

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

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.1398/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2017-18)

SA Projects Hyderabad PAN: ACYFS7618E (Appellant)	Vs.	Income Tax Officer Ward 11 (3) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.A. Sai Prasad, CA	
राजस्व द्वारा/Revenue by::	Shri Srinath Sadanala, DR	
सुनवाई की तारीख/Date of hearing:	07/04/2025	
घोषणा की तारीख/Pronouncement:	09/04/2025	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal filed by the assessee is directed against the order dated 23/10/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The assessee has raised the following grounds of appeal:

1. The Ld. First Appellate Authority failed to appreciate the facts that the appellant was under bonafide belief that there is no delay in filing the first appeal.
2. The Ld. First Appellate Authority failed to appreciate the facts as mentioned in Form 35, that the mails and communication received by tax consultant could not be received by the assessee and hence the date of actual receipt of the order was 16/02/2021.
3. The learned first appellate authority in the facts and in the circumstances of the case, is not justified in not deciding the issue on merits and conforming the addition of Rs.75,37,556/- including cash deposits of Rs.10,00,000/- being business receipts as unexplained money u/s.69A.
4. The appellant reserves his right to add, amend, delete or substitute any ground or grounds during the course of the hearing.

3. The learned AR of the assessee has submitted that the learned CIT (A) has dismissed the appeal of the assessee in limine being barred by limitation while passing the impugned order. He has pointed out that the assessee has explained the reason for the delay as the service of the assessment order was only on 16/02/2021 and thereafter, the appeal was filed before the learned CIT (A) on 2/3/2021. The learned CIT (A) without giving any appropriate opportunity to the assessee has dismissed the appeal by treating the same as invalid being barred by limitation. Thus, the learned AR has submitted that the impugned order passed by the learned CIT (A) is in violation of the principles of natural justice and liable to be set aside and the matter may be remanded to the record of the learned CIT (A) for fresh consideration.

4. On the other hand, the learned DR has submitted that the learned CIT (A) has issued notice to the assessee, but there was no response on behalf of the assessee to the notice issued by the learned CIT (A) and therefore, the learned CIT (A) was having no option but to pass the impugned order ex-parte. Since the appeal of the assessee was barred by limitation as filed after more than one year, therefore, the same was dismissed being barred by limitation in the absence of any sufficient reason to explain the delay. He has relied upon the impugned order of the learned CIT (A).

5. We have considered the rival submission as well as the relevant material available on record. The assessee in Form-35 has stated that the assessment order was served on the assessee only on 16/02/2021 and thereafter, the appeal before the learned CIT (A) was filed on 2/3/2021. This fact is recorded in paras 3 & 4 of the impugned order as under:

3. On perusal of Form-35, it is seen that the assessment order u/s 144 of the Act dated 30-11-2019 has been disclosed to be served on 16-02-2021 and this appeal was filed on 02-03-2021. Thus, appeal filed on 02-03-2021 is beyond the statutory time limit provided for filing of the appeal. As per Section 249(2)(c) the appeal shall be presented within 30 days of the following date on which the intimation of the order sought to be appealed against is served.

4. It is important factor that assessment order was passed on 30-11-2019 and date of service of order has been disclosed on 16-02-2021. It is also observed that no reason has been made during the appellate proceeding for the delayed filing of appeal. In absence of any supporting document the fact that order dated 30-11-2019 was served on 16-02-2021 cannot be accepted, thus delayed filing of appeal by the assessee also cannot be accepted. Thus, I am of the view that appeal has been filed with delay.

6. The learned CIT (A) did not accept this explanation and reasons for filing the appeal belatedly and finally dismissed the appeal as barred by limitation in paras 6.18 and 7 as under:

6.18 It has been noted that appeal was filed with the delay of almost two months excluding the period of Covid pandemic as per the order of the Hon'ble Apex Court and that implies the appellants attitude and deliberate inaction on the part of the appellants.

7. Considering the above discussion and facts, the appeal filed is not in conformity with the provisions of Sec 249(2) of the Act, and there is no sufficient cause for condonation of the delay in filing of the appeal, the present appeal is dismissed as not maintainable. Thus, the appeal filed by the appellants is dismissed as not maintainable.

In effect, the appeal is dismissed.

7. It is pertinent to note that once the assessee has stated in Form-35 that the assessment order passed u/s 144 of the Act was served on 16/02/2021, then before rejecting the said explanation of the assessee, the assessee ought to have been given an appropriate opportunity to substantiate and file the better particulars on this issue. The learned CIT (A) appears to have issued only one notice just before passing the impugned order and therefore, in our considered opinion, an appropriate opportunity of hearing was not given to the assessee before passing the impugned order and dismissing the appeal of the assessee as barred by limitation. Accordingly, in the facts and circumstances of the case and in the interest of justice, the impugned order of the learned CIT (A) is set aside and the matter is remanded to the record of the learned CIT (A) for fresh adjudication including the condonation of delay. The assessee is

also directed to produce relevant record including the application/ affidavit to explain the cause of delay in filing the appeal before the learned CIT (A).

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 9th April, 2025.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 9th April, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	SA Projects C/o Katrapati & Associates, 1-1-298/2/B/3 Sowbhagya Avenue Apartments, 1st Floor, Ashoknagar, Street No.1 Secunderabad 500020
2	Income Tax Officer Ward 11(3) Signature Towers, Opp: Botanical Gardens, Kondapur, Hyderabad 500084
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order