

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री विजयपाल 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 अपीलसं./I.T.A.No.327/VIZ/2025
(निर्धारण वर्ष/ Assessment Year: 2015-16)

Babu Rao Sahukari 24-107-54/1 C/o. Srikar Sai Medical Agencies Gonthivanipalem Gajuwaka, Visakhapatnam – 530026 Andhra Pradesh [PAN:EFNPS1341E] (अपीलधर्ती/Appellant)	Vs.	Income Tax Officer – Ward – 2(5) Visakhapatnam – 530020 Andhra Pradesh (प्रत्यर्ती/Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri M. Muralidhar, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr.AR
सुनवाई समाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	17.07.2025
घोषणा की तारीख/Date of Pronouncement	:	25.07.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order

No.ITBA/NFAC/S/250/2024-25/1075037595(1) dated 26.03.2025 for the A.Y.2015-16 arising out of order passed under section 147 r.w.s. 144 of Income Tax Act, 1961 (in short 'Act') dated 17.03.2023.

2. Brief facts of the case are that, assessee being an individual has not filed his return of income for the impugned assessment year and the Ld. Assessing Officer [hereinafter in short "Ld. AO"] after going through the NMS Module observed that the assessee has made cash deposits to the tune of Rs.60,54,950/- and also purchased alcoholic liquor for Rs.45,99,826/- from Andhra Pradesh Beverage Corporation Limited, Vizianagaram depo. A show-cause notice under section 148A(b) of the Act was issued to the assessee, assessee failed to respond to the show-cause notice and hence the Ld. AO proceeded to pass an order under section 148A(d) of the Act on 30.03.2022 and accordingly issued notice under section 148 of the Act on 30.03.2022 requiring the assessee to file the return of income within the specified date. Ld. AO as detailed in Page No. 2 of the assessment order has provided multiple opportunities by way of notice under section 142(1) of the Act and show-cause notice under section 144 of the Act. Assessee failed to respond to any of the notices. Since there was no compliance to the notices issued during the assessment proceedings, Ld. AO framed the assessment under section 144 of the Act by making addition of Rs.60,54,950/- as unexplained money under section 69A of the Act and Rs.45,99,826/- as unexplained expenditure under section 69C of the Act.

3. Aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld.CIT(A). Before Ld. CIT(A), assessee contested the jurisdiction for issuance of notice under section 148 of the Act. Assessee while acknowledging the date of service of the assessment order as 17.03.2023 filed the appeal before Ld.CIT(A) on 13.09.2023 thereby belatedly filed appeal after a period of 179 days. Ld. CIT(A) observed that assessee has not filed any condonation petition and also not responded to any of the notices issued and therefore dismissed the appeal of the assessee.

4. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal : -

“1. That the assessment order(s) of authorities below Ld AO as well as Ld CIT(A) were not as per the Facts of the case and as per the law applicable to the provisions, under the Income tax act, 1961.

2. That the grounds are mutually exclusive, distinct and independent and hence to be adjudicated separately, though grouped together.

3. That the 9 grounds of appeal submitted duly while filing form no. 35 were not disposed off by Ld CIT(A) and not adjudicated

4. The Ld AO is not justified in levelling a bald allegation wrt Income escaped at Rs. 106.55 Lacs instead of netting of purchases of liquor as per statement of TCS, was without application of mind.

4.1 That the Ld JAO, AO-NFAC as well as CIT(A) are not justified in not laying their hands with respect to double taxation on the same income/receipts, since the liquor purchased for Rs. 45,99,826/- as was sold for Rs. 60,54,950/- had to be netted off for arriving at the Net Income and hence alleged Income was arrived at Rs. 106.55 Lacs instead of correct amount of Rs. 14.55 Lacs approx.

5. **TIME BARRED:**

The Ld AO has erred in issuing the notice u/s 148 after 31.03.2021, ie. on 30.03.2022. Further, this is against the Rule laid down by Hon'ble Supreme court in UOI vs. Rajeev Bansal (SC) (2024) 134 TLC 004 dtd 03.10.2024, at para no. 19(f) where revenue conceded that all the notices were to be dropped being no applicability of TOLA.

6. *The Ld AO has erred in not supplying copies of Approval obtained from higher authority u/s 151 to the assessee. The approval was wrongly given by higher authority without any independent application of mind and issued in a "mechanical manner" makes the entire assessment void.*

7. *That the Ld CIT(A) has erred in presuming that assessee deliberately, wilfully, and not interested in prosecution /appeal, when he has filed all the grounds of appeal and document relied on etc., before filing the appeal in Form 35, and the opportunities provided u/s 250 was neither with any annexure nor calling for information nor calling for delay condonation petition. Then passing an adverse order cannot be an opportunity to assessee at all, this is also since reply given in first hearing not considered at all where assessee clearly indicated that he has produced all grounds etc. (The reply was given on 21.01.2025 vide Acknowledgement Number: 833953111210125 against the notice of hearing dated 03.01.2025)*

8. *That the procedure adopted by the Ld JAO, Ward-2(5), was not in order and not as per procedure laid down under "Faceless assessments" & shall be by FAO only, and there was no service of notice for the variations proposals since the same is a mandatory condition for completing the assessment proceedings u/s 151A.*

9. *The Ld AO(NFAC) had erred in applying sec 69A that is not relevant as "money was not found" and doesnot include any cash deposit made in Bank account which is a "Cash credit".*

10. *Burden of Proof is on the part of revenue and is never on the assessee to prove that the purchase of liquor is not related to cash deposits to arrive at a conclusion that the same are unexplained expenditure. Ld AO was wrongly assumed the same and did not apply his mind that the cash deposits are out of sale proceeds of Liquor to purchase the liquor from "AP beverages corporation Ltd" since the company accepts only online payments and not cash.*

11. *The huge interest were charged u/s 234A, B & C may be waived, since the same was arising due to impugned additions made wrongly.*

12. *Any other ground that may be urged at the time of hearing of the Appeal before the Hon'bleCIT(A).".*

5. It was the submission of the Ld. Authorised Representative [hereinafter “Ld.AR”] that the Revenue Authorities erred in treating the net income but however aggregated cash deposits and the purchase of liquor for arriving at the total income. He further submitted that the cash deposits of Rs.60,54,950/- are the sale proceeds of liquor purchases from the Andhra Pradesh State Beverages amounting to Rs.45,99,826/-. He further submitted that since the net profit is around Rs.15 lakhs, the notice issued under section 148 of the Act on 30.03.2022 is time barred as laid down by the Hon’ble Supreme Court in the case of UOI v. Rajeev Bansal [(2024) 134 TLC 004 dated 03.10.2024].He therefore pleaded that the assessment order is void ab-initio and hence prayed for quashing the same.

6. Further on merits, he submitted that the assessee did not view the order uploaded in the ITBA portal by the Ld. AO and hence immediately on the knowledge of the existence of the assessment order, assessee filed appeal before Ld. CIT(A). However, there was a delay of 179 days. Ld.AR further contended that the appeal was filed within the period of 30 days immediately on the knowledge of existence of the assessment order in the portal and hence no petition for condonation is filed for condonation of delay before the Ld. CIT(A). He also further contended that assessment proceedings are to be faceless as per the CBDT circular but however the jurisdictional assessing officer, ward 2(5) has passed the order and hence assessment order is also invalid on this ground.

He further pleaded that on the legal issues the assessment order deserves to be quashed and if the bench decides otherwise, assessee should be taxed on the net income of Rs.15 lakhs approximately.

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supporting the orders of the Revenue Authorities, submitted that Ld. CIT(A) has rightly adjudicated the case based on the non-filing of the petition for condonation of the delay by the assessee. Assessee also continuously failed to respond to any of the notices of the Revenue Authorities and has not raised any objections to the show-cause notice issued under section 148A(b) of the Act. He therefore pleaded that order of the Ld. CIT(A) be upheld.

8. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has not filed the return of income for the impugned assessment year under section 139(1) of the Act inspite of engaging in the business activities. Ld. AO and Ld. CIT(A) provided multiple opportunities to the assessee, where assessee failed to comply with any of the notice. Assessee also failed to raise any objection for the notice issued under section 148A(b) of the Act along with the documentary evidences. In the absence of non-compliance by the assessee, Ld. AO has no option but to decide the case on merits based on the material available on record and accordingly has considered the total income at Rs. 106 lakhs. Therefore, we do not see any infirmity in the decision of the Ld.AO for the issuance of notice under section

148 of the Act. The onus is on the assessee to provide documentary evidences before the Ld.AO to prove that the escaped income is below Rs.50 Lakhs and hence no notice can be issued u/s. 148 of the Act. The assessee failed to respond to any of the notices and also failed to provide documentary evidences and hence questioning of the jurisdiction of the Ld.AO to issue notice u/s. 148 could not be accepted. Therefore, we have no hesitation to dismiss the ground No. 5 raised by the assessee.

9. On merits, it was submitted that assessee was not aware of the assessment order passed by the Ld. AO on 17.03.2023. It was also further submitted that assessee filed the appeal before First Appellate Authority immediately on becoming aware of the assessment order passed by the Ld. AO. However, on perusal of the Form 35 it is seen that the assessee has admitted service of assessment order on 17.03.2023. The onus is on the assessee to establish the service of the assessment order was intimated belatedly. The assessee did not file any petition for condonation citing the reasons that the assessee was not served with the assessment order on 17.03.2023. The assessee has neither responded to any of the notices of the Ld. CIT(A) and it was alleged in the written submissions that the Ld. CIT(A) should have called for the condonation petition. The onus is clearly on the assessee to seek condonation for the belated filing of appeal by 179 days and not on the revenue to ask for condonation. On perusal of Form 35 it is also noticed that assessee himself has voluntarily

declared date of service of assessment order on 17.03.2023. Hence, the burden lies on the assessee to provide sufficient and reasonable cause by filing the condonation petition before the Ld.CIT(A). Further the Revenue Authorities could not presume that the cash deposits arise out of the sale proceeds of liquor in the absence of any reply or documentary evidences furnished before the Revenue Authorities. It is noticed that assessee has failed on all avenues to establish and submit the details of the facts before Revenue Authorities. In these facts and circumstances to meet the ends of justice, assessee is directed to file the petition for condonation before Ld. CIT(A) for 179 days and also the Ld.CIT(A) is directed to examine the petition for condonation and if sufficient cause is shown the case may be adjudicated on merits in accordance with law by providing one final opportunity to the assessee. Assessee is also directed to cooperate with the remand proceedings without seeking unnecessary adjournments failing which the Ld. CIT(A) is at liberty to decide the case on merits based on the material available on record.

10. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25th July, 2025.

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

उपाध्यक्ष/VICE PRESIDENT

Dated: 25.07.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Babu Rao Sahukari**
24-107-54/1
c/O. Srikar Sai Medical Agencies
Gonthivanipalem
Gajuwaka, Visakhapatnam – 530026
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer – Ward – 2(5)**
Visakhapatnam – 530020
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