

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.80/Ind/2020
Assessment Year: 2009-10

Shri Sharad Sharma H-3B, Nishant Colony, 74 Banglows, T.T. Nagar, Bhopal	बनम/ Vs.	ACIT (Central), Gwalior
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AMZPS 9791D		
Assessee by	Shri Kunal Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.03.2023	
Date of Pronouncement	31.03.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 11.11.2019 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**Ld. CIT(A)**] u/s 250 of the Income-tax Act, 1961 [**the Act**], which in turn arises out of assessment-order dated 07.12.2016 passed by learned ACIT, Central, Gwalior [**Ld. AO**] u/s 147 read with section 143(3) of the act for Assessment-Year [**AY**] 2009-10, the assessee has filed this appeal on various grounds as mentioned in the Appeal Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Ld. AR representing the assessee submitted that the present appeal has been filed after a delay of 13 days. He submitted that the assessee has filed an application for condonation of delay which is on record. He submitted that after the receipt of the order appealed against, the assessee discussed the matter with his regular counsel and it was decided to file appeal, but after sometime the assessee observed that the counsel was not seriously working for preparation and filing of appeal. Therefore, the assessee appointed a new counsel and arranged for filing. In this process, the appeal got delayed. Ld. AR submitted that the delay is marginal; not attributable to willful default of assessee and it has happened due to a reasonable circumstance. Ld. AR made a humble prayer to condone the delay. We confronted Ld. DR representing the revenue who did not show any objection. In view of this, the delay is condoned and the appeal is proceeded with.

4. Ld. AR narrating the facts and chronological events having taken place in the present case, submitted that the AO initiated action u/s 147 through notice u/s 148 dated 30.03.2016 which culminated into passing of assessment-order dated 07.12.2016 u/s 147 read with section 143(3). Aggrieved by same, the assessee filed first-appeal to Ld. CIT(A) which came to be decided by order dated 11.11.2019 u/s 250 of the Act wherein Ld. CIT(A) granted part-relief. Assailing this order dated 11.11.2019, the assessee has filed present appeal before ITAT. However, during the period between 07.12.2016 to 11.11.2019, Ld. PCIT (Central), Bhopal exercised revisionary jurisdiction vide order dated 10.01.2019 u/s 263 whereby the aforesaid assessment-order dated 07.12.2016 was held as erroneous-cum-prejudicial to the interest of revenue; was set aside and the AO was directed to reframe assessment de novo. Thereafter, in pursuance of such revision-order, the AO passed a fresh assessment order dated 30.09.2019. Thus, according to Ld. AR the original assessment-order dated 07.12.2016 has become non-est; consequently the order of Ld. CIT(A) dated 11.11.2019 u/s 250 relatable to that assessment-order has no legs to stand. Therefore, the

present-appeal emanating from those orders has also become infructuous. Ld. AR has also made the very submission in Para No. 9 of his Written-Submission dated 15.03.2023:

“From the perusal of the above, it is clearly evident that since the Ld. Pr. CIT, Central, Bhopal has given direction to set aside the order and further directed to reframe the assessment order de novo, the said assessment order dated 07.12.2016 has become non-existent and the consequent appeal before the Hon’ble bench also therefore become infructuous.”

5. On careful consideration, we agree with the fair submission made by Ld. AR that the present-appeal has become infructuous. Ld. DR also agrees. Therefore, the present appeal deserves to be dismissed/disposed of as infructuous.

6. However, Ld. AR has also submitted that the assessee has filed another appeal before Ld. CIT(A) against the fresh assessment-order dated 30.09.2019 which is pending before Ld. CIT(A). Ld. AR has made a prayer to give liberty to the assessee to raise all issues before Ld. CIT(A) i.e. the issues arising from original assessment-order dated 07.12.2016 as well as fresh assessment-order dated 30.09.2019. Ld. AR has made this prayer in Para No. 10 of his Written-Submission:

“The said plea could not be raised before the Ld. CIT(A) 3, Bhopal due to different counsel representing the assessee. Thus, in view of above-mentioned facts and circumstances, we humbly request the Hon’ble Bench to kindly pass an appropriate order along with the liberty to exercise all the issues which Includes the issues covered by the assessment order dated 07.12.2016 and the issues covered in the assessment order dated 30.09.2019 before the Ld. CIT(A)-3, Bhopal simultaneously.”

7. We find that the appeal against fresh assessment-order is a subject-matter pending before Ld. CIT(A) and the assessee may make such a prayer before him explaining all facts. Thereafter, the Ld. CIT(A) will take a call in accordance with law.

8. Resultantly, this appeal of assessee is dismissed/disposed of in terms indicated above.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 31/03/2023.

Order pronounced in the open court on/...../2023.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31.03.2023

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 approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	