

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 Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.121 & 122/Hyd/2025**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Shri Syed Khader Hussain Hyderabad PAN:ADQPH6382R (Appellant)	Vs.	Income Tax Officer Ward 11(1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, CA		
राजस्व द्वारा/Revenue by: Shri Srinath Sadanala, DR		
सुनवाई की तारीख/Date of hearing: 16/04/2025		
घोषणा की तारीख/Pronouncement: 16/04/2025		

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These two appeals by the assessee are directed against the composite orders dated, 05/12/2024 of the learned CIT (A)-NFAC Delhi, arising from the assessment order passed u/s 147 r.w.s. 144B of the I.T. Act, 1961 as well as the penalty order passed u/s 270A of the Act respectively for the A.Y 2017-18.

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

ITA No.121/Hyd/2025

- 1. Under the fact and circumstances of the case, the learned Commissioner of Income Tax (Appeals)/NFAC erred in not condoning the delay of 350 days in filing the appeal.*
- 2. The Learned C.I.T(A)/NFAC failed to note that the Appellant was prevented by reasonable and sufficient cause in not filing the appeal in time.*
- 3. The Appellant craves to add, modify or amend the above grounds anytime during the course of appeal.”*

ITA No.122/Hyd/2025

- 1. Under the fact and circumstances of the case, the learned Commissioner of Income Tax (Appeals)/NFAC erred in not condoning the delay of 164 days in filing the appeal.*
- 2. The Learned C.I.T(A)/NFAC failed to note that the Appellant was prevented by reasonable and sufficient cause in not filing the appeal in time.*
- 3. The Appellant craves to add, modify or amend the above grounds anytime during the course of appeal.”*

3. At the time of hearing, the learned AR of the assessee has submitted that the learned CIT (A) has dismissed the appeals of the assessee in limine, as barred by limitation. He has pointed out that the assessee was working as a Line Inspector with the Telangana State Southern Power Distribution Company and retired on 31/12/2016 from services. The assessee is not a well educated person and therefore, is not well versed with the procedures and proceedings pending before the learned CIT (A). He has filed the affidavit of the assessee to explain the delay of 11 months and 5 months in filing the respective appeals before the learned CIT (A) against the assessment order as well as the penalty order passed u/s 270A of the Act. Since the assessee was

not aware about the procedure and was dependent on the Tax Consultant regarding the proceedings initiated u/s 148 of the Act, the notices were issued by the Tax Authorities on the email ID used by the Tax Consultant for filing the return of income and therefore, the assessee being not convergent with the technologies and use of computer was not aware about the notices issued by the Assessing Officer as well as the learned CIT (A). Thus, the learned AR has submitted that the assessee was under bonafide belief that, after filing the return, no further steps or compliance was required. Due to lack of knowledge and old age, the assessee was not aware about the order passed by the Assessing Officer and therefore, there was a delay in filing the appeal before the learned CIT (A). The learned AR has thus, pleaded that the delay in filing the appeal before the learned CIT (A) may be condoned.

4. On the other hand, the learned DR has submitted that, it is a case of complete gross negligence on the part of the assessee who has neither participated in the proceedings before the Assessing Officer nor filed the appeal in time before the learned CIT (A).

5. We have considered the rival submission and gone through the contents of the affidavit filed by the assessee. The reason for delay in filing the appeals have been explained in in para 8 to 14 of the affidavit as under:

8. Since I had just returned from HAJ pilgrimage, I met him in the month of August and was shocked to know that the Department has raised a demand on the retirement benefits which were exempt from tax under section 10 of the IT Act. He stated that the assessment for the subject AY was completed under section 147 r.w.s 144 read with 144B of the Income Tax Act 1961 ('the Act') by the National Faceless Assessment Centre, determining the total income at Rs 61,81,727 compared to the returned income of Rs 12,06,289. The order was passed on 17.03.2022. The difference between the assessed income and returned income is Rs 49,75,438 and represents the retirement benefits reported in Form 26AS by the employer as part of salary income. However, in form 16, the employer as reported only Rs 12,06,289 basis which the return was filed. The amount was added based on the salary income reported in Form 26AS.
9. I was told that the assessment was completed under section 144 of the Act for non-compliance to the notice by taxing the retirement benefits which is not otherwise taxable under the Act as I am state Government employee, and the retirements benefits are exempt under section 10 of the Act. On verification of the portal, it is seen that all the notices were sent to the email id sadiqpasha.rpg@gmail.com whom I did not know.
10. I was also told that the department has also levied penalty of Rs 8,16,032 under section 270A of the Act for under reporting of income vide order dated 19.09.2022. The Penalty notices were also sent to email id sadiqpasha.rpg@gmail.com which I was not aware.
11. Only in August end, I had come to know of the demand on account of the addition which is levied on an income which is not taxable otherwise. Mr.Gopal Krishna expressed that I need to file an appeal to the CIT(A). He further stated that he is not well versed in appeal proceedings and directed me to a CA by name Mr.Prabhu who has his office in Masab Tank. Mr. Prabhu agreed to file an appeal and took the papers. After keeping the papers for some time, he quoted a substantial fee which I was not in a position to pay. Therefore, I had to rely on Mr. Gopal Krishna to suggest some other CA to help me file an appeal. Due to lack of knowledge and given my old age, I had to rely on Mr.Gopal Krishna to help and guide me in the given situation. This process of identifying a CA having subject matter expertise to take my case a reasonable fee further delayed the process.
12. Till recently, I did not know who had created the login ID and password and updated my profile on the income tax portal. Neither the email id ["sadiqpasha.rpg@gmail.com"](mailto:sadiqpasha.rpg@gmail.com) nor the mobile number "**8125198842**" provided in the return filed under section 148 of the Act belongs to me. Recently, the CA representing the case before the Hon'ble Income Tax Appellate Tribunal called on the registered mobile which was provided in return and checked with that person. The Person whose name is Sadiq Pasha informed him that Rajesh had used his mobile and email id for creating login details for few of his clients as he has exceeded the limit with his own mobile and email id. The login details was created by Rajesh when he took the documents from me. He had provided one of his friend's email id

"sadiqpasha.rpg@gmail.com" and mobile no on the portal which I did not know till date.

13. I am living on the retirement benefits and pension. I am in no position to pay this huge demand. Further, the subject matter of addition under section 147 of the Act and the penalty levied under section 270A of the tax is not taxable under the Act. Thus to impose tax and penalty on an income which is otherwise not taxable (Pls refer to Paragraph 2 (SUPRA)) on technical grounds is against Article 265 of the constitution. The tax and penalty demand would wipe of my entire savings.

14. The Appellant prays that if the delay in filing the Appeal before the C.I.T(A) for the reasons stated in these averments or condoned both the Appellant and the Department would have their respective rights being submitted for adjudication and on the other hand if it is held to the contrary, a meritorious case would be thrown out at the threshold violating the principles of natural justice and fair play.

6. Accordingly, in the facts and circumstances of the case, when the Assessing Officer has passed the ex-parte order and the learned CIT (A) has dismissed the appeal of the assessee in limine, we incline to condone the delay of 11 months and 5 months in filing the appeals before the learned CIT (A) arising from the assessment order as well as the penalty order passed u/s 270A of the I.T. Act, 1961 subject to cost of Rs.2500/- for each appeal to be paid to the Prime Ministers' National Relief Fund within a period of one month from the date of this order.

7. The learned AR of the assessee has pleaded that the Assessing Officer has made the addition on account of unexplained deposits in the Bank Account, whereas the assessee was having only the salary income and retirement benefit funds as source of the deposits in the Bank Account. However, since the

assessee could not participate in the assessment proceedings, the relevant details and record could not be filed before the Assessing Officer. Thus, the learned AR has pleaded that the matter may be remanded to the record of the Assessing Officer for fresh adjudication after proper verification and examination of the relevant record to be filed by the assessee.

8. On the other hand, the learned DR has raised no objection if the matter is remanded to the record of the Assessing Officer for fresh adjudication after verification and examination of the relevant records.

9. Having considered the rival submission as well as perusal of the orders of the authorities below, we find that the Assessing Officer has made an addition of Rs.49,75,438/- in para 7 as under:

7. The requirements of statutory notices issued from time to time affording the assessee opportunity to explain the case have not been complied with.

The assessee has received salary totaling to Rs. 61,81,727/- from Central Power Distribution Company of Andhra Pradesh, during assessment year 2017-18 and the assessee has filed return of income on 27.04.2021 and declaring gross salary income of Rs.12,06,289 after issued notice U/s 148 of I T Act. and the assessee has not offered remaining salary of Rs. 49,75,438 (as per 26AS Rs. 61,81,727 – as per ROI Rs. 12,06,289) and any explanation during the course of assessment proceedings nor during the course of reassessment proceedings. The assessee has not complied to any of the notices issued by this office, therefore it is presumed that the assessee has nothing to say anything about the received salary totaling to Rs. 49,75,438 (as per 26AS Rs. 61,81,727 – as per ROI Rs. 12,06,289). In absence of any reply the receipt of Rs. 49,75,438/- is treated un explain salay income the assessee under the head income from Salary income Penalty proceedings u/s. 270A under reporting of the I.T.Act, 1961 are also initiated separately for under reporting.

(Addition –Rs. 49,75,438 /-)

10. From the above, it is clear that the Assessing Officer was having the information that the amount in question was received by the assessee from the Telangana Southern Power

Distribution Company on his retirement, but the same was considered by the Assessing Officer as salary and made the addition without giving benefit u/s 10 of the I.T. Act, 1961. Accordingly, in the facts and circumstances of the case, the impugned order of the learned CIT (A) is set aside and the matter is remanded to the record of the Assessing Officer for fresh adjudication after giving an appropriate opportunity of hearing to the assessee to submit the relevant record, details and submissions.

11. Since the matter in quantum appeal has been set aside to the record of the Assessing Officer, therefore, the order of the learned CIT (A) arising from the penalty levied u/s 270A of the I.T. Act, 1961 is also set aside and the matter is remanded to the record of the Assessing Officer for taking necessary steps, if need arises as per the outcome of the set aside proceedings in quantum/assessment.

12. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on the conclusion of hearing i.e. on 16th April, 2025.

Sd/-

(MANJUNATHA, G)
ACCOUNTANT MEMBER

Sd/-

(VIJAY PAL RAO)
VICE-PRESIDENT

Hyderabad, dated 16th April, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Syed Khader Hussain, 7-2-215/1, Ashok Colony, Sanath Nagar, Hyderabad 500018
2	Income Tax Officer Ward 11(1), Signature Towers, Sy. No.6(P) of Kondapur, Sy. No.37(P) of Kothaguda, Opp: Botanical Gardens, Serilingampally, RR District 500084
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order