

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'SM' Bench, Hyderabad**

**श्री विजय पाल राव, उपाध्यक्ष एवं**  
**श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।**  
**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.1134/Hyd/2025**  
(निर्धारण वर्ष / Assessment Year: 2013-14)

Ms. Arcot Afsar Begum, Tadipatri. PAN:AJOPA1727D (Appellant)	<b>Vs.</b>	Income Tax Officer, Ward-1, Anantapur. (Respondent)
निर्धारिती द्वारा / Assessee by:	Shri G. V. Reddy, Advocate	
राजस्व द्वारा / Revenue by:	Shri Sankar Pandi P, SR-DR	
सुनवाई की तारीख / Date of hearing:	08/09/2025	
घोषणा की तारीख / Pronouncement:	12/09/2025	

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M. :**

This appeal is filed by Ms. Arcot Afsar Begum (“the assessee”), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), dated 27.01.2025 for the A.Y. 2013-14.

2. At the outset, it is noted that there is a delay of 95 days in filing of the present appeal. The assessee has filed a condonation petition along with an affidavit explaining the reasons for the delay. In this

regard, the Learned Authorised Representative (“Ld. AR”) submitted that the assessee is a small businessman having limited knowledge of tax litigation, procedures and statutory timelines. Due to lack of proper professional assistance within time, the appeal could not be filed before the Tribunal within the prescribed period. It was contended that the delay is neither willful nor deliberate but has occurred on account of genuine and bona fide reasons. Accordingly, he prayed for condonation of the delay in the interest of substantial justice.

3. Per contra, the Learned Departmental Representative (“Ld. DR”) did not raise any serious objection to the prayer of the assessee.

4. We have carefully considered the submissions of both sides and perused the condonation petition along with the affidavit placed on record. On perusal of the same, we are satisfied that the assessee has shown a reasonable and bona fide cause for the delay in filing the appeal. It is well settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In view of the above facts and circumstances, and there being no serious objection from the Revenue, we condone the delay of 95 days in filing of the appeal. Accordingly, the appeal is admitted for adjudication on merits.

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

**1. Erroneous Invocation of Section 69A – No Basis for Treating Cash Deposits as Unexplained Money:**

The learned Assessing Officer has erred both in law and on facts in invoking the provisions of Section 69A of the Income-tax Act, 1961 to treat the cash deposits of Rs.29,92,000 in the appellant's bank account as unexplained money. Section 69A contemplates addition only where money is found in the ownership of the assessee but is not recorded in the books of account, and where the assessee fails to offer a satisfactory explanation. However, in the present case, the appellant has opted for presumptive taxation under Section 44AD, wherein the maintenance of books of account is not mandated by law.

Once the income is declared under Section 44AD, the turnover is accepted, and profits are estimated at the presumptive rate. In such a scenario, the very premise of Section 69A—that the money is not recorded in the books—fails, as there are no books required to be maintained in the first place. Consequently, the essential condition for invoking Section 69A stands unfulfilled, and the impugned addition is ultra vires the statutory framework.

**2. Presumptive Taxation under Section 44AD – Complete Code, No Requirement to Explain Cash Deposits:**

The appellant had declared a gross turnover of Rs.69,21,348 and presumptive income of Rs.5,59,900 under Section 44AD, which is higher than the presumptive rate of 8%. It is a well-settled legal position that Section 44AD is a complete code in itself, and where an assessee has declared income at the presumptive rate on eligible turnover, the Assessing Officer cannot insist on

income and declared the turnover, the question of invoking Section 69A does not arise in law, as the element of “not recorded in books of account” is absent.

The appellate authority also failed to acknowledge that the appellant had offered a plausible and consistent explanation that the cash deposits were business receipts, which aligns with the nature of the business and prevailing cash-based trade practices in the semi-urban region. The rejection of the explanation without any evidence to the contrary is arbitrary and contrary to principles of natural justice.

**5. Section 115BBE Taxation Unjustified in the Absence of Valid Addition under Section 69A:**

The AO further erred in subjecting the said addition of Rs.29,92,000 to special rate of taxation under Section 115BBE in the rectification order dated 26.09.2023. As the very basis of addition under Section 69A is legally untenable, the consequential imposition of tax under Section 115BBE is also non est in the eyes of law and must be quashed.

**PRAYER:**

In view of the above submissions, the appellant humbly prays that:

- The addition of Rs.29,92,000 made under Section 69A of the Income-tax Act, 1961, be deleted in its entirety;
- The application of Section 115BBE and the resulting demand of Rs.20,33,928 be set aside;
- The return of income filed under Section 44AD may be accepted as correctly and lawfully declared;
- Any other relief deemed fit and proper in the facts and circumstances of the case may also be granted.

6. The brief facts of the case are that, the assessee is an individual who did not file the return of income for the A.Y. 2013-14. On the basis of information available, the Ld. Assessing Officer (“Ld. AO”) noticed that the assessee had deposited cash of Rs.29,92,000/- in his bank account during the year under consideration. Accordingly, the case of the assessee was reopened under section 147 of the Income Tax Act, 1961 (“the Act”) and notice under section 148 of the Act was issued to the assessee on 29.03.2021. During the reassessment proceedings, the assessee neither filed any return of income nor responded to the various statutory notices issued by the Ld. AO. Consequently, the Ld. AO proceeded to complete the assessment on

best judgment basis and passed the order under section 147 read with section 144 read with section 144B of the Act on 28.03.2022, treating the cash deposits of Rs.29,92,000/- as unexplained money under section 69A of the Act.

7. Aggrieved with the order of Ld. AO, the assessee preferred appeal before the Ld. CIT(A). However, even before the appellate authority, the assessee failed to comply with the notices issued. As a result, the Ld. CIT(A) dismissed the appeal ex-parte.

8. Aggrieved with the order of Ld. CIT(A), the assessee has now come in appeal before the Tribunal. The Ld. AR submitted that the order of the Ld. CIT(A) suffers from violation of the principles of natural justice. He invited our attention to para no. 5 of the order of the Ld. CIT(A) to point out that only one notice dated 03.10.2024 was issued before dismissing the appeal. It was contended that sufficient opportunity of being heard was not provided to the assessee. The Ld. AR further submitted that since the assessee's case had already remained non-prosecuted before the Ld. AO also, in the interest of justice, the matter may be restored to the file of the Ld. AO with one more opportunity to the assessee to substantiate his case.

9. Per contra, the Ld. DR supported the orders of the lower authorities. He submitted that, the assessee has been already provided adequate opportunity by the lower authorities. Hence, no further opportunity shall be provided to the assessee.

10. We have heard the rival submissions and perused the material available on record. It is undisputed that both before the Ld. AO as well as before the Ld. CIT(A), the assessee failed to properly prosecute the case. However, from para no.5 of the order of the Ld. CIT(A), it is evident that only one notice dated 03.10.2024 was issued before dismissing the appeal, which in our considered view does not satisfy the requirement of affording adequate and effective opportunity of being heard. It is a settled position that adherence to the principles of natural justice is a fundamental requirement of adjudication. Since the assessee did not get effective opportunity either before the Ld. CIT(A) and the Ld. AO has no opportunity to decide the issue on merits, we are inclined to restore the matter to the file of the Ld. AO. Accordingly, the impugned orders are set aside and the issue is remanded to the file of the Ld. AO with a direction to afford one more effective opportunity of being heard to the assessee. The assessee shall also be at liberty to file necessary evidence and explanation in support of his claim. At the same time, the assessee is directed to extend full cooperation in the assessment proceedings and not to seek unnecessary adjournments.

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

**Order pronounced in the open Court on 12th Sept., 2025.**

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

**Sd/-**  
**(MADHUSUDAN SAWDIA)**  
**ACCOUNTANT MEMBER**

Hyderabad.

Dated: 12.09.2025.

*\* Reddy gp*

**Copy of the Order forwarded to :**

1.	Ms. Arcot Afsar Begum, 13-364, Bukkapatnam Street, Tadipatri-515411 Anantapur District.
2.	The ITO, Ward-1, Anantapur.
3.	Pr.CIT, Kurnool .
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,