

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE

Before Shri Kul Bharat, Hon'ble Judicial Member

and

Shri Manish Borad, Hon'ble Accountant Member

ITA No. 173/Ind/2015

A.Y. 1991-92

Hemantkumar Pandey

Khandwa

::: Appellant

Vs

ACIT

Circle Khandwa

::: Respondent

Appellant by	Shri S.K. Pandey Advocate with assessee
Respondent by	Shri K.G. Goyal
Date of hearing	25.5.2018
Date of pronouncement	31.5.2018

**O R D E R**

**PER SHRI MANISH BORAD, AM**

This appeal of the revenue relating to the assessment year 1991-92 is directed against the order of the Commissioner of Income Tax (Appeals)-II, Indore, dated 28.11.2014 which is arising out of the order u/s 143(3) of the Income Tax Act (in short referred as 'Act') Act framed by the ACIT, Circle 2(2), Khandwa.

2. The assessee has taken the following grounds :-

*“(i) That, the assessment order was not served though the same was passed on 22.3.1994 the counsel of the assessee obtained the certified copy of the same on 27.11.2002 but failed to take legal recourse and no reminder was served to the assessee till now. Hence assessee should not be punished for the fault committed by the counsel as assessee was busy in serving his ill father. It was only on 30.6.2012 when the case was handed over to us and we had filed the appeal on 27.7.2012 to the Hon'ble CIT-2(Appeal) and there was no delay on behalf of the assessee*

*(ii) That, the ld. A.O. has completed the assessment u/s 144 of the Income tax Act to the best of his judgment without giving final opportunity of being heard so the assessment was bad and illegal.*

- (iii) That the ld. A.O. has erred in assessing income at Rs. 75,000/- on the basis of additions made in A.Y. 1990-91 to the returned income.*
- (iv) That the basis on which the above additions were made no longer exist as the same (A.Y. 1990-91) have been deleted in full after the order of Income tax Appellate Tribunal bench Indore. Hence, the additions made by the ld. A.O. may kindly be deleted in full.*
- (v) That on the facts and in the circumstances of the case, the addition is wrong and the same required to be deleted.”*

3. Briefly stated, the facts, as culled out from record, are that the ex-parte order u/s 144 of the Act was framed in the case of the assessee on 22.3.1994 assessing the total income at Rs. 75,000/-. Against this order, the assessee went in appeal to the learned Commissioner of

Income Tax (Appeals). However, the learned Commissioner of Income Tax (Appeals) on observing that the appeal is delayed by more than 18 years, was not convinced with the reason for delay and did not condone the same and accordingly dismissed the appeal. Subsequent thereto, the assessee preferred appeal before the Tribunal but on the date of hearing i.e. 15.12.2015 none appeared on behalf of the assessee and, therefore, the appeal was dismissed for non-prosecution. Thereafter, the assessee filed a M.A. seeking opportunity to be heard and the same was accepted by the Tribunal restoring the appeal to its original number vide order dated 19.5.2017.

4. The learned counsel for the assessee referring to the grounds of appeal submitted that the impugned assessment order passed u/s 144 of the Act was not served upon the assessee since the date of passing of

the order i.e. 22.3.1994. It was on 17.11.2002 that the assessee was able to obtain a certified copy of the order. It was contended that the delay arose because the authorised representative at that point of time did not inform the assessee about the impugned order due to which the assessee failed to take legal recourse. He, therefore, contended that the learned Commissioner of Income Tax (Appeals) ought to have adjudicated the appeal on merits after condoning the delay and, therefore, one more opportunity to be provided to go before the learned Commissioner of Income Tax (Appeals) for necessary adjudication.

4. On the other hand, the learned DR submitted that the learned Commissioner of Income Tax (Appeals) rightly dismissed the appeal of the assessee as it was time barred for more than 18 years and there was no

plausible reason given by the assessee for the said delay.

5. We have heard both the parties and have perused the record placed before us. We find that the assessment was passed u/s 144 of the Act. The matter pertains to the assessment year 1991-92. During the course of hearing on earlier date i.e.6.12.2018 the assessee was present in person and the learned DR brought all the assessment record. The assessee reiterated the submissions made by the learned counsel for the assessee that he has not authorised any counsel to receive the assessment order and he was never served with the assessment order at his address. On the other hand, the records available with the revenue department reveals that one Mr. Agrawal, learned counsel for the assessee, has given a letter submitting that he has no such record with him and they were

called back by the assessee long before during the F.Y. 1991-92 and he has no further information to submit.

6. In these circumstances as well as the matter being pertaining to the assessment year 1991-92, we find it justified as well as in the interest of justice to condone the delay on the part of the assessee in filing the appeal before the learned Commissioner of Income Tax (Appeals) and set aside the grounds of appeal relating to addition of Rs.75,000/- to the file of the learned Commissioner of Income Tax (Appeals) for necessary adjudication. Needless to mention that proper opportunity of being heard should be provided to the assessee and simultaneously we also direct the assessee to be compliant and do not seek any adjournment unless otherwise required and cooperate in the set aside proceedings.

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

Pronounced in open Court on 31May, 2018.

Sd/-

sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

31May, 2018

Dn/-

Copy to – Appellant/Respodent/Pr.CIT/CIT(A)/DR/Guard File

By order

Private Secretary