

**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.338/Ind/2022
(Assessment Year: 2011-12)

Christopher Kujur 256, Alka Puri, Dewas, M. P. 455001	Vs.	ITO-1, Dewas, M. P.
PAN No. ABWPK4929P		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by :	Shri Ashish Porwal, Sr. D.R.

Date of Hearing	06.02.2023
Date of Pronouncement	27.02.2023

ORDER

PER SUCHITRA KAMBLE - JM:

This appeal is filed by the assessee against the order dated 01.09.2022 passed by the Ld. CIT-(Appeals), National Faceless Appeal Centre, Delhi for A.Y. 2011-12.

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

“1. *Ex-parte dismissal of appeal filed.*

2. *That having regard to the facts and circumstances of the case the CIT Appeal NFAC, Delhi has erred in law and on facts in dismissing the appeal ex-party without giving proper and sufficient opportunity and further erred in holding the penalty order of the A.O. dt. 21.05.2019 passed u/s 271F of the Act upholding the action of the A.O. correct.*

3. *That in the appeal case and in view of the matter action of CIT Appeal NFAC, Delhi dismissing the appeal ex-party under this section is bad in law and against the facts and circumstances of the case.*

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4. *That having regard to the facts and circumstances of the case the CIT Appeal NFAC, Delhi has erred in law and on facts in holding the penalty order is correct ex-party is against the principle of natural justices as there was sufficient cause for absence in last date of hearing 30.08.2022 as the real elder Brother Lt. Shree Rajendra Kumar Mahajan, Dist. And Session Judge (Retd.) of the Sr. Counsel of the appellant CA A. K. Mahajan suddenly expired due to severe Heart Attack on 29.08.2022. The Sr. Counsel of the appellant CA A.K. Mahajan was shocked, under mental trauma due to sudden and untimely personal loss of family member; they were engaged in the final rituals of the deceased elder brother resulting in non-attendance on the fixed date of appeal on 30.08.2022.*

5. *Sir it is further prayed that no penalty under section 271F for delay in Filing Income Tax Return under Bona Fide Belief that No Taxable Income existed. The appellant had reasonable cause for not filing the return of income before due date of filing of return; the wrong penalty charged u/s. 271F therefore deserves to be cancelled and it is prayed to kindly cancel the same.*

6. *The Ld. CIT(A) was not justified in upholding order of AO charging penalty of Rs. 5,000/- u/s. 271F.*

7. *The appellant craves leaves to add, alter, amend, delete any of the grounds of appeal.*

8. *The appellant craves leaves to refer to any material, documents, evidences placed on record.”*

3. The assessee is an individual. The Assessing Officer issued notice under Section 148 on 28.03.2018 and thereafter issued notice under Section 142(1) dated 23.05.2018. The last notice was issued on 29.10.2018, but the assessee did not respond to the notices issued by the Assessing Officer, therefore, the Assessing Officer passed assessment order under Section 144 of the Act thereby determined total income of assessee at Rs. 13,46,200/-. Thereafter, the Assessing Officer issued notice under Section 271F dated 03.12.2018 for not filing the return of income under Section 139 and imposed penalty of Rs. 5,000/-.

4. Being aggrieved by the order under Section 271F the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal.

5. At the time of hearing none appeared on behalf of the assessee despite giving notice. There is no change in address and therefore we are proceeding on the basis of the submissions made by the assessee before the CIT(A) which are reproduced as well as grounds of appeal filed alongwith Form No. 36 before us.

6. The Ld. D.R. relied upon the assessment order and the order under Section 271F of the Act. The Ld. D.R. submitted that the penalty passed under Section 271F is just and proper. The Ld. D.R. relied upon the order of CIT(A) as well.

7. We have heard Ld. D.R. and perused all the relevant material available on record. It appears that the CIT(A) issued notice to the assessee on 24.03.2021 and 22.08.2022 but whether those notices are served or not has not been mentioned in the order of the CIT(A). Further from Ground No. 4 of the assessee's appeal it appears that the Chartered Accountant of the assessee has expired on 29.08.2022 and therefore, the assessee could not attend the proceedings before the CIT(A), thus, there was a genuine reason for not attending the proceedings before the CIT(A). Therefore, in the interest of justice we are remanding back the issue contested by the assessee before the CIT(A) to be decided after giving hearing to the assessee. Needless to say, the assessee be given opportunity of hearing by following principle of natural justice. It is pertinent to note that in case the assessee did not cooperate before the CIT(A) and delays the appellate proceedings the CIT(A) may pass the

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order accordingly. Appeal of the assessee is partly allowed for statistical purposes.

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

Order pronounced on 27/02/2023 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 27/02/2023

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER
Ahmedabad; Dated 27/02/2023
TANMAY, Sr. PS

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

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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, आयकर अपीलीय अधिकरण,इंदौर/ DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Sr. Private Secretary)
ITAT, Indore