

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "SMC" BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य, एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

आयकर अपीलसं./I.T.A. No.495/VIZ/2025
(निर्धारण वर्ष/ Assessment Year: 2017-18)

Sri Lakshmi Narasimha Stone Crushers 2-2, Donabanda-521256 Andhra Pradesh [PAN: ADCFS0870M] (अपीलार्थी/ Appellant)	v.	Income Tax Officer – Ward -1(1) CR Building Vijayawada – 520002 Andhra Pradesh (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri K. Venkata Praveen, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.06.2025
घोषणा की तारीख/Date of Pronouncement	:	12.06.2025

आदेश /ORDER

PER V. DURGA RAO, JM:

1. The captioned appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (in short "Ld. CIT(A)") vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1055984618 (1) dated 12.09.2023 for the A.Y.2017-18 arising out of order

passed under section 144 of Income Tax Act, 1961 (in short 'Act') dated 27.11.2019.

2. At the outset, we observe that there is a delay of 385 days in filing the appeal before the Tribunal. Assessee has filed an affidavit wherein he has stated that "Consultant" who have handled assessee's accounts and taxes and filed the appeal before Ld. CIT(A) have not informed the appellant about the notice and never responded to any of the notices issued by the Ld. CIT(A). The order passed by Ld. CIT(A) on 12.09.2023 was not brought to the notice of the assessee. The firm was closed due to disputes among the partners. It is submitted that under these circumstances the delay in filing the appeal, neither intentional nor wanton. Therefore, assessee prayed that delay may be condoned.

3. On the other hand, Ld. Departmental Representative [hereinafter in short "Ld. DR"] submitted that delay may not be condoned.

4. We have heard both the sides and perused the affidavit filed by the assessee, we find that that due to closure of the firm and also no information from the tax consultant, assessee could not file the appeal within the due date. We are of the opinion that there is sufficient cause to condone the delay, accordingly, the delay is condoned.

5. Assessee has raised following grounds in its appeal: -

“1. The order of the Learned Assessing Officer (AO), as upheld by the Learned Commissioner of Income Tax (Appeals) hereinafter referred to as the "CIT(A)", is erroneous in law and on the facts of the case.

2. The Learned AO and the Ld. CIT(A) erred in treating the cash deposits totaling Rs. 12,01,000/- during the demonetization period as unexplained income under Section 69A of the Income Tax Act, 1961, without appreciating the fact that these are mere receipts from business activities of the Appellant which is totally arbitrary.

3. The Learned AO and the CIT(A) have made an erroneous disallowance for non-deduction of taxes for the payment of Rs. 24,00,000/- to Sri.Nimmgada Jaya Prakash towards rental expense.

4. Without prejudice to the above grounds or any other grounds which may be raised, the Ld. CIT(A) has erred in law and on facts of the case by upholding an order which has a high pitched assessment in the case of the appellant by making an addition to the highest magnitude thereby causing harassment and serious grievance to the appellant.

5. The Appellant craves to leave, add, modify, alter, delete and / or rescind all or any of the grounds of appeal on or before the final hearing if necessary so arises, with the approval of Hon'ble Income Tax Appellate Tribunal.

6. In the light of the above grounds, the Appellant requests and prays the Hon'ble Income tax Appellate Tribunal, Visakhapatnam bench to grant the necessary relief based on the facts.”

6. Ld.AR submitted before us that the Ld. CIT(A) had passed ex-parte order without providing proper opportunity to the assessee of being heard. Therefore, the Ld.AR pleaded that the assessee may be provided with one more opportunity to pursue his case before the Ld. CIT(A).

7. Ld. DR on the other hand objected to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee, however, on the given dates of hearing, neither the assessee nor his Representative appeared

before the Ld. CIT (A). Under these circumstances, the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record. Hence, Ld. DR pleaded that the orders passed by the Ld. Revenue Authorities do not call for any interference and appeal of the assessee may be dismissed.

8. We have heard both the sides and perused the record and gone into the orders of the Revenue Authorities. On examining the facts of the case, we find that though Ld. CIT (A) had posted the case on several occasions, none appeared on behalf of the assessee before the Ld. CIT(A) on the given dates of hearing. Hence, the Ld. CIT(A) left with no other option except to pass ex-parte order based on the material available on record. In our opinion, the Ld. CIT(A) ought to have decided the case on merits instead of dismissing the appeal ex-parte. In this situation, we find strength in the arguments advanced by the ld. AR. Therefore, considering the prayer and the submissions of the Ld. AR and the issues involved in the appeal, in the interest of justice, we are of the opinion that the one more opportunity should be given to the assessee to substantiate its case before the Ld. CIT(A). In view of the above, the order passed by the Ld. CIT(A) is set-aside and remit back to the file of Ld. CIT(A) to consider afresh in accordance with law. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld.Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate

orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

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

Order pronounced in the open court on 12th June, 2025.

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

Dated: 12/06/2025
Giridhar, Sr.PS

Sd/-
(वी. दुर्गा राव)Sd/-
(V. DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-

1. निर्धारिती/ The Assessee : Sri Lakshmi Narasimha Stone Crushers
2-2, Donabanda-521256
Andhra Pradesh
2. राजस्व/ The Revenue : Income Tax Officer – Ward -1(1)
CR Building
Vijayawada - 520002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल/ Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam