

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

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस बालाकृष्णन, माननीय लेखा सदस्य

**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI S BALAKRISHNAN HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.233/Viz/2025
(निर्धारणवर्ष/ Assessment Year: 2018-19)

M/s. Dhanalakshmi Textrade India Pvt Ltd., D. No. 9-42 & 11-61 Bundar Road, Ashok Nagar Kanuru, Vijayawada-520007. PAN: AAECD8308H	VS.	Income Tax Officer -Ward-3(1) Vijayawada.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Smt. Venkata Suseela, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath – CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	09/07/2025
घोषणा की तारीख/ Date of Pronouncement	:	18/07/2025

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 (in short "Ld. CIT(A)-NFAC") vide DIN & Order No. ITBA/NFAC/S/250/2025-26/1075586961(1), dated 11/04/2025 arising out of the order passed U/s. 143(3) r.w.s 144B of the Income

Tax Act, 1961 (in short "the Act"), dated 26/05/2021 for the Assessment Year 2018-19.

2. Brief facts of the case are that the assessee-company filed its return of income for the AY 2018-19 on 12/10/2018 admitting a total income of Rs. 3,08,570/-. Thereafter, the case was selected for complete scrutiny under CASS. Accordingly, notice U/s. 143(2) of the Act, dated 22/09/2019 was issued and duly served upon the assessee. Subsequently, notices U/s. 142(1) of the Act were issued calling for certain information. In response, the assessee-company filed its replies from time to time. Thereafter, the Ld. AO issued a show-cause notice dated 06/05/2021 wherein the assessee was asked as to why the assessment should not be completed as per the Draft Assessment Order. Since there was no response, the Ld. AO finalized the assessment. During the assessment proceedings, the Ld. AO observed that as per the Trading account, P & L Account as well as ITR filed by the assessee, the assessee-company has shown its turnover / sales of Rs. 119,18,73,676/- for the AY 2018-19 and net profit of Rs.2,04,268/- from the business of trading. On this issue, the Ld. AO sought explanation from the assessee and in response, the assessee made its submissions as narrated in Para-4 of the assessment order. On a perusal of the assessee's submissions, the Ld. AO asked the assessee to furnish party-wise sales above Rs. 1 Crs and the assessee

vide its submission dated 12/01/2021 furnished the details as sought for by the Ld. AO. Considering the submissions of the assessee, the Ld.AO observed that the assessee has shown sales of Rs.123,76,74,157/- to M/s. Kalanikethan Silks Pvt Ltd. However, as per the ITR and P & L Account submitted by the assessee, the total sales was shown only of Rs. 119,18,73,676/-. The Ld. AO further observed that the assessee has shown a very low net profit ratio of 0.05%. Considering the above facts, the Ld. AO came to a conclusion that the assessee has suppressed the sales to the tune of Rs.4,58,00,481/- in his books of account. The Ld. AO further observed that the said difference value of sales (Rs. 4,58,00,481/-) is over and above the sales recorded in the books of account, which amounts to 'out of books sales' made by the assessee during the AY 2018-19. Accordingly, the Ld. AO brought to tax Rs. 4,58,00,481/- as business income of the assessee and made addition. The Ld. AO also initiated the penalty proceedings U/s. 270A of the Act. Thus, the Ld. AO determined the total income of the assessee at Rs.4,61,09,051/- and passed the assessment order on 26/05/2021 vide section 143(3) r.w.s 144B of the Act. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A).

3. On appeal, the Ld. CIT(A) observed that as per Form-35, though the assessee is required to file the appeal within 30 days on receipt of

the assessment order as per the provisions of section 249(2) of the Act, the assessee filed the appeal on 23/08/2021 and therefore, there is a delay in filing the appeal before the First Appellate Authority. It was further observed that the delay in filing the appeal was not mentioned in Form-35 nor filed the condonation application separately. Therefore, the Ld. CIT(A) held that since the assessee's appeal was not filed within the prescribed time limit, the same is not admitted and accordingly, dismissed the appeal of the assessee in-limine.

4. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *On the facts and circumstances of the case, Ld. CIT(A) is not justified in dismissing the appeal.*
2. *On the facts and circumstances of the case, Ld. CIT(A) is not justified in condoning the delay of 30 days by executing the mistake by not filing the Form-35.*
3. *On the facts and circumstances of the case, Ld. CIT(A) might have given another opportunity for meeting substantial justice.*
4. *On the facts and circumstances of the case, Ld. CIT(A) not justified in dismissing the appeal without adjudicating on the merits of the case.*
5. *On the facts and circumstance of the case, the Ld. AO has travelled beyond jurisdiction by making the addition of Rs. 4,58,00,481/- which is against the selection criteria of security.*
6. *On the facts and circumstances of the case, Ld. AO is not justified in making addition of Rs. 4,58,00,481/-.*
7. *On the facts and circumstance of the case it is requested to provide another opportunity to represent the case before the Ld. AO by putting relevant facts.*
8. *Any other ground or grounds that may be urged at the time of hearing of the appeal.”*

5. At the outset, the Learned Authorized Representative (in short "Ld AR") submitted that the Ld. AO made the addition of Rs.4,58,00,481/- on account of suppression of sales. On appeal, the Ld. CIT(A) dismissed the appeal of the assessee on a pure technical ground ie., in Form-35 the assessee has mentioned that 'there is no delay in filing of the appeal'. The Ld. AR further submitted that there is a delay of 57 days in filing the appeal before the Ld. CIT(A) however, the said delay was occurred during the COVID-19 pandemic. She further submitted that in view of the Hon'ble Supreme Court decision in *Suo Motu Writ Petition (C) No. 3 of 2020*, dated 10th January, 2022, wherein the limitation period from 15/03/2020 till 28/02/2022 stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Therefore, the assessee's case is squarely covered by the said decision of the Hon'ble Supreme Court (*supra*). She further submitted that, the Ld. CIT(A) did not issue any defect notice with respect to non-mentioning of delay in Form-35 by the assessee. Therefore, the Ld. AR pleaded that the matter may be remitted back to the file of the Ld. CIT(A) to decide the case on merits and the assessee may be given one more opportunity of being heard before the Ld.CIT(A).

6. On the other hand, the Ld. CIT-DR relied on the orders of the Ld. Revenue Authorities and argued in support of their decisions.

7. We have heard the rival submissions and perused the material available on record as well as the orders of the Ld. Revenue Authorities. On a perusal of the order of the Ld. CIT(A)-NFAC, we find that the appeal of the assessee-company was dismissed in-limine on the reason that there is a delay in filing the appeal before the First Appellate Authority and the same was not mentioned in Form-35. We further observed that the period of delay in filing the appeal before the Ld. CIT(A)-NFAC is covered by the decision of the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020*, dated 10th January, 2022, wherein the Hon'ble Supreme Court has excluded the period from 15/03/2020 to 28/02/2022 from the calculation of limitation period expiring between the two days i.e., 15/03/2020 and 28/02/2022. In the case on hand, the assessment order was passed on 26/05/2021 and the appeal was filed on 23/08/2021, which is well within the excluded period by the Hon'ble Supreme Court on account on Covid Pandemic. Under these circumstances, we deem it fit to grant one more opportunity to the assessee by following the principles of natural justice and therefore, we condone the delay before the Ld. CIT(A) and remit the matter back to the file of the Ld. CIT(A) for fresh adjudication on merits in accordance with law. Needless to

mention that the assessee should cooperate during the proceedings before the Ld. CIT(A)-NFAC, otherwise, the Ld. CIT(A)-NFAC is at liberty to decide the case in accordance with law and based on the material available before him.

8. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced in the open court on 18th July, 2025

Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER	Sd/- (एस.बालाकृष्णन) (S BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Visakhapatnam, dated 18.07.2025.

OKK/sps

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	M/s. Dhanalakshmi Textrade India Pvt Ltd C/o. CA MV Prasad, First Floor, D.No. 6-3-871, Snehalata, Greenlands Road, Begumpet, Hyderabad-500016.
2.	राजस्व/ The Revenue	:	Income Tax Officer, Ward-3(1), CR Building, 1 st Floor Annex, MG Road, Vijayawada-520002.
3.	The Principal Commissioner of Income Tax,		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण,हैदराबाद/ ,ITAT, Visakhapatnam.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam.