

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

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
ITA No.417/Ind/2022  
Assessment Year: 2011-12**

<b>Smt. Sheetal Kaushal, House No. 9C, Indrapuri Raisen Road, Bhopal M.P. Pin. 462022 PAN-AQOPK6965C</b>	v.	<b>ITO-5(2), Bittan Market, Bhopal, M.P.</b>
(Appellant)		(Respondent)
Assessee by:	Smt. Nisha Lahoti, CA	
Respondent by:	Sh. Ashish Porwal, Sr. DR	
Date of hearing:	01.03.2023	
Date of pronouncement:	22.03.2023	

**ORDER**

**SHRI VIJAY PAL RAO, J.M.:**

This appeal by the assessee is directed against the order dated 13.07.2022 of CIT(A) for the Assessment Year 2011-12.

2. There is a delay of 93 days in filing the present appeal. The assessee has filed an application/affidavit explaining the cause of delay and seeking condonation of delay in filing the appeal. I have heard the Learned AR as well as Learned DR and considered the reasons explained in the application for condonation of delay. The assessee has explained the cause of delay in filing the appeal as she has not received the impugned order of the CIT(A) which was available only on the e-portal of the Department and the assessee was not aware about the impugned order passed by the CIT(A). She has stated in the affidavit that the assessee did not received the impugned order through post and therefore, she was not aware

about the impugned order till a call was received from the Income Tax Office. Thus, the assessee has pleaded that the delay in filing the appeal is neither intentional nor deliberate but due to the reasons which were beyond the control of the assessee as the assessee was not served with the impugned order through post and immediately after knowing the fact that the order is available on e-portal of the Department, she took immediate steps for filing the present appeal. The Learned DR has objected to the condonation of delay and submitted that the assessee was negligent about filing of the present appeal within the period of limitation and cannot take an excuse of not knowing the availability of the order on e-portal of the Department.

3. Having considered the reasons explained by the assessee as well as submissions of the Ld. DR, I find that when the impugned order was not served on the assessee either by postal mode or by e-mail then the reasons explained by the assessee constitute a reasonable cause for delay in filing the present appeal. Accordingly, the delay of 93 days in filing the present appeal is condoned.

The assessee has raised the following grounds of appeal:

*"1. That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.*

*2. That the delay in filing of Appeal be kindly condoned.*

*3. That the order of the learned lower authorities passed are unlawful and illegal.*

4. *That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard. Also the Learned CIT (Appeals) National Faceless E-Appeal Centre, was also not justified in not allowing any opportunity of personal hearing through digital media before confirming the disallowance.*

5. *That the various findings of the learned lower authorities are opposed to the facts hence the same may kindly be quashed.*

6. *That on the facts and circumstances of the case the Learned lower authorities erred and were not justified in making addition of Rs.35.20,000/- on account of unexplained investment U/s 69 of the Act.*

7. *That the above grounds are independent to each other.”*

4. The Ld. AR of the assessee has submitted that the assessment order was passed by the AO under Section 144 of the Income Tax Act as the assessee could not appear before the AO for want of service of notices. The AO has made the addition on account of unexplained investment in the property of Rs. 35,20,000/- while passing the *ex-parte* order which was challenged by the assessee before the CIT(A) but due to non-receipt of notice from the CIT(A), the assessee could not appear before the CIT(A), as the notices were issued online on the e-portal or on the e-mail which were not come to the notice of the assessee as she was not aware about the mode of service of notices. He has further submitted that the CIT(A) has passed the *ex-parte* order and dismissed the appeal of the assessee in limine without deciding the same on merits. Hence, the Ld. AR has submitted that the impugned order of the CIT(A) may be set aside

and the matter may be remanded to the record of the Assessing Officer for deciding the same afresh after giving an opportunity of hearing to the assessee. On the other hand, the Ld. DR has opposed the contention of the assessee and submitted that the assessee was negligent in appearing before the AO as well as before the CIT(A) therefore, the assessee does not deserve any further opportunity.

5. I have considered the rival submissions as well as relevant material on records. The assessee is individual and filed return of income for the year under consideration on 14.07.2011 declaring total income of Rs. 1,84,750/-. The AO reopened the assessment on the basis of the AIR Information generated through system disclosing the investment of Rs. 35,20,000/- by the assessee in the immovable property during the year under consideration vide notice under Section 148 dated 20<sup>th</sup> March, 2018. Since, there was no response to the notice issued by the AO under Section 148 as well as under Section 142(1) of the Income Tax Act therefore, the AO proposed to pass the best judgment assessment under Section 144 of the Income Tax Act and did so while passing the order on 24.12.2018. The assessee challenged the action of the AO before the CIT(A) and pointed out that the assessee produced all the relevant details and documentary evidences in response to the inquiry conducted by the AO prior to issuing the notice under Section 148 of the Income Tax Act. The assessee also pointed out that the notice issued by the AO were sent at the wrong address and therefore, there was no appearance of the assessee before the AO. The CIT(A)

issued four notices of hearing of the appeal but again there was no appearance on behalf of the assessee before the CIT(A) and consequently the appeal of the assessee was dismissed in limine for non-prosecution. It is manifest from the impugned order that the CIT(A) has proceeded to dismiss the appeal of the assessee for non-prosecution in Para 8 is as under:

*“8. As seen from the above, despite four opportunities being provided to the appellant over a span of nearly nineteen months, no response has been received from the appellant to any of the hearing notices. From the above it is clear that despite several and adequate opportunities being given over a long span of time, no submissions have been filed by the appellant in support of the present appeal. Hence the appeal filed by the appellant is liable to be dismissed for non-prosecution.”*

In Para 9 and 10 of the impugned order, the CIT(A) has dismissed the appeal for non-prosecution as under:

*“9. Even on examination of order u/s 144, material available on record and merits it is seen that vide the hearing notices the appellant was asked to furnish submissions in support of the grounds of appeal filed by him. However, despite the multiple requests, no response has been not been filed by the appellant till date despite 4 notices over a span of nineteen months. Examination of record shows that with form 35, only two pages of the sale deed have been attached by the appellant which is incomplete. Therefore, as the information available is only partial and the appellant has not supplemented the same as she has not responded to any of the four notices sent to her over a span of 19 months, there is no reason available on record*

for any change in the order of the AO. Thus the order u/s 144 of the AO is confirmed. Accordingly, the single ground of appeal is dismissed.

10. Thus, the appeal of the appellant is dismissed on merits, non-prosecution and delay. In the result, the appeal is dismissed.”

6. Thus, the appeal of the assessee was dismissed for non-prosecution and was not decided on merits. Accordingly, the impugned order of the CIT(A) is set aside. Since, the assessment order was also passed under Section 144 of the Act therefore, the relevant record and explanation to be filed by the assessee requires proper verification and examination at the level of the AO. Accordingly, the matter is remitted to the record of the Assessing Officer for deciding the same afresh after giving an opportunity of hearing to the assessee.

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

Order pronounced on 22/03/2023 as per Rule 34 (4) of I.T.A.T. Rules, 1963.

*Sd/-*  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

Dated: 22/03/2023

Allahabad

K.D. Azmi

Copy forwarded to:

1. Appellant-Smt. Sheetal Kaushal
2. Respondent- ITO-5(2),
3. CIT(A),
4. CIT
5. DR

By order