

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION’ BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON’BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.257/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2015-16)

Venkateswara Rao Madhyahnapu 1-4-5, Padamara Veedhi Mr. D. Balaram House Eluru-534001 West Godavari, Andhra Pradesh [PAN: AESPM1820Q] (अपीलार्थी/ Appellant)	v.	Income Tax Officer – Ward – 1 Eluru, Andhra Pradesh (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	20.11.2024
घोषणा की तारीख/Date of Pronouncement	:	28.11.2024

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order passed under section 263 of Income Tax Act, 1961 (in short ‘Act’) by Learned Principal Commissioner of Income Tax, Visakhapatnam - 1 [hereinafter in short “Ld.Pr.CIT”] vide DIN &

Order No. ITBA/COM/F/17/2023-24/1063341481(1) dated 25.03.2024 for the A.Y. 2015-16 against order passed under section 147 r.w.s. 144B of the Act dated 17.03.2022.

2. At the outset, it is noticed from the appeal record that there is a delay of 27 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld. AR drew our attention to the affidavit filed by the assessee along with a petition seeking for condonation of delay and read out the contents of the petition which is as under:

“1. Assessee was served with PCIT order on dt. 25.03.2024, passed u/s 263 of the IT Act. Whereas, the assessee being aggrieved was desirous to file appeal before the Hon'ble ITAT and the appeal was filed on dt:18.06.2024 as against the due date of filing i.e., dt. 23.05.2024, thus causing a delay of 27 days. The reasons and circumstances under which the appeal was filed belatedly are stated here under:

2. Whereas, it is stated that the assessee was go to counsel office for signing appeal papers on dt. 21.05.2024 but was affected with viral. fever on dt. 18.05.2024, therefore, was confined to the house undergoing treatment and was advised to take rest for 2 weeks. Due to weakness and BP. In this process could not go to counsel's office to counsel's office requesting to prepare the documents which was done on 17th June 2024 and the appeal was filed on 18th June 2024 causing a delay of 27 days.

3. In light of the above, it is respectfully submitted that this delay in filing the appeal belatedly was not as a result of any negligence or lack of diligence, but solely due to the unfortunate and unforeseen circumstances surrounding assessee health. Doctor's certificate in support of petition is attached herewith.

4. I understand the importance of adhering to statutory timelines and sincerely apologize for this delay.

5. I humbly pray the Honorable Bench for favorable consideration of this delay.”

3. On perusal of the contents of the affidavit filed by the assessee and medical records as well as the submission of the Ld. AR, we find that the

assessee is prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed time limit with a delay of 27 days. Therefore, we hereby condone the delay of 27 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Brief facts of the case are that, assessee is a non-filer of return of income and the ITBA system shown transactions during the year under consideration that assessee has made huge cash deposits as detailed in the assessment order. Ld.Assessing Officer [hereinafter in short "Ld. AO"] therefore believed that income has escaped assessment within the meaning of section 147 of the Act. Thereafter the Ld.AO issued notice under section 148 of the Act dated 30.03.2021 and duly served upon the assessee by way of e-proceedings. In response, assessee filed return of income on 20.04.2021. Thereafter, notice under section 143(2) dated 15.11.2021 was issued and duly served on the assessee. Subsequently, the case was transferred to National Faceless Appeal Centre under Faceless Assessment Scheme, 2019. Considering the reply of the assessee, the Ld. AO accepted the return of income filed by the assessee.

5. Subsequently, the Ld.Pr.CIT by exercising his powers under section 263 of the Act prima facie considered the order passed under section 147 r.w.s. 144B of the Act dated 17.03.2022 is erroneous and prejudicial to the interest of the revenue. Thereafter he issued show-cause notice dated 12.03.2024 to the assessee to show cause why the assessment should not be revised as detailed in

the

show-cause notice. In response, assessee filed his reply on 18.03.2024 seeking four day's time to submit the information called for. The assessee later filed response along with certain information stating that he is a salaried employee working with liquor shop "Venkata Sai Wines", Chitalapudi and stated that the cash deposits in his account are does not belong to him but belongs to his employer which was used to pay A.P. Beverages Corporation towards purchase of liquor. He also submitted that he does not have liquor licence and the entire cash deposits belongs to his employers arising out of the sale of liquor. Considering the submissions made by the assessee and after perusal of the same, Ld.Pr.CIT found it to be unacceptable as the assessee has not furnished any documentary evidences or any confirmation from the employer/owner of the wine shop on whose behalf cash was claimed to be deposited by the assessee. Ld.Pr.CIT therefore directed the Ld. AO to pass the consequential order after affording a reasonable opportunity to the assessee.

6. Aggrieved by the order of the Ld.Pr.CIT, assessee is in appeal before us by raising the following grounds of appeal: -

1. The order passed u/s 263 of the IT Act, dt. 25.03.2024, is contrary to the facts of the case and the provisions of the law.

2. It is contended that the Learned Principal Commissioner of Income Tax (hereinafter referred to as "Ld. PCIT") has overstepped his jurisdiction by initiating a review of the subject case, since the Assessing Officer's (AO) order is neither erroneous nor prejudicial to the revenue's interests.

3. The Ld. PCIT ought to have known that the case was initially brought under scrutiny by issuance of notice u/s 148 of the IT Act to investigate the

cash deposits in the assessee's bank account, which AO duly examined, therefore, the order passed u/s 143(3) r.w.s 147 of the IT Act cannot be labeled as erroneous, since no prejudice is inflicted upon the revenue.

4. *Considering the Ld. PCIT's acknowledgment of the assessee's employment at a wine shop and the origin of the cash deposits is from a shop owner's business activities where assessee was employed, including transactions with the AP State Beverages Corporation, without there being any adverse remarks by Ld. PCIT on this, it is contradictory to attribute these deposits to the assessee.*

5. *It is relevant to note that when all relevant aspects regarding the source and utilization of cash deposits were presented before the AO, who after thorough examination accepted these, consequently, the contradictory stance taken by the Ld. PCIT is an offshoot of mere suspicion which cannot serve as a valid ground for invoking sec 263 of the IT Act.*

6. *In light of the aforementioned grounds, and other arguments to be presented during the hearing, it is the prayer of the assessee that the orders passed u/s 263 of the IT Act are liable to be set aside.”*

7. The only issue emanating from the above grounds is with respect to cash deposits into the assessee account which was claimed be belonging to the sales by Venkata Sai Wines and deposited by his employer. At the outset, Ld.Authorised Representative [hereinafter “Ld.AR”] argued that the cash deposits does not belong to the assessee and was remitted immediately to the APVAT Account for purchase of liquor for the “Venkata Sai Wine shop” run by his employer. He submitted that bank statement is available in paper book at page No. 16 which clearly evidences that cash deposits have been immediately transferred to APVAT Account. He therefore pleaded that order of the Ld.Pr.CIT be quashed.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that assessee has not provided any corroborative evidences

substantiating the claim of the assessee that the cash deposits belong to the owner of the wine shop who happens to be his employer. Ld. DR further submitted that assessee has also not provided any confirmation from the employer stating that the cash deposits arising out of the sales from wine shop and deposited into assessee / employee account. He therefore pleaded that order of the Ld.Pr.CIT be sustained.

9. We have heard both the sides and perused the material available on record. It is the case of the Ld.Pr.CIT that there are huge cash deposits to the bank account No. 012201000014259 held with Indian Overseas Bank, where assessee claims it to be the cash arising out of the sales from the wine shop belonging to his employer / owner. However, we noticed that assessee has failed to provide any confirmation from the owner / employer to substantiate his claim that the cash deposits belong to him, except the bank statement, even before us. Ld.Pr.CIT has rightly directed the Ld. AO to pass the consequential order; after affording reasonable opportunity to the assessee and we find no infirmity in the order of the Ld.Pr.CIT while sustaining the same. Thus, grounds raised by the assessee are dismissed.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28th November,2024.

Sd/-
(के.नरसिम्हा चारी)
(K. NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated: 28.11.2024

Giridhar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Venkateswara Rao Madhyahnapu**
1-4-5, Padamara Veedhi
Mr. D. Balaram House
Eluru-534001
West Godavari, Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 1**
Eluru, Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam