आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

श्री रविश सूद,न्यायिक सदस्य एवं श्री मधुसूदन सावड़िया लेखा सदस्य समक्ष|

Before Shri Ravish Sood, Judicial Member
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं /**ITA No.2093/Hyd/2026**
(निर्धारण वर्ष/Assessment Year: 2016-17)

Shri Babu Gundlapalle, CHITTOOR PAN:BBWPG3524R	Vs.	Income Tax Officer Ward-1 Chittoor
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.A. Sai Prasad, CA	
राजस्व द्वारा/Revenue by:	Shri K. Prasad, Sr. AR	
सुनवाई की तारीख/Date of hearing:	17/09/2026	
घोषणा की तारीख/Pronouncement:	16/10/2026	

ORDER

Per Madhusudhan Sawdia, A.M.:

This appeal is filed by Shri Babu Gundlapalle ("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 22.11.2023 for the A.Y. 2016-17.

2. At the outset, it is observed that there is a delay of 867 days in filing the present appeal before this Tribunal. The assessee has filed a condonation petition along with an

affidavit explaining the reasons for the delay. The Learned Authorized Representative ("Ld. AR") submitted that the assessee is a government teacher who, owing to the nature of his employment, was frequently transferred from one place to another. The assessee was not conversant with online income-tax proceedings and was dependent upon tax consultants for compliance with income-tax matters. He submitted that, acting upon incorrect professional advice, the assessee had pursued a revision petition also under section 264 of the Income Tax Act, 1961 ("the Act") before the Learned Principal Commissioner of Income Tax, Tirupati. Subsequently, upon obtaining advice from another tax consultant, the assessee withdrew the revision petition and immediately thereafter filed the present appeal before the Tribunal. The Ld. AR submitted that the delay was neither deliberate nor intentional but arose from the aforesaid circumstances.

3. The Ld. AR further submitted that the assessee's only source of income during the year under consideration was salary of Rs. 5,10,420/-, which was duly reflected in Form 26AS and on which tax had already been deducted by the employer. However, the Assessing Officer ("AO"), in the assessment order dated 30.03.2022, adopted the salary income at Rs. 55,77,032/-. He submitted that the resulting demand was disproportionately high in relation to the assessee's actual salary income. The assessee, being a government employee with limited means, would suffer severe

hardship if the appeal were dismissed on limitation without examining the correctness of the assessed income. Accordingly, he prayed that the delay be condoned and the appeal be admitted for adjudication on merits.

4. Per contra, the Learned Departmental Representative ("Ld. DR") vehemently opposed the condonation of the inordinate delay of 867 days. He submitted that the assessee had also failed to respond during the assessment proceedings and that such conduct did not warrant a liberal approach. Accordingly, he prayed that the appeal be dismissed as barred by limitation.

5. We have heard the rival submissions and perused the material available on record. The explanation furnished by the assessee is that he is a government teacher, was frequently transferred, lacked familiarity with online income-tax proceedings and depended upon professional assistance. It has further been explained that, under mistaken professional advice, he also pursued a revision petition under section 264 of the Act before the Learned Principal Commissioner of Income Tax, Tirupati, and, upon receiving subsequent advice, withdrew that petition and filed the present appeal. The Ld. AR has also highlighted the substantial difference between the salary income stated to be reflected in Form 26AS at Rs. 5,10,420/- and the salary income adopted in the assessment at Rs. 55,77,032/-. The principal objection of the Ld. DR is that the delay is

substantial and that the assessee's failure to participate in the assessment proceedings demonstrates a lack of diligence.

6. We have carefully considered these competing submissions. The delay of 867 days is undoubtedly substantial and cannot be condoned merely on the ground that the assessee would otherwise face a tax demand. Nevertheless, the length of the delay has to be considered along with the explanation offered and the surrounding circumstances. In the present case, the assessee's pursuit of revision proceedings supports his explanation that he was attempting to seek redress against the assessment, though through an alternative remedy pursued under mistaken advice. His dependence upon professional assistance, lack of familiarity with online proceedings and frequent transfers also require consideration cumulatively. Having regard to these circumstances and the explanation furnished in the affidavit, we are satisfied that the delay was not a deliberate attempt to disregard the appellate process.

7. The objection of the Ld. DR regarding the assessee's non-compliance during the assessment proceedings is relevant and cannot be overlooked. Such non-compliance, however, does not, by itself, warrant rejection of the explanation furnished for the delay in filing the appeal. Further, the substantial discrepancy in salary income pointed out by the Ld. AR calls for examination on merits. Without expressing any opinion on the correctness of that contention, we consider that, in the peculiar facts of the present case, the

interests of substantial justice would be served by permitting adjudication of the appeal on merits. At the same time, the assessee's lack of due diligence warrants the imposition of costs. Accordingly, we condone the delay of 867 days and admit the appeal for adjudication on merits, subject to the assessee depositing a sum of Rs. 5,000/- in the Prime Minister's National Relief Fund within 30 days from the date of receipt of this order.

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

> "*1. The Order of the learned Commissioner of Income Tax (A) is not correct either on facts or in law and in both.*
>
> *2. The learned CIT(A) erred in law and on facts in dismissing the appeal under section without adjudicating the substantive ground challenging the assessment, particularly when the addition of Rs.55,77,032/- was ex facie contrary to the information available in Form No. 26AS, which reflected salary income of only and TDS of Rs.27,897, thereby causing grave prejudice to the appellant.*
>
> *3. The learned Assessing Officer failed to appreciate that Form 26AS reflected TDS credit of only Rs-27,897 and salary/ payment details aggregating to Rs.5,10,420/- and therefore the addition of is arbitrary, conjectural and unsupported by any legally admissible evidence.*
>
> *4. The learned Assessing Officer erred in assuming jurisdiction under sections 147/148 on the basis of incorrect facts by treating as salary income, whereas Form No. 26AS reflected salary receipts of only Rs.5,10,420/-consequently, the reassessment proceedings are bad in law and liable to be quashed (Additional Ground).*
>
> *5. The learned Assessing Officer erred in assuming jurisdiction under sections 147/148 of the Act on the basis of notice under section 14B dated 29.03.2021, which was neither duly served upon the appellant nor digitally signed in accordance with law, and therefore the said notice being invalid and unenforceable, the consequential reassessment*

proceedings and assessment order passed thereunder are liable to he quashed. (Additional Ground).

6. The appellant craves leave to add, amend, modify, rescind, supplement or alter any or more grounds of appeal stated herein above either nr at the time of hearing of this appeal"

9. The brief facts of the case are that the assessee is an individual employed as a government teacher and had not filed any return of income for the assessment year 2016-17. The AO reopened the assessment under section 147 of the Act and issued notice under section 148 of the Act on 29.03.2021. The assessee neither filed a return of income in response to the said notice nor complied with the subsequent notices issued during the assessment proceedings. Consequently, on the basis of the information available on record, the AO completed the assessment under section 147 read with sections 144 and 144B of the Act vide order dated 30.03.2022, determining the total income under the head "Salaries" at Rs. 55,77,032/-.

10. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A), who dismissed the appeal for non-compliance with section 249(4)(b) of the Act, as the assessee had neither filed a return of income nor paid the advance tax payable by him.

11. Aggrieved by the said order of the Ld. CIT (A), the assessee is in appeal before this Tribunal. The Ld. AR submitted that the Ld. CIT(A) was not justified in dismissing the appeal under section 249(4)(b) of the Act. He submitted

that, where no return of income has been filed, the said provision requires payment of an amount equal to the advance tax payable by the assessee. In the present case, the assessee's only income was salary of Rs. 5,10,420/-, against which tax of Rs. 27,897/- had already been deducted by the employer, as reflected in Form 26AS. The balance amount assessed as salary income was disputed by the assessee. Accordingly, after considering the tax deducted at source, no advance tax was payable by the assessee, and the appeal could not have been dismissed for non-compliance with section 249(4)(b) of the Act. The Ld. AR further submitted that the assessment itself had been completed ex parte and that the substantial difference between the salary income reflected in Form 26AS and the income adopted by the AO required examination. He therefore prayed that, instead of restoring the appeal to the Ld. CIT(A), the matter be restored to the file of the AO for fresh adjudication after providing the assessee an opportunity to substantiate his claim.

12. Per contra, the Ld. DR submitted that the issue required factual examination by the AO. Accordingly, he expressed no objection to restoring the matter to the file of the AO for fresh adjudication.

13. We have heard the rival submissions and perused the material available on record. The Ld. AR has contended that the assessee's salary income was only Rs. 5,10,420/-, on which tax of Rs. 27,897/- had already been deducted by the employer, and that no advance tax remained payable. He has

also disputed the adoption of salary income of Rs. 55,77,032/- in the ex parte assessment and requested restoration of the matter to the AO for verification. The Ld. DR has submitted that the issue requires factual examination and has not objected to such restoration. Section 249(4)(b) of the Act, in a case where no return of income has been filed, requires the assessee to pay an amount equal to the advance tax which was payable by him. Thus, the relevant consideration is whether any advance tax was payable by the assessee. The mere non-filing of a return does not, by itself, establish non-compliance with the said condition. In the present case, the salary income of Rs. 5,10,420/- and the tax deducted thereon of Rs. 27,897/- are reflected in Form 26AS. After taking into account the tax deducted by the employer against the tax liability on the said salary income, no advance tax remained payable by the assessee. The disputed salary income adopted in the assessment cannot, merely by reason of its inclusion in the assessment order, be treated as establishing a default in payment of advance tax for the purpose of admitting the appeal. Accordingly, we accept the assessee's contention that there was no non-compliance with section 249(4)(b) of the Act, and the dismissal of the appeal on that ground is unsustainable.

14. On the merits of the assessment, we observe that the AO completed the assessment ex parte, adopting salary income of Rs. 55,77,032/-, whereas the assessee claims that his salary income was only Rs. 5,10,420/-. This substantial

difference requires verification of the salary records, Form 26AS and other relevant material. Since the assessee did not participate in the assessment proceedings, the AO had no occasion to examine the explanation and supporting evidence now sought to be furnished. Considering the nature of the dispute, the request of the Ld. AR and the absence of any objection from the Ld. DR, we consider it appropriate to restore the matter directly to the file of the AO for fresh adjudication. Accordingly, we set aside the order of the Ld. CIT(A) and restore the assessment to the file of the AO for fresh adjudication in accordance with law, after providing the assessee a reasonable opportunity of being heard. The AO shall examine the actual salary income earned by the assessee and allow credit for tax deducted at source in accordance with law. The assessee is directed to cooperate with the proceedings and furnish the relevant details and supporting evidence without seeking unnecessary adjournments.

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

Order pronounced in the Open Court on 16th October, 2026.

Sd/-	Sd/-
(RAVISH SOOD) **JUDICIAL MEMBER**	**(MADHUSUDAN SAWDIA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 16th October, 2026.

Vinodan/sps

Copy to:

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2	Income Tax Officer, Ward-1, 10-251, Gandhi Road, Chittoor A.P
3	Pr. CIT, Tirupati
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order