

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.1179/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Mohammed Zakaria Shaik Kadapa [PAN : AVQPS0420D]	Vs.	Income Tax Officer Ward-1 Kadapa
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:		
राजस्व द्वारा / Revenue by:		
सुनवाई की तारीख / Date of hearing:		
घोषणा की तारीख / Date of Pronouncement:		

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order dated 10.09.2024 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)], National Faceless Appeal Centre (NFAC), Delhi, relating to A.Y.2017-18.

2. The brief facts of the case are that the assessee is an individual and has not filed his return of income for the A.Y.2017-18. The case has been selected for scrutiny, to verify the source for cash deposit of Rs.21,38,500/- in the bank account during the demonetization period i.e. from 09.11.2016

to 30.12.2016. The Assessing Officer called upon the assessee to explain the sources for the cash deposit. In response, the assessee submitted that, he is carrying on wholesale trading in foodgrains, provisions and vegetables in the name of KNR Corporation and the source for the cash deposit is out of business / trading receipts. The assessee further submitted that the source for cash deposit is out of opening cash in hand available on 08.11.2016 amounting to Rs.7,98,465/-. The Assessing Officer after considering the relevant submissions of the assessee and also taking note of nature of business turnover declared from the business and net profit declared by the assessee, rejected the books of accounts and estimated 5% net profit on total turnover of Rs.1,22,42,691/- and determined income from business and profession at Rs.6,10,640/-. The Assessing Officer made further addition of Rs.21,38,500/- towards cash deposited into bank account during the demonetization period u/s 69A of the Income tax Act, 1961.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A) and such appeal has been filed on 24.01.2020 with the delay of 5 days. The appellant has explained the reasons for the delay in filing the appeal and as per the appellant, his father has fallen sick and he was attending to his father's medical emergencies. Once, his father recovered from illness, he has rushed to his counsel and furnished relevant papers for filing the appeal, which caused the delay of 5 days. The Ld.CIT(A) did not convince with the explanation furnished by the assessee, for explaining the delay of 5 days and therefore, by following certain judicial precedents,

rejected the appeal filed by the assessee, unadmitted and dismissed the appeal in limine. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

4. The learned Counsel for the assessee submitted that the Ld.CIT(A) erred in dismissing the appeal filed by the assessee, unadmitted for 5 days delay in filing the appeal, even though the assessee has explained the reasons for the delay in filing the appeal. Therefore, she submitted that the delay may be condoned and the issue may be set aside to the file of the Ld.CIT(A) for deciding the issue on the basis of material available on record.

5. The learned DR, on the other hand fairly agreed that the matter may be decided in accordance with law.

6. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that there was delay of 5 days in the appeal filed by the appellant before the Ld.CIT(A). The appellant had also explained the reasons for the delay in filing the appeal. According to the appellant, he was attending to his ailing father and once his father recovered from illness, he furnished relevant papers to his counsels for filing the appeal before the CIT(A). In our considered view, if we go by the reasons given by the appellant and the period of delay, the Ld.CIT(A) ought to have condoned the delay of 5 days in filing the appeal for advancement of substantial justice. Because, if we dismiss a meritorious case on technicalities, then the case may be thrown out of the judicial review. Since the Ld.CIT(A) did

not condone the delay of 5 days in filing the appeal, even though the reasons given by the appellant come under reasonable cause, in our considered view, the delay in filing the appeal before the first appellate authority needs to be condoned. Therefore, we condone the delay of 5 days in filing the appeal before the Ld.CIT(A) and direct the Ld.CIT(A) to admit the appeal filed by the appellant for adjudication. Further, since the Ld.CIT(A) did not adjudicate the issues on merits, in our considered view, the issue needs to go back to the file of the Ld.CIT(A) for reconsideration. Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the Ld.CIT(A) and also direct the Ld.CIT(A) to reconsider the issue on merits, after providing reasonable opportunity of hearing to the assessee.

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

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

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MANJUNATHA G.)
ACCOUNTANT MEMBER

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

Copy to:

S.No	Addresses
1	Mohammed Zakaria Shaik, 17/123, Shaik Mahamood Mandy Bazar, Kadapa
2	The Income Tax Officer, Ward-1, Kadapa
3	The Pr.CIT, Kurnool
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order