

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE

SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER  
&  
SHRI BALAKRISHNAN S, ACCOUNTANT MEMBER

आ.अपी.सं / ITA No.423/Viz/2024  
(निर्धारण वर्ष / Assessment Year: 2020-21)

Vaddadi Madhusudana Rao Vs. Asst.Commissioner of  
Visakhapatnam Income Tax  
[PAN :ACOPV4137H] Circle-3(1)  
Visakhapatnam

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri G.V.N.Hari, AR  
राजस्व द्वारा/Revenue by: Dr.Aparna Villuri, DR

सुनवाई की तारीख/Date of hearing: 18/11/2024  
घोषणा की तारीख/Pronouncement on: 21/11/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 27/08/2024 passed by the learned Commissioner of Income Tax (Appeals), ("learned CIT(A)"), in the case of Madhusudana Rao Vaddadi ("the assessee") for the assessment year 2020-21, assessee preferred this appeal.

2. Brief facts of the case are that the assessee retired from MMTC Ltd. under Voluntary Retirement Scheme, received net terminal benefits of Rs.1,08,15,275/- after deducting tax at source at Rs.14,35,169/- from the total benefits of Rs.1,22,50,444/-. Assessee filed return of income for assessment year 2020-21 on 25/11/2020 admitting income of Rs.52,31,590/- and claimed exemption of Rs.13,21,198/- in respect of gratuity.

3. The return of income filed by the assessee was taken up for scrutiny under CASS and notices under section 143(2) and 142(1) of the Income tax Act, 1961 ("the Act") were issued and served on the assessee, calling for information. On the basis of information submitted by the assessee, the learned Assessing Officer completed the assessment and determined the total income of the assessee at Rs.1,60,50,427/- and computed the tax payable at Rs.99,61,207/- after making certain additions / disallowances with regard to deduction in respect of half pay leave encashment and FEEPR allowance, addition of RS.4,21,198/- towards gratuity, addition of Rs.75,00,000/- and 21,33,000/- under section 69 of the Act.

4. Aggrieved by the order of the learned Assessing Officer, assessee preferred an appeal before the learned CIT(A) with the delay of 01 day and the learned CIT(A) dismissed the appeal of the assessee *in limine* holding that in the absence of existence of reasonable cause and also in the absence of proper explanation and reasons, without being supported by proper evidence, the appeal filed by the assessee late by 01 day is not condonable.

5. Against which, assessee preferred appeal before the Tribunal and at the outset, learned AR submitted that the learned CIT(A) is not justified in dismissing the appeal *in limine* on the ground that there was no petition filed by the assessee to explain the said delay in filing the appeal and the learned CIT(A) ought to have provided an opportunity to the assessee before dismissing the appeal *in limine*.

6. Per contra, learned DR submitted that the onus is on the assessee to file condonation petition and explain the reasons for filing the appeal belatedly. In the absence of any reasonable cause put forth by the assessee for filing the appeal belatedly before the learned CIT(A), learned CIT(A) is justified in dismissing the appeal of the assessee *in-limine*.

7. We have heard the rival parties in the light of the submissions made on either side and also gone through the material available on record. As per section 9(1) of The General Clauses Act, 1897 the first day in a series of days or any other period of time is excluded and hence the delay of 1 day is not a

delay in filing the appeal belatedly. For the sake of clarity, we extract section 9(1) of the General Clauses Act, 1897 as under :

*“9. Commencement and termination of time.—(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.*

8. Keeping in view the above judicial precedent and also keeping in view the principles of natural justice, we consider the request of the assessee reasonable and in the interest of justice, we restore the issue to the file of the learned CIT(A) for considering the submissions of the assessee and to take a fresh view in the matter, after affording a reasonable opportunity of being heard to the assessee.. We direct the assessee to co-operate with the learned CIT(A) in getting the matter disposed of on merits, without seeking any adjournments. Grounds are accordingly treated as allowed for statistical purposes.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 21<sup>st</sup> November, 2024.

**Sd/-**

**(BALAKRISHNAN S.)**

**ACCOUNTANT MEMBER**

Hyderabad,

Dated: 21 /11/2024

*L.Rama, SPS*

**Sd/-**

**(K. NARASIMHA CHARY)**

**JUDICIAL MEMBER**

Copy forwarded to:

1. Shri Vaddadi Madhusudana Rao, D.No.20-8-13, AVN College Road, Upper Relli Veedhi, Visakhapatnam
2. The Assistant Commissioner of Income Tax, Circle-3(1), Visakhapatnam
3. The Pr.CIT, Visakhapatnam
4. The DR, ITAT, Visakhapatnam
5. GUARD File

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