आयकर अपीलीय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam "Division" Bench, Visakhapatnam

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri S. Balakrishnan, Accountant Member

आ.अपी.सं /**ITA No.471/Viz/2024**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Sri Rajani Gold Vijayawada PAN:ACNFS6675E	Vs.	Income Tax Officer Ward(1) Vijayawada
(Appellant)		(Respondent)

निर्धारिती द्वारा/Assessee by:	Shri G.V.N. Hari, Advocate *(Hybrid)*
राजस्व द्वारा/Revenue by::	Dr. Satyasai Rath, CIT(DR)
सुनवाई की तारीख/Date of hearing:	01/05/2025
घोषणा की तारीख/Pronouncement:	13/05/2025

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal filed by the assessee is directed against the order dated 25/05/2023 of the learned CIT (A)-NFAC Delhi, arising from the penalty order passed u/s 271DA of the I.T. Act, 1961 for the A.Y.2018-19.

2. There is a delay of 474 days in filing the present appeal. The assessee has filed a petition for condonation of delay

which is supported by the affidavit of Managing Partner of the assessee firm. The learned AR of the assessee has submitted that a huge addition of Rs.31.41 crores was made by the Assessing Officer while completing the assessment for the year under consideration and consequently, a demand of about Rs.40 crores was raised. Further, the penalty was levied u/s 271DA of the Act to the tune of Rs.53.94 crores. The assessee firm did not have the capacity to meet such huge tax demand. Moreover, the properties of the Partners were attached by the Department for recovery of arrears and consequently, the firm was disabled in mobilizing further funds. As such the assessee firm slowly become defunct with a very meager business which has resulted reducing the strength of the employees and there was no regular Accountant for the assessee firm. The notices issued by the learned CIT (A) was sent to the email which could not be opened during the period from April, 2023 to November, 2024 resulting an ex-parte order passed by the learned CIT (A). Thus, the learned AR has submitted that the assessee was having no knowledge about the impugned order till the Managing Partner of the assessee firm received a call from the Income Tax Department regarding the payment of arrears of the tax and then the assessee found that the appeal filed by the assessee against the penalty order has been dismissed by the learned CIT (A) ex-parte. The learned AR has thus, submitted that till November, 2024, the assessee was not having the knowledge of the impugned order passed by the learned CIT (A) and thereafter, immediately the assessee took

steps and filed the present appeal. Thus, the learned AR has submitted that the delay in filing the appeal was neither intentional nor deliberate but due to the reason beyond the control of the assessee. Hence, he has pleaded that the delay in filing the appeal may be condoned and the appeal of the assessee be admitted for adjudication on merits. The learned AR has relied upon the judgement of the Hon'ble Supreme Court in the case of Collector of Land Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) as well as the decision of the Hon'ble Andhra Pradesh High Court in the case of State of Andhra Pradesh vs. Venkataramana Chuduva & Muramura Merchant & Anr. (159 ITR 59).

3. On the other hand, the learned DR has objected to the condonation of delay and submitted that there is an inordinate delay of 474 days and the assessee has not explained a sufficient cause for such inordinate delay.

4. We have considered the rival submission and carefully perused the contents of the condonation petition filed by the assessee. The assessee has given the reasons for delay as the assessee was not having the knowledge of the impugned order and explained that after the huge demand raised by the Assessing Officer, as a result of high pitch additions made in the assessment as well as penalty levied u/s 271DA of the I.T. Act, 1961, the assessee was not able to manage the funds to meet the demand

and consequently, the business of the assessee was severely affected to reach the state of defunct/non-functional. The strength of the employees of the assessee was reduced drastically and there was no regular Accountant of the assessee firm. The Department has not disputed the fact that for the recovery of the demand arising from the assessment, properties of the Partners were also attached by the Department. In such a situation and financial crunch, the assessee could not follow up the appeal filed before the learned CIT (A) against the penalty order and consequently, the appeal of the assessee was dismissed by the learned CIT (A) while passing the impugned ex-parte order. It is pertinent to note that the learned CIT (A) has given the details of the notices issued in para 4 of the impugned order as under:

> *"4. PROCEEDINGS:*
>
> *The appellant was provided multiple opportunities of being heard by way of issue of hearing notice dated 18.04.2023, 01.05.2023 and 12.05.2023. The appellant has not responded to any of the notices. Grounds of Appeal and Statement of Facts and the order of the Learned Assessing Officer have been carefully considered. Grounds of Appeal of the Appellant as reproduced above are adjudicated as under."*

5. Thus, all the 3 notices were issued by the learned CIT (A) within a span of less than one month and thereafter, the appeal of the assessee was dismissed for non-prosecution. Passing of the ex-parte order by the learned CIT (A) itself shows that the assessee could not participate in the proceedings before the learned CIT (A) and therefore, the reasons explained by the assessee in the petition for condonation of delay are fortified by

the fact that the learned CIT (A) has passed the impugned order for non-prosecution and no details were given by the learned CIT (A) as how the notices were sent or served on the assessee. The appeal of the assessee was not decided by the learned CIT (A) on merits but the same was dismissed in limine for non-prosecution which is also contrary to the provisions of section 250(6) of the I.T. Act, 1961 resulting a gross injustice to the assessee when huge penalty levied by the Assessing Officer u/s 271DA of the Act has been confirmed without deciding the appeal on merits. It is settled proposition of law that the expression of sufficient cause must be construed liberally in favour of the litigant approached the Court belatedly so that the dispute could be decided as far as possible on merits and not on technicalities.

5.1 Having regard to the facts and circumstances of the case when the assessee was facing the financial hardships and almost reached to the state of closure of the business due to the higher demand as well as attachment of the properties by the Department for recovery of the tax arrears, it is clear that the delay in filing the appeal cannot be attributed to any ulterior purpose to be achieved by the assessee. The reasons explained by the assessee are also found to be beyond the control of the assessee as the assessee was not having the knowledge of the notices issued by the learned CIT (A) as well as the impugned order passed ex-parte. The assessee has explained that only in the month of November, 2024, when the Department has called

the Managing Partner of the assessee firm for payment of the outstanding tax dues, the assessee came to know about the impugned order and then filed the present appeal. The Hon'ble Supreme Court in the case of Collector of Land Acquisition v. Mst. Katiji & Others (Supra) has laid down the principles that the Courts should be liberal in construing the sufficient cause and should lean in favour of such party. It was observed that whenever substantial justice and technical principles are opposed to each other, the cause of substantial justice has to be preferred and justice oriented approach has to be adopted by the Courts while deciding the matter of condonation of delay. Therefore, when the reasons explained by the assessee are bonafide and not a device to cover up ulterior purpose or attempt to save the litigation in underhand way, then a lenient and liberal approach has to be taken for considering the sufficient reasons for the delay in filing the appeal. Having considered the facts and circumstances of the case and particularly when the learned CIT (A) has passed the impugned order ex-parte in haste without giving an effective opportunity of hearing to the assessee, we are satisfied that the assessee was having a sufficient and Bonafide cause for the delay in filing the present appeal. Hence, the delay of 474 days in filing the present appeal is condoned.

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

1. The Order under Sec. 271 DA of the Act, dated 15.03.2022 passed by the NFAC, Delhi levying a penalty of RS.53,94,84,120/- for the Asst.Year.2018-2019 may be ERRONEOUS both in law and also on facts of the case.

2. It is humbly prayed that the DELAY OF ABOUT 135 days emerged in filing of the present appeal may kindly be CONDONED AND THE APPEAL PETITION IS ADJUDICATED ON MERITS for the detailed submissions made at para 10 of the ACCOMPANYING STATEMENT OF FACTS.,

3. As is explicit and evident from the OBSERVATIONS of the NFAC, Delhi contained at para 11 and page 4 of the impugned penalty order under Sec.271DA of the Act, the impugned penalty proceedings were initiated and concluded by the Ld. JCIT/Addl.CIT(on NFAC, Delhi) not WITH REFERENCE TO HIS 'OWN SATISFACTION'. But with reference to the 'SATISFACTION of the A.O. and hence the Order under Sec.271DA, cited SUPRA may be VOID IN LAW.

4. Taking cognizance of the fact that the Ld. A.O. accepted the appellant's Income as admitted in the ROI for the Asst.Year under review, while completing the assessment under Sec.143(3) r.w.s 144B of the Act, dated 22.04.2021 only ON CONSIDERATION of the ACCOUNTING Record including the CASH RECEIPTS maintained in TALLY PACKAGE ETC.,) and COPIES OF LEDGER EXTRACTS etc., it may not appear to be Justifiable and/or lawful to hold the view that the appellant has not provided any valid explanation with supporting documents during the assessment proceedings.

5. Also taking cognizance of the ACCEPTANCE of the Turnover of Rs.1,05,68,95,165/-(which included the impugned cash receipts/deposits of Rs.53,94,84,120/- and the NET PROFIT SHOWN there from the Ld. A.O. ought to have noticed that there is no BLACK MONEY/EVASION OF INCOME/ TAX for PREVENTION of which only the PROVISIONS contained in Sec.269SS/269T/269ST etc., were inserted in the STATUTE BOOK, and hence the levy of penalty under Sec.271DA may be VOID IN LAW.

(Contd..2)

6. Also considering the fact that the Ld. A.O. took into consideration the EXPLANATORY REPLY dated 24.01.2022 (vide para 8 and page 3 of the penalty order)., the observation of the Assessing Officer that there is NO COMPLIANCE from the appellant to the Penalty Notices may be DEVOID OF ANY MERIT.

7. Giving due weight to the fact that there emerged a 'REASONABLE CAIUSE'" referred to in Sec.271DA(Vide PROVISO APPENDED thereto), as explained in the accompanying STATEMENT OF FACTS, the Ld. Assessing Officer ought to have noticed that the impugned penalty order under Sec.271DA, dated 15.03.2022 may not be SUSTAINABLE IN LAW.

8. That in the facts and circumstances incorporated in the accompanying STATEMENT OF FACTS, that even if there emerged VIOLATION of Sec.269ST, as PRESUMED BY the Ld. Assessing Officer ought to have noticed that the same ought to have taken the characteristics of TECHNICAL AND VENIAL BREAH OF LAW and hence the impugned levy of PENALTY under Sec.271DA may be VOID IN LAW , under BOTH THE ENACTED LAW AND ALSO JUDGE MADE LAW:

9. Also considering the fact that there were CASH RECEIPTS below the THRESHOLD LIMIT OF Rs.2 LAKHS (Two Lakhs) as evidenced by the ACCOUNTING RECORD (including the CASH BOOK), which was proposed to produced at the directions of the Ld. Assessing Officer for causing independent verification , the UNILATERAL DECISION formulated by him leading to levy of penalty, may be VOID IN LAW and that attitude may also be against the PRINCIPLES OF NATURAL JUSTICE.

10. That in the facts and circumstances incorporated in the ACCOMPANYING STATEMENT OF FACTS, the impugned levy may not be SUSTAINABLE IN LAW.

11. For these reasons and other reasons which may be advanced during the course of hearing of the appeal, it is humbly requested that the IMPUGNED PENALTY of Rs.53,94,84,120/- levied under Sec.271DA may be ORDERED TO BE DELETED , so as to be in conformity with the provisions of law.

VIJAYAWADA
DATE: 27-08-2022.

7. At the time of hearing, the learned AR of the assessee has submitted that the learned CIT (A) has not decided the appeal on merits but the same is dismissed for non-prosecution. The reasons for non-appearance before the learned CIT (A) are the same as explained in the petition for condonation of delay. Thus, the learned AR has prayed that the matter may be remanded to the record of the learned CIT (A) for deciding the same on merits after giving an appropriate opportunity of hearing to the assessee.

8. On the other hand, the learned DR has no serious objection so far as the matter be remanded to the record of the learned CIT (A) for fresh adjudication.

9. Having considered the rival submission and careful perusal of the impugned order, at the outset, we note that the learned CIT (A) has not decided the appeal on merits but the same was dismissed for non-prosecution. As we have already noted the fact that the learned CIT (A) has issued 3 notices within a short span of less than one month and then passed the impugned ex-parte order. Thus, prima facie it appears that the assessee was not given an effective opportunity of hearing. Further, when the assessee was facing the financial crisis and other hardships on account of attachment of the properties of the Partners by the Department for recovery of the outstanding dues, then the reasons explained by the assessee for non-participation are found to be reasonable and Bonafide. Accordingly, 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 of the appeal on merits after giving appropriate opportunity of hearing to the assessee.

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

Order pronounced in the Open Court on 13th May, 2025.

Sd/-	Sd/-
(S. BALAKRISHNAN) **ACCOUNTANT MEMBER**	**(VIJAY PAL RAO)** **VICE-PRESIDENT**

Hyderabad, dated 13th May, 2025

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 1(1) IT Office, CR Building, 1st Floor, Annex, MG Road, Vijayawada 520002
3	Pr. CIT - Vijayawada
4	DR, ITAT Visakhapatnam Bench
5	Guard File

By Order