

आयकर अपीलियअधिकरण, विशाखापटणम पीठ, विशाखापटणम  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "DIVN" BENCH, VISAKHAPATNAM  
श्री विजय पाल राव, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT  
&  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.165/Viz/2025  
(निर्धारण वर्ष / Assessment Year : 2012-13)

Vijayalakshmi Daggumalli,  
Krishna District,  
Andhra Pradesh.  
PAN: CUVPD4504P

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by  
प्रत्यार्थी की ओर से / Revenue by

Vs. Income Tax Officer,  
Ward-1(3),  
Vijayawada.

(प्रत्यर्थी/ Respondent)

Shri C. Subrahmanyam, CA  
Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing : 01/05/2025  
घोषणा की तारीख/Date of  
Pronouncement : 20/05/2025

ORDER

PER S. BALAKRISHNAN, AM:

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)") in DIN & Order No.

ITBA/NFAC/S/250/2024-25/1072454685(1), dated 23/01/2025 for the AY 2012-13 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 (“the Act”), dated 23/12/2019.

2. Briefly stated the facts of the case are that the assessee, an individual, has not filed her return of income for the AY 2012-13. As per the information available with the Department, the Ld. AO noticed that the assessee has sold 1310.2 sq yds of land to Sri Chandana Kedarish for a sale consideration of Rs. 16,38,000/- vide Doc. No. 1086/2011 registered with SRO, Nunna who adopted the market value at Rs. 39,31,000/- for registration purpose. The Ld. AO further observed that as per the provisions of section 50C of the Act, the stamp value adopted by the SRO should be considered as full value consideration and therefore, with respect to the above transaction, the assessee has earned long term capital gains. The Ld. AO further also observed that since the assessee did not file her return of income for the AY under consideration and there is income escaping assessment and with the approval of the competent authority, notice U/s. 148 of the Act dated 26/03/2019 was issued and the same was served on the assessee. There is no compliance to the notice U/s.

148 by the assessee. Thereafter, notices U/s. 142(1) of the Act dated 6/8/2019 & 12/11/2019 were issued calling for certain information and the same were served on the assessee. In response to the notices, the assessee filed reply on 11/12/2019 and also filed the return of income on 11/12/2019 admitting a total income of Rs. 81,470/- wherein it was submitted that the assessee has sold the urban agricultural land and out of the sale proceeds, an amount of Rs. 12 lakhs was invested for construction of residential house on the land owned by her husband and hence eligible for deduction U/s 54F of the Act. During the assessment proceedings, the Ld. AO also noticed that even though the assessee has filed her return of income on 11/12/2019, since the assessee has not submitted the ITR-V the return of income is invalid. Thereafter, the Ld AO issued notice U/s. 142(1) of the Act dated 14/12/2019 and after verification of the information furnished by the assessee, the Ld. AO completed the assessment U/s. 144 of the Act as Best Judgment Assessment based on the material available on record and determined the LTCG at Rs. 38,49,330/-. Accordingly, the Ld. AO computed the total income of the assessee and raised a demand of Rs. 21,25,777/-. Aggrieved by the order of the Ld. AO, the

assessee filed an appeal before the Ld. CIT(A)-NFAC with a delay of 23 days.

3. On appeal, in the absence of any cogent explanation / reason to substantiate the belated filing of the appeal, the Ld. CIT(A)-NFAC did not condone the delay and dismissed the appeal of the assessee in limine. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *That on the facts and circumstances of the case and in law, the assessment order passed U/s. 144 r.w.s 147 of the Act dated 23/12/2019 as upheld by the Ld. CIT(A) vide order U/s. 250 dated 23/01/2025 is contrary to the facts of the case and the applicable provisions of law.*
2. *The Ld. CIT(A) disposed of the appeal, ex-parte without granting a reasonable opportunity to the assessee, thereby violating the principles of natural justice.*
3. *The Ld. CIT(A) issued a letter on 17/01/2025 directing the assessee to file a condonation petition for a 23 days delay. However, the window closed by 21/01/2025, coinciding with the Pongal Holidays (15-21 January), during which the auditor was unavailable. The Ld. CIT(A) failed to provide reasonable time, therefore the dismissal of the appeal unjustified.*
4. *The disposal of the appeal ex-parte by the Ld. CIT(A) is against the provisions of section 250(6) of the Act which obligates the CIT(A) to dispose of the appeal on merits.*
5. *The Ld. CIT(A) ought to have held that the assessing officer did not assess the capital gains in the right manner and in accordance with the provisions of the Act.*
6. *For these reasons and other grounds that may be raised at the time of hearing, the appellant respectfully prays that the order passed U/s. 250 of the Act be set aside and additions made by the AO and confirmed by the CIT(A) be deleted.”*

4. At the outset, the Ld. Authorized Representative [AR] submitted that the Ld. CIT(A)-NFAC ought to have considered the explanation of the assessee with respect to the condonation of delay in filing the appeal before the Ld. CIT(A)-NFAC as the assessee has explained the reasons in Form-35 filed before the Ld. CIT(A). The Ld. AR further submitted that the Ld. CIT(A) issued a letter on 17/01/2025 directing the assessee to file a condonation petition for a 23 days delay. However, the window closed by 21/01/2025, coinciding with the Pongal Holidays (15-21 January), during which the auditor was unavailable. The Ld. AR further submitted that the delay in filing the appeal is not on account of negligence or any deliberate act of the assessee. Ld. AR also submitted that without considering the explanation and the submissions of the assessee, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee as non-maintainable due to non filing of petition for condonation of delay. The Ld. AR therefore pleaded that the matter may be remitted back to the file of the Ld. CIT(A)-NFAC to decide the appeal on merits.

5. On the other hand, the Ld. Departmental Representative [DR] heavily relied on the orders of the Ld. Revenue Authorities. The Ld. DR further submitted that before the Ld. CIT(A)-NFAC

even though there is a delay, the onus is on the assessee to explain each day's delay with proper evidence. The Ld. DR also submitted that since the assessee has not discharged his onus, the Ld. CIT(A)-NFAC has rightly dismissed the appeal of the assessee as non-maintainable. In toto, the Ld. DR supported the decision of the Ld. Revenue Authorities and pleaded to uphold the decision of the Ld. AO.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is a fact that on being aggrieved by the addition made by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC with a delay of 23 days. It is also a fact that with respect to the belated filing of the appeal, the assessee has explained his reasons in Form-35. Further, the contention of the Ld. AR is even though the Ld. CIT(A) issued a letter on 17/01/2025 directing the assessee to file evidences substantiating the reasons for delay of 23 days in filing the appeal before him, and the reply window closed on 21/01/2025. It was also the submission of the Ld. AR that due to closed holidays on account of Pongal the assessee could not file evidences before the Ld. CIT(A) substantiating the delay. In our

considered opinion, the Ld. CIT(A)-NFAC ought to have considered the explanation given by the assessee for belated filing of the appeal and disposed of the appeal on merits. Instead, the Ld. CIT(A)-NFAC dismissed the appeal in-limine. Therefore, considering the facts and circumstances of the case and the reasons advanced by the Ld. AR the assessee is having sufficient cause for delay in filing the appeal before the Ld. CIT(A)-NFAC. In the interest of justice, we find it deem fit to condone the delay of 23 days in filing the appeal before the Ld. CIT(A) and thereby remit the matter back to the file of the Ld. CIT(A)-NFAC with a direction to dispose of the appeal on merits in accordance with the provisions of section 250(6) of the Act. Further, we also hereby direct the assessee to cooperate before the Ld. CIT(A)-NFAC in their proceedings, otherwise Ld. Revenue Authorities are at liberty to pass orders in accordance with law based on the material available on record. It is ordered accordingly.

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

Pronounced in the open Court on 20<sup>th</sup> May, 2025.

Sd/-  
(VIJAY PAL RAO)  
उपाध्यक्ष/VICE PRESIDENT

Sd/-  
(S. BALAKRISHNAN)  
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 20/05/2025

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Vijayalakshmi Daggumalli, 4-88/AOC Area, GKonduru POMO, Krishna District, Andhra Pradesh-521229.
2. राजस्व/The Revenue - Income Tax Officer, Ward-1(3), CR Building, 1<sup>st</sup> Floor Annex, MG Road, Vijayawada, Andhra Pradesh – 520002.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam