

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

(Convened through Virtual Court)

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.168/Ind/2022
(Assessment Year: 2011-12)

Shri Nishant Kumar Tiwari 256, Gram Akbarpur, Dist. Dewas (M.P.) - 455221	Vs.	Income Tax Officer-1 Dewas
PAN No. ALBPT9376N		
(Appellant)	..	(Respondent)

Appellant by :	Shri Manjit Sachdeva, A.R.
Respondent by :	Shri Ashish Porwal, Sr.D.R.

Date of Hearing	25.01.2023
Date of Pronouncement	30.01.2023

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 16.07.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 04.12.2018 passed by the ITO-1, Dewas, under Section 144 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2011-12.

2. There is 260 days delay in preferring the appeal before us. An application for condonation of delay was also filed on 30.05.2022 wherefrom it appears that the assessee is handicapped and suffering from hemophilia disease. Under these circumstances, the matter has been requested to taken care of by the brother of the assessee Gaurav Tiwari who

was also suffering from Typhoid and was hospitalized at Civil Hospital, Kannod in the District of Dewas from 13.07.2021 to 20.07.2021. The certificate whereof is also annexed to this application for condonation of delay. In fact, the Appellate order was received by the assessee on 16.07.2021 but due to prolonged lockdown as the outcome of Covid-19, the appeal could not be filed in time coupled with the reason as already discussed hereinbefore. The Ld. AR, under these circumstances prayed for condonation of delay, which was with all his fairness, the Ld. DR has not made any serious objection.

3. Having heard the Ld. Counsels appearing for the parties and having regard to the particular facts and circumstances of the matter, for the ends of justice, we find it fit and proper to condone the delay in preferring instant appeal preferred before us by the assessee.

4. The matter relates to order dated 16.07.2021 passed by NFAC, Delhi, which was finalised against the assessee by confirming the addition of Rs.12 Lakhs on the count that the said impugned amount has been paid to the Index Medical College run by the Mayank Welfare Society apart from the regular fees. Relevant to mention that the order passed by the Ld. AO is also under Section 144 of the Act due to non-compliance of notice issued to the assessee. Thus, admittedly, the order impugned is an outcome of the ex parte order. In order to prevent the miscarriage of justice, we find that the assessee should be given further opportunity of being heard by the authorities below. In that view of the matter, we dispose of this appeal by remitting the issue to the file of the Ld. AO to pass a reasoned order afresh upon giving reasonable opportunity of being heard to the assessee and upon taking into consideration the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter.

We also make it clear that the assessee would also not pray for any unnecessary adjournment and would render full cooperation with the authorities below.

5. In the result, assessee's appeal is allowed for statistical purposes.

This Order pronounced on 30/01/2023

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER
Indore; Dated 30/01/2023

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

S. K. Sinha, Sr. PS

True Copy

आदेश की प्रतिलिपि अग्रेषित/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, / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Sr. Private Secretary)
ITAT, Indore