

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.40/Ind/2022
Assessment Year: 2011-12

Yashwant Singh Chouhan Indore	<u>बनाम/</u> Vs.	ITO-1(4) Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: CWLPS4832D		
Assessee by	Shri Hemant Joshi, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.08.2022	
Date of Pronouncement	30.08.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal by assessee is directed against the order dated 21.01.2020 by Commissioner of Income-Tax (Appeals)-I, Indore [**Ld. CIT(A)**] which in turn arises out of the order of assessment dated 12.12.2018 passed by Ld. ITO-1(4) Indore u/s 147 r.w.s. 144 of the Income-tax Act, 1961 [**the Act**] for Assessment Year 2011-12, on the following grounds:

“1. That the ld. 1st Appellate Authority has erred both in law in passing the 1st appeal order without considered the facts.

2. That the ld. 1st Appellate Authority not considered the fact

and confirmed the assessment-order

3. That the ld. 1st Appellate Authority has not accepted the evidence which was produced during the 1st appeal.

4. That the ld. 1st Appellate Authority has also erred in not following the principal of natural justice.

5. That thus the 1st Appellate order passed is quite illegal unjust unwarranted contrary to facts and deserve to be set aside.

6. That the appellant further craves to add, alter and/or amend any of the forging ground as and when necessary.”

2. The registry has informed that the appeal should have been filed up to 18.05.2020 but the same has been filed on 02.03.2022 after a delay of 653 days. The Ld. AR prayed that the assessee has filed an application with affidavit seeking condonation of delay, with the reasoning that the assessee is an agriculturist, resides in a village and having very nominal education. Therefore, the appeal could not be filed in time. Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

3. The facts are such that the department received an information from Annual Information Report that the assessee had made total cash deposits of Rs. 37,00,000/- in a bank account during the previous year 2010-11 relevant to assessment year 2011-12 under consideration. To enquire the sources of cash-deposits, the department issued notices dated 26.08.2016 & 02.08.2017 to the assessee but, however, no compliance was made by assessee. Finally, Ld. AO made a belief that the cash deposits had been made out of unexplained sources and hence the income chargeable to tax has escaped assessment. Accordingly, the Ld. AO issued notice u/s 148 on 21.03.2018 in order to frame assessment u/s 147 of the Act. However, the assessee did not make any compliance to this notice u/s 148. Subsequently,

the Ld. AO also issued notices dated 18.06.2018, 30.08.2018 and 30.11.2018 but the same were also not complied by the assessee. Lastly, the ld. AO made assessment u/s 144 of the Act to the best of his judgment and assessed total income at Rs. 37,30,689/- consisting of (i) Unexplained cash deposits in bank of Rs. 37,00,000/- u/s 68 of the Act, and (ii) Interest credited in bank account of Rs. 30,689/-.

4. Aggrieved by assessment-order, the assessee filed appeal to Ld. CIT(A). During appellate-proceeding, the assessee submitted that he was unable to comply with the notices of Ld. AO for the reasons that (i) he is an agriculturist, (ii) he resides in a rural area, (iii) he had a very nominal education, (iv) he is not aware of Income-Tax requirements, and (v) he does not know how to proceed in income-tax matters. The assessee also filed certain additional-evidences to Ld. CIT(A) for consideration. However, the Ld. CIT(A) was not convinced with these reasons given by assessee. Ld. CIT(A) also observed that the assessee had not filed a proper application under Rule 46A of the Income Tax Rules, 1962 for admission of additional evidences. With these reasoning, Ld. CIT(A) upheld the order of assessment as well as additions made by ld. AO and did not grant any relief to the assessee.

5. Aggrieved by order of Ld. CIT(A), the assessee has filed this appeal before us. During the hearing, Ld. AR appearing on behalf of the assessee submitted very humbly that the assessee is genuinely an agriculturist, resides in a rural area, very nominally educated for the name-sake and does not know the proceedings of income-tax. Ld. AR submitted that these reasons assigned by the assessee are not frivolous reasons, they are actual and genuine reasons. Ld. AR went on submitting that even he had to persuade the assessee personally for filing appeal. Ld. AR submitted that there was no malafide intention of assessee in not complying with the notices issued by Ld. AO, the reasons cited by assessee were responsible for this happening. Ld. AR very humbly submitted that in order to grant substantial justice and for a fair and proper assessment in accordance with law, an opportunity must be given to the assessee so that the assessee can

submitted all necessary details / documents to the authorities. Ld. AR further assured that the assessee will co-operate the department and submit the details and documents as required. Ld. AR further requested that it would be better to remand this case back to the Ld. CIT(A) so that the litigation comes to an early-end, considering the age and state of assessee.

6. Ld. DR opposed the submissions of Ld. AR.

7. Having regard to the legitimate reasons explained by Ld. AR, the financial liability likely to fall upon the assessee, the willingness of assessee to submit the details / documents to the authorities to enable them to make a proper assessment of taxable income / tax liability in accordance with law and keeping in view the objective to impart substantial justice, we are persuaded to remand this case back to Ld. CIT(A) for a fresh consideration in accordance with law. The assessee is also directed to co-operate the department, do not seek unnecessary adjournment and submit required details/documents to Ld. CIT(A). Accordingly, we remand this case to Ld. CIT(A) in terms indicated here. Needless to say the assessee be given opportunity of hearing by following principle of natural justice.

8. In the result, this appeal of Assessee is allowed for statistical purposes.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 30/08/2022.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.08.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	