

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री एस बालाकृष्णन, माननीय लेखा सदस्य एवं श्री संदीप सिंह करहेल, माननीय न्यायिक सदस्य

**SHRI S BALAKRISHNAN HON'BLE ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

आयकरअपीलसं./I.T.A. No.501/Viz/2024
(निर्धारणवर्ष/ Assessment Year: 2018-19)

Kanishka F&B, D.No. 40-7-6, Gowraiah Street, Mogalrajapuram, Vijayawada, Krishna – 52000 Andhra Pradesh. PAN: AASFK1319C	VS.	Income Tax Officer, Ward-2(2), Vijayawada.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Sri C. Subrahmanyam, CA
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Sri MN Murthy Naik, CIT-DR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	16/09/2025
घोषणा की तारीख/ Date of Pronouncement	:	18/09/2025

ORDER

PER S BALAKRISHNAN, AM:

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (in short "Ld. CIT(A)") in DIN & Order No. ITBA/NFAC/S/250/2023-24/1063342905(1), dated 25/03/2024

arising out of the order passed U/s. 143(3) r.w.s 144B of the Income Tax Act, 1961 (in short “the Act”) for the Asst. Year 2018-19.

2. At the outset, it is noticed from the record that there is a delay of 193 days in filing the appeal before the Tribunal. In respect of the belated filing of the appeal, the assessee filed a petition for condonation of delay along with an affidavit and the relevant paragraphs from the affidavit are extracted herein below:

- “1.
2. *Whereas, P. Sai Sitaram, Managing Partner, who attends income tax matters of the assessee was to go to his Counsel’s office to sign the papers on 19/05/2024 but on the previous day he met with an accident. Immediately got the medical treatment and was advised for bed rest for four weeks. In this process filing of appeal went unnoticed. In the meanwhile, on 29/09/2024, the undersigned received phone call from the income tax department to pay tax demand upon which discovered the pending of appeal which was not filed. Realizing the situation, the undersigned immediately, approached the Counsel requesting to prepare the documents which was done on 02/12/2024 and the appeal was filed on 03/12/2024 causing a delay of 193 days.*
3. *In the light of the above, it is respectfully submitted that this delay in filing the appeal belatedly was not as a result of any negligence or lack of diligence, but solely due to the unfortunate and unforeseen circumstances. Doctor’s certificate in support of petition is attached here with.....”*

3. Considering the above reasons adduced by the assessee for filing of the appeal beyond the prescribed time limit with a delay of 193 days, we are of the considered view that there is a sufficient and reasonable cause that prevented the assessee in

filing the appeal within the prescribed time limit. Therefore, we hereby condone the delay of 193 days and proceed to adjudicate the appeal on merits.

4. Brief facts of the case are that the assessee filed its return of income for the AY 2018-19 on 29/09/2018 declaring a loss of Rs. 26,91,175/-. The return was processed U/s. 143(1) of the Act and the case was selected for complete scrutiny under CASS for the reasons 'introduction of large capital or share capital in the year of incorporation'. Thereafter, notice U/s. 143(2) of the Act was issued on 22/09/2019 and served on the assessee. Further, notice U/s. 142(1) of the Act was issued to the assessee on 07/12/2020. The assessee did not respond to the notice issued U/s. 142(1) nor filed any submissions before the Ld. AO. However, in response to the notice issued U/s. 143(2) of the Act, dated 22/09/2019, the assessee has furnished its reply on 07/10/2019 and submitted that the assessee firm was commenced on 24/05/2017 and hence, it was only the first year of the business. It was further submitted that the partners of the assessee have invested Rs. 3,86,95,754/- towards capital during the year under consideration. The Ld. AO also issued notice U/s. 133(6) of the Act to the assessee's partners Shri Bhargav Swaroop Chitturi; Sri Polavarapu Sai Sitaram and Shri Satish Kumar Yarlagadda in reply these partners have furnished the information as called for. On

perusal of the information available before him, the Ld. AO observed that the assessee failed to furnish the details of the balance sheet of each partner in support of their creditworthiness, ledger account of the partners in the assessee's books of account. Therefore, considering the assessee's failure to furnish the satisfactory documentary evidence in support of the source of Rs. 3,86,95,754/- in the form of partner's capital introduced in the assessee-firm during the year under consideration, the Ld. AO invoked the provisions of section 68 of the Act and made addition of Rs. 3,86,95,754/- U/s. 68 r.w.s 115BBE of the Act and determined the total income of the assessee at Rs. 3,86,95,750/-. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A).

5. On appeal, the Ld. CIT(A) passed ex-parte order and dismissed the appeal of the assessee as there was no compliance from the assessee to the hearing notices issued. 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. That under the facts and circumstances of the case, the order passed U/s. 143(3) of the Act dated 23/06/2021, which was upheld by the Ld. CIT(A) vide order passed U/s. 250 of the Act dated 25/03/2024 is not in accordance with the facts of the case and the provisions of law.*

2. *The Ld. CIT(A) disposed of the appeal, ex-parte, without granting reasonable opportunity to the assessee, thereby, violating the principles of natural justice.*
3. *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 Ld. CIT(A) to dispose of the appeal on merits.*
4. *The Ld. CIT(A) erred in sustaining the addition of Rs. 3,86,95,750/- U/s. 68 of the Act on protective basis. Making such an addition is not legally sustainable and the addition ought to have been deleted as no conclusive evidence or reasoning has been provided to justify it.*
5. *The Ld. CIT(A) is not correct in confirming the capital contributions made by the partners of Rs. 3,86,95,750/- in the hands of the assessee firm on a protective basis. The assessee firm, being in its first year of business, does not have any independent source of income to question the contributions made by the partners. The addition lacks legal justification.*
6. *The Ld. CIT(A) failed to appreciate that major amount in question has already been accepted in the hands of the partners of the firm while passing the assessment order U/s. 143(3), leaving certain amount in the hands of partners which is under contest. Therefore, taxing the amount to the extent that was accepted in the hands of the partners, on a protective basis, is contrary to the provisions of the Act.*
7. *Without prejudice to the above contentions, it is submitted that no addition can be made for the capital contributions of the partners in the hands of the assessee firm. The capital contributions have been duly substantiated by partners in their individual assessments explaining the source of funds.*
8. *For these and other grounds that may be urged at the time of hearing, the appellant prays that the order passed by the Ld. CIT(A) be set-aside in the interest of justice.”*

6. At the outset, the Ld. AR submitted before us that the Ld. CIT (A) has passed ex-parte order without providing proper opportunity to the assessee of being heard. He further submitted that the assessment made in the case of the assessee is on protective basis whereas the additions have been made in the hands of the partners on substantive

basis. He therefore pleaded that the addition is not justifiable in the hands of the assessee. It was prayed before us that the assessee may be provided one more opportunity to the assessee of being heard before the Ld. CIT(A).

7. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee has appeared before the Ld. CIT (A) nor responded to the hearing notices issued. It was further submitted that the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

8. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that the Ld. CIT (A) had posted the case on four occasions. The main grievance of the assessee is that the addition is made on protective basis which needs to be examined by the Ld. Revenue Authorities. Since none appeared on behalf of the assessee before the CIT(A) on the dates of hearing nor filed any details / written submissions with regard to the grounds raised before the Ld. CIT(A), the Ld. CIT (A) was left with no other option except to adjudicate the appeal ex-parte. In this situation, considering the prayer of the Ld. AR for one final

opportunity before the Ld. CIT(A), and in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh and decide the case on merits by providing one more opportunity to the assessee of being heard. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and on 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 as indicated hereinabove.

Order pronounced in the open court on 18th September, 2025.

Sd/ (संदीप सिंह करहेल) (SANDEEP SINGH KARHAIL) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S BALAKRISHNAN) लेखासदस्य/ACCOUNTANT MEMBER
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Visakhapatnam, dated 18.09.2025.

OKK/sps

आदेशकीप्रतिलिपिअग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Kanishka F&B, D.No. 40-7-6, Gowraiah Street, Mogalrajapuram, Vijayawada, Krishna – 52000 Andhra Pradesh.
2.	राजस्व/ Revenue	The :	Income Tax Officer, Ward-2(2), CR Building, First Floor Annex, MG Road, Vijayawada.

3.	The Principal Commissioner of Income Tax,
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण /DR,ITAT, Visakhapatnam.
5.	The Commissioner of Income Tax
6.	गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam.