

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.197/Ind/2022
(Assessment Year: 2009-10)

Avijit Shastri Vaishali Colony, Indore, Madhya Pradesh-452009	Vs.	ITO Ward-4(1), Indore
PAN No.BGXPS5553G		
(Appellant)	..	(Respondent)

Appellant by :	Shri Pankaj Shah, C.A.
Respondent by :	Shri Ashish Porwal, Sr. D.R.

Date of Hearing	12.01.2023
Date of Pronouncement	16 .01.2023

ORDER

PER SUCHITRA KAMBLE - JM:

This appeal is filed by the assessee against the order dated 09.06.2022 passed by the Ld. CIT-(Appeals), National Faceless Appeal Centre (in short “NFAC”), Delhi for A.Y. 2009-10.

2. The grounds of appeal raised by the assessee read as under:

“1. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) (“CIT(A)”) erred in not admitting the appeal by condoning the delay in filing of appeal which was attributable to reasonable cause. The Appellant prays that the order of CIT(A) and AO be set aside to the AO to decide the matter afresh on merits based on evidences and documents.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer in doing best judgment assessment under Section 144 of the Act by not adjudicating the matter on merits which is prayed to be quashed.

3. The CIT(A) also erred in not accepting the additional evidences relating to various investments and deductions as claimed in return of income filed by assessee which is prayed to be admitted in the interest of justice.

4. *On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer in making addition in the assessment and not accepting the income as returned by the Appellant. The Appellant prays that the said addition and adjustment be deleted and returned Income be accepted.*

5. *On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the action of Assessing Officer in disallowing the claim of Interest paid on Housing Loan under section 24(b) of Act amounting to Rs.2,86,170. The Appellant prays that the said disallowance be directed to be deleted.*

6. *On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) (“CIT(A)”), erred in confirming the disallowance of the claim of Repayment of Housing Loan of Rs. 42,761/- under Section 80C of the Income Tax Act. The Appellant prays that the said addition be directed to be deleted.*

7. *On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) (“CIT(A)”), erred in confirming the disallowance of the claim of Contribution towards recognized provident fund of Rs. 58212/- under Section 80C of Income Tax Act. The Appellant prays that the said addition be directed to be deleted.*

8. *On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) (“CIT(A)”) erred in confirming the action of Assessing Officer in not granting the credit of taxes paid and deducted amounting to Rs. 60960/- of the Appellant.*

9. *On the facts and circumstances of the case and in law the learned CIT(A) erred in passing an order which is illegal, unwarranted and in contravention to the principles of natural justice. The Appellant prays that the said order be directed to be quashed.*

10. *The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal.”*

3. The return of income was filed by the assessee through it's the then employer M/s. Nestle India Ltd., New Delhi on 29.07.2009 declaring total income at Rs. 9,04,200/-. The Assessing Officer issued notice under Section 143(2) on 18.08.2010. The case was received at Indore on transfer from ITO, Ward-3, Panipat. The detail questionnaire was issued on 30.08.2011. The questionnaire under Section 142(1) dated 25.11.2011 was issued to the permanent address of the assessee which was received back unserved by the Assessing Officer. The Assessing Officer passed assessment order under Section 143(3) on 22.12.2011 thereby making

addition on account of set off of loss reduced from income and addition on account of withdrawal of deduction claimed under Chapter VIA.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A) on 15.09.2021. The appeal of the assessee was dismissed as there is delay of 10 years.

5. The Ld. A.R. submitted that the assessee is a private salary earner, during the period under consideration up to 20.09.2008 and was serving with Nestle India Ltd. New Delhi and thereafter joined Wanbury Ltd. Mumbai on 23.09.2008. The assessee left Wanbury Ltd Mumbai on 06.11.2009 and join Cadbury India Ltd. Mumbai on 09.11.2009. Due to frequent changes in the employment, the assessee could not receive the notices issued by the department, as most of the notices sent by the employer of the assessee. During this period parents of assessee also retired from State Bank of India and shifter to Pune, therefore, assessee could not receive any notice of the department under Section 142/143(2). The ITO-4(1), Indore passed assessment order under Section 144 r.w.s. 143(3) of the Income Tax but the same order was not received by the assessee. The Ld. A.R. submitted that as regards the refunds due to the assessee for A.Y. 2013-14 (Rs. 94,860/-) and A.Y. 2018-19 (Rs. 45,847/-) when the counsel of the assessee was perusing for these refunds at that juncture the assessee came to know that these refunds were adjusted against the very old demand, thereupon the counsel of the assessee approached the department for details of old demand. The assessee then informed by the ITO-4(1), Indore that there was an ex-parte assessment for A.Y. 2009-10 with demand of Rs. 2,64,730/-. The counsel of the assessee made a written request to ITO-4(1),

Indore to issue the copy of assessment order on 03.01.2020 and thereafter regularly perusing the department to obtain the copy of assessment order and after that the assessee received the assessment order only on 16.08.2021. Thereafter, the assessee within one month period filed the appeal before the CIT(A). Thus, the Ld. A.R. submitted that the delay was not deliberate but due to this unavoidable circumstances. Therefore, the Ld. A.R. submitted that the matter may be remanded back to the file of the Assessing Officer as the assessment order itself is passed ex-parte.

6. The Ld. D.R. submitted that the assessee had ample opportunity to pursue the assessment order in the relevant years. But the assessee failed to do so. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer in Para 2 of the assessment order itself admitted that notice sent by the office was received back unserved. There was no effort made by the Assessing Officer to serve the statutory notice to the assessee thereafter. The assessee has in detail explained the situation because of change in employment and change of places due to his employment the assessee could not follow all the notices as well as the assessment proceedings. The reason given by the assessee appears to be genuine. Though, the delay is more than 10 years the same is properly explained by the assessee. The affidavit filed by the assessee before the CIT(A) was not properly considered by the CIT(A). Therefore, in the interest of justice it will be appropriate to remand back the issue on merit to the file of the Assessing Officer as the assessment order

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itself is ex-parte and the assessee had never had the opportunity to appear before the Assessing Officer and plead his case alongwith the documentary evidences. The delay condoned in the present appeal is factual centric in the present appeal itself and the same should not be taken as precedent in any other case. Needless to say, the assessee be given opportunity of hearing before the Assessing Officer as per principle of natural justice.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced on 16 /01/2023 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

This Order pronounced in Open Court on /01/2023

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)

ACCOUNTANT MEMBER

Ahmedabad; Dated 16/01/2023

TANMAY, Sr. PS

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, इंदौर/ DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

(SUCHITRA KAMBLE)

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

(Sr. Private Secretary)

ITAT, Indore

1. Date of dictation 12.01.2023
2. Date on which the typed draft is placed before the Dictating Member 13.01.2023
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S .01.2023
5. Date on which the fair order is placed before the Dictating Member for pronouncement .01.2023
6. Date on which the fair order comes back to the Sr.P.S./P.S .01.2023
7. Date on which the file goes to the Bench Clerk .01.2023
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....