

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

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.1032/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Venkata Gurunatha Rao Swamy Suryapet [PAN :ABWPS5361D]	Vs.	Income Tax Officer Ward-1 Suryapet
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Ms.S.Sandhya, AR	
राजस्व द्वारा / Revenue by:	Shri Srinath Sadanala, DR	
सुनवाई की तारीख / Date of hearing:	12 / 12 / 2024	
घोषणा की तारीख / Date of Pronouncement:	12 / 12 / 2024	

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order dated 09.03.2024 of the learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)], National Faceless Appeal Centre, Delhi, relating to A.Y.2017-18.

2. At the outset, we find that there is a delay of 154 days in the appeal filed by the assessee before the Tribunal, for which a petition for condonation of delay along with an affidavit, explaining the reasons has been filed. The learned Counsel for

the assessee, referring to the petition filed by the assessee submitted that the appellate order passed by the Ld.CIT(A) has been served on the appellant's email address given in Form 35. The said e-mail id was not of the appellant, but the counsel who prepared the appeal papers and filed before the Ld.CIT(A). The consultant, who handled the tax matters did not notice the order passed by the Ld.CIT(A). Towards the end of November 2023, due to personal reasons, the appellant engaged the services of another chartered accountant for filing the return of income for the A.Y.2023-24, where, the chartered accountant noticed that the appellate order was passed by the Ld.CIT(A) for the A.Y.2017-18. Further, immediately, after taking notice of the appellate order, the appeal has been filed, which resulted in the delay of 154 days. However, the said delay is neither intentional nor wanton of any undue benefit, but beyond the control of the assessee, therefore, in the interest of justice, delay may be condoned and the appeal may be admitted for hearing.

3. The Ld.DR on the other hand, opposing the petition filed by the assessee, submitted that the reasons given by the assessee are vague in nature, without any specific reasons, as to how the appellant was prevented from filing the appeal on or before the due date. Therefore, the delay in filing the appeal should not be condoned.

4. We have heard both the parties and considered the relevant reasons given by the appellant in their petition filed for condonation of delay and after going through the reasons, we find that the reasons given by the appellant seems to be

bonafide and reasonable, because in the present system of e-filing of appeals, it is quite possible for the appellant to miss out various communications issued by the authorities due to ignorance or misconduct of the consultant, who is handling the tax matters, therefore, for these reasons, the appeals cannot be thrown out of the judicial scrutiny. Therefore, we are of the considered view that the reasons given by the assessee are reasonable and thus, the delay in filing of the appeal is condoned and the appeal filed by the assessee is admitted for hearing.

5. The brief facts of the case are that the assessee is a proprietor of M/s Ashtalaxmi Agencies, carrying on business of wholesale kirana, filed his return of income for the A.Y.2017-18 on 09.11.2017, by admitting total income of Rs.9,89,350/-. A survey operation u/s 133A of the Income tax Act, 1961 ("the Act") was carried out at the business premises of the assessee on 03.03.2017 and during the course of survey operations, physical stock is verified with reference to books of accounts and there is a difference. Consequent to survey, the case was selected for scrutiny and accordingly, notices u/s 143(2) and 142(1) of the Act, were issued from time to time and called for information from the assessee. Further, during the course of assessment proceedings, the Assessing Officer noticed that as per information available in AIMS, the appellant has deposited cash of Rs.1,77,79,500/- between 08.11.2016 to 30.12.2016 into the bank account. The Assessing Officer called upon the assessee to file necessary evidences to prove the sources for the cash deposit. In response, the assessee has filed the details of

total sales, cash sales, cash deposits during the financial year and also the period from 08.11.2016 to 30.12.2016 of current year and corresponding previous financial year. The Assessing Officer after taking note of relevant facts and also the gross profit and net profit declared by the assessee from his business, observed that although the assessee has declared huge turnover from his business, but net profit from his business is meagre, which works out to less than 1%. Therefore, rejected the financial results and estimated 2% net profit on total business turnover, excluding cash deposit of Rs.1,77,77,000/- towards cash deposit during the demonetization period and assessed business income of Rs.25,54,491/-. The Assessing Officer had also made addition of Rs.1,77,77,000/- u/s 69A of the Act towards cash deposits during demonetization period. as unexplained money u/s 69A of the Act. The Assessing Officer also made additions of Rs.20,86,000/- towards stock difference noticed during the course of survey operations conducted u/s 133A of the Act.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Ld.CIT(A), the assessee neither appeared nor filed any details, which is evident from the order passed by the Ld.CIT(A), where, the appeal was posted for hearing on three occasions, but no written submissions / information was furnished by the assessee. Therefore, the Ld.CIT(A) dismissed the appeal filed by the assessee, ex-parte, for non-prosecution. However, the said appeal was dismissed on technical grounds without considering the issues on merits.

7. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal and submitted that the Ld.CIT(A) is not justified in dismissing the appeal ex-parte, without considering the grounds on merits. Therefore, submitted that the order passed by the Ld.CIT(A) be set aside and an opportunity of hearing may be granted to the assessee before the Ld.CIT(A) for fresh consideration.

8. The Ld.DR supporting the order of the Ld.CIT(A) submitted that the assessee was given sufficient opportunities before the lower authorities, but the assessee failed to avail the same, therefore, the order of Ld.CIT(A) should be upheld.

9. We have heard the both the parties, perused the material on record and also gone through the orders of the authorities below. The assessment proceedings before the Assessing Officer are completed by making certain additions. Although the assessee filed appeal before the Ld.CIT(A), but neither appeared nor filed any details, which is evident from para 4 of the Ld.CIT(A) order. Therefore, the Ld.CIT(A) dismissed the appeal of the assessee, but such dismissal is on technical ground only. It is a well settled principle by the decisions of various courts that even in the case of non-appearance of the parties, the appeals should be decided on merits, based on material available on record. In the present case, the Ld.CIT(A) dismissed the appeal filed by the assessee in one line finding, stating that there is no material on record to warrant interference in the order of the Assessing Officer, though the Assessing Officer

discussed the issues in length and made additions. Therefore, we are of the considered view that the Ld.CIT(A) erred in dismissing the appeal filed by the assessee, contrary to the settled principle of law and therefore, the issue needs to go back to the file of the Ld.CIT(A) for fresh consideration and to give reasonable opportunity of hearing to the assessee. Thus, we set aside the order of Ld.CIT(A) and restore the appeal to the file of the Ld.CIT(A) for fresh consideration. The Ld.CIT(A) is directed to reconsider the issue on merits, after providing reasonable opportunity of hearing to the assessee. The assessee is directed to appear before the Ld.CIT(A) and file relevant evidences for speedy disposal of the appeal. The appellant is also directed to pay a nominal cost of Rs.5000/- for showing disregard to the appellate proceedings and pay such cost to the State Legal Aid Authority, Hon'ble High Court of Telangana and furnish relevant evidences to the Registry.

10. In the result, appeal filed by the assessee is allowed for statistical purpose.

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

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA G.) ACCOUNTANT MEMBER
---	--

Hyderabad,
Dated 12th December, 2024
L.Rama, SPS

Copy to:

S.No	Addresses
1	Shri Venkata Gurunatha Rao Swamy, 1-6-116/1, VT Road, Suryapet
2	The Income Tax Officer, Ward-1, Suryapet
3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order