

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No. 306/Ind/2016 & 313/Ind/2016
Assessment Year- 2008-09**

ShailendraBansal Barwah (Appellant)	बनाम/ Vs.	Income Tax Officer 5(2), Indore (Revenue)
PAN No.ACOPB – 1135H		

Appellant by	Shri Girish Agrawal
Respondent by	Shri R.P. Mourya
Date of Hearing:	13.02.2018
Date of Pronouncement:	15.02.2018

आदेश / O R D E R

PER MANISH BORAD, A.M:

These two appeals by the same assessee pertaining to the A.Y. 2008-09 out of which ITA No. 306/Ind/2016 relates to quantum addition and is directed against the order of the CIT(A)-II, Indore, dated 29.1.2016 which is arising out of the order u/s 143(3) of the Act dated 29.10.2010 framed by the ITO 5(2), Indore. The second appeal i.e. ITA No. 313/Ind/2016 relates to penalty u/s 271(1)(c) of

the act and is directed against the order of the learned CIT(A) dated 29.1.2016 against the penalty order framed on 27.4.2011 by the ITO 5(2), Indore.

2. Briefly stated, the facts, as culled out from record, are that the assessee is an Individual and his main source of income is from interest. The return of income filed on 8.9.2008 declaring income at Rs.1,11,960/-. The case picked up through CASS. Notice u/s 143(2) of the Act duly served on the assessee. In the course of assessment proceedings the Assessing Officer observed that the assessee made deposits of Rs. 9,50,000/- (i.e. Rs. 6,50,000/- on 13.7.2007 and Rs. 3 lacs on 27.3.2008) with State Bank of Indore. Necessary details, as called for, were not supplied by the assessee and the Assessing Officer accordingly made the addition of Rs.9,50,000/- u/s 69 of the Act towards unexplained investments. Aggrieved, the assessee preferred appeal before the CIT(A) against the impugned additions. However, the appeal was time barred by 32 months. The CIT(A) even though discussed the facts of the case but finally dismissed the appeal for being barred and did not admit it for adjudication.

3. However, penalty proceedings u/s 271(1)(c) of the Act were initiated before the assessee could appeal before the CIT(A) and the assessee remained non-compliant during the penalty proceedings and accordingly penalty of Rs. 3,02,980/- was imposed under section 271(1)(c) of the Act.

4. The appeal by the assessee before the CIT(A) against penalty imposed u/s 271(1)(c) of the Act did not find favour from the CIT(A).

5. Now, the assessee is in appeal before the Tribunal against quantum addition, delay not condoned by the CIT(A) as well as penalty sustained by the CIT(A).

6. We will first take up ITA No. 306/Ind/2016 relating to quantum addition. The learned counsel for the assessee submitted that the delay in filing the appeal before the CIT(A) arose due to wrong advice given by the counsel of the assessee, Shri K.K. Sarda, and reference was made to page 5 of the paper book showing the certificate given by Shri K.K. sarda admitting that he advised the assessee for not filing the appeal.

7. On the other hand, the learned DR supported the orders of the authorities below.

8. We have heard the rival contentions and perused the record placed before us. In the instant appeal the assessee has challenged the addition of Rs.9,50,000/- sustained by the CIT(A). From a perusal of the findings of the learned CIT(A) we observe that the appeal of the assessee was dismissed by the CIT(A) for delay in filing the same which was around 32 months. It was pleaded by the learned counsel for the assessee before us as well as before the CIT(A) that the assessee could not file the appeal due to wrong advice given by the counsel, Shri K.K. sarda. From perusal of the certificate placed at page 5 of the paper book issued by Shri K.K. Sardha wherein he has mentioned "*That the facts of the case of Shri Shailendra Bansal relating to assessment year 2008-09 (F.Y. 2007-08) appeared to me not favourable and as such I advised him for not filing the appeal*". The alleged advice of the CA seems to have restrained the assessee from filing the appeal. It is well evident that for the purpose of taxation, the assessee has to take

consultancy/guidance from the tax experts who are mainly CAs/advocates of tax practitioners. It is not possible for the assessee to be well-verse with taxation laws and to decide on critical issues such as filing of appeal, etc. Even though the reason for the alleged delay in filing the appeal before the CIT(A) is not so enterprising, but still looking to the factual aspect of the case as well as the interest of justice, the assessee deserves one more opportunity of being heard. Further, from perusal of the order of the CIT(A) we find that the facts of the alleged cash deposits, alleged link of source of cash deposit with the cash withdrawn from the mother's account and also non-availability of any evidence in support of the source of cash have been duly discussed in the body of the order of the CIT(A) but there is no concrete finding on merits and the appeal has been dismissed due to delay in filing the appeal. We, therefore, in the given facts and circumstances of the case, condone the delay in filing the appeal before the CIT(A) and direct him to admit the same for fresh adjudication with the direction to decide the issues raised in the instant appeal after affording proper opportunity of being heard to the assessee.

9. In the result, the appeal of the assessee in ITA No. 306/Ind/2016 is allowed for statistical purposes.

10. Apropos ITA No. 313/Ind/2016 wherein the assessee has challenged the order of the CIT(A) confirming the penalty u/s 271(1)(c) of the Act, we are of the view that as we have set aside the issue of quantum addition to the file of the CIT(A) and the outcome of the order of the CIT(A) will be the basis to decide as to whether the penalty is leviable u/s 271(1)(c) of the Act or not, we set aside the issue of penalty u/s 271(1)(c) of the Act also to the file of the CIT(A) being consequential to the quantum issue, for deciding the same afresh after affording reasonable opportunity of being heard to the assessee.

10. In the result, ITA No. 313/Ind/2016 is allowed for statistical purposes.

11. Finally, both the appeals of the assessee are allowed for statistical purposes.

Order was pronounced in the open court on 15.2.2018.

sd
(KUL BHARAT)
JUDICIAL MEMBER

sd
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 15/02/2018

Dn/-

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

Dn/-

By order

Private Secretary/DDO, Indore

1. Date of dictation : 8.2.2018
2. Date on which the typed draft is placed before the Dictating Member : 9.2.2018
3. Date on which approved draft comes to the Sr.P.S./P.S: 10.1.2018
4. Date on which the fair order is placed before the dictating Member for pronouncement:
5. Date on which the fair order comes back to the Sr.P.S./P.S.:
6. Date on which the file goes to the Bench Clerk:
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature of the order.
9. Date of Despatch of the Order: