of source of cash deposits with supporting evidences to be filed by the assessee.

ITA No.713/Hyd/2024 (Smt. Nalla Pavana)

9. The assessee has explained the delay of 298 days in filing of the appeal for condonation of delay which is supported by affidavit. We have heard the learned AR as well as the learned DR on the condonation of delay in filing the appeal. The reasons explained by the assessee are identical to the reasons for delay as explained in the case of the husband of the assessee, in ITA No.708/Hyd/2024. Accordingly, in view of our findings on the

condonation of delay in the appeal in ITA No.708/Hyd/2024, the delay of 298 days in filing the appeal is hereby condoned subject to the cost of Rs.2500/- to be deposited in the Prime Minister's National Relief Fund within one month from the date of this order.

10. The assessee has raised the following grounds:

"1. The order of the learned CIT (A) is erroneous both on facts and in law.

2. The learned CIT (A) erred in deciding the appeal without providing proper opportunity.

3. The learned CIT (A) erred in not deciding the grounds on merit and further erred in confirming the action of the Assessing Officer in completing the assessment u/s 144 and in determining the total income at Rs.4,74,21,027/-.

4. The learned CIT (A) erred in confirming the action of the Assessing Officer in treating the aggregate of the deposits made into Canara Bank as the income of the appellant assessable u/s 69A of the I.T. Act, and in taxing the addition.

5. The learned CIT (A) erred in upholding the order of the assessment.

6. The learned CIT (A) ought to have seen that the deposits represent the commission income on food grains.

7. The learned CIT (A) ought to have appreciated the fact that the appellant is a commission agent by profession and derives income solely through commission earnings. And ought to have considered that the appellant earns fixed rate of 2% commission on transaction.

8. Any other ground that may be urged at the time of hearing".

11. The learned AR of the assessee has submitted that the assessee be given one more opportunity to file the supporting

evidences to explain the source of cash deposits before the Assessing Officer.

12. On the other hand, the learned DR has raised no serious objection, if the matter is remanded back to the record of the Assessing Officer, for fresh adjudication after verification of the supporting evidences to be filed by the assessee.

13. An identical issue has been considered by us in case of the husband of the assessee in ITA No.708/Hyd/2024 and accordingly, the impugned order of the learned CIT (A) is also set aside and the matter is remanded to the record of the Assessing Officer for fresh adjudication after verification and consideration of the explanation of the assessee with supporting evidences to be filed by the assessee.

14. In the result, both the appeals filed by the assessees are allowed for statistical purposes.

Order pronounced in the Open Court on 12th November, 2024.

Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER	Sd/- (VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 12th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Nalla Sai Reddy, Shop No.159, New Grain Market, Warangal 506002
2	Smt. Nalla Pavana, Shop No.159, New Grain Market, Warangal 506002
3	Income Tax Officer Ward -2 Warangal
4	Pr. CIT, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order