

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.413/Ind/2022
Assessment Year: 2017-18

Kailash Singh F.No.513, Bhagwan Parisar Hoshangabad Road, Misroad, Bhopal (Appellant / Assessee)	<u>बनम/</u> Vs.	DCIT/ACIT 1(1) Bhopal (Respondent / Revenue)
PAN: AHIPS 0796 G		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	30.03.2023	
Date of Pronouncement	18.04.2023	

आदेश / ORDER

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

Feeling aggrieved by appeal-order dated 11.07.2022 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 17.12.2019 passed by learned DCIT/ACIT-1(1) Bhopal, [**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2017-18, the assessee has filed this appeal on following grounds:

“1. That on the facts and in the circumstances of the case and in law, the findings of learned Commissioner of Income Tax (A), NFAC, Delhi are bad and opposed to facts, equity and law and are, therefore, unsustainable in law.

2. For that in the facts and circumstances of the case, the Commissioner of Income Tax (A), NFAC, Delhi erred in violating the principles of natural justice by not providing opportunity of hearing to the assessee, the action of the Commissioner of Income Tax (A), NFAC, Delhi was wholly unreasonable, uncalled for and bad in law.

3. That on the facts and in the circumstances of the case and in law, the learned A.O. as well as Commissioner of Income Tax (A), NFAC, Delhi erred in making addition of Rs. 72,47,812/- on account of estimation of profit, without appropriate reasons and justification, hence the same should be deleted.

4. Because the Commissioner of Income -Tax (A), NFAC, Delhi has passed expate order without appropriate opportunity of hearing.

5. The appellant craves leave to add/alter any of the grounds of the appeal before or at the time of hearing.”

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

3. The registry has informed that the present appeal is delayed by 19 days and therefore time-barred. Ld. AR submits that the assessee has filed an application for condonation of delay supported by an affidavit on stamp. On perusal of the application/affidavit, we observe that the assessee has stated that his father was a senior citizen and seriously ill and there arose complications in his treatment; hence there occurred a small delay of 19 days in filing the appeal. Ld. AR very humbly submits that there is no deliberate lethargy, negligence or mala fide intention of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submits that the sole reason of delay is the illness of assessee's father. Ld. DR left the matter to the wisdom of Bench. We have considered the explanation of assessee and in absence of any contrary fact or material on record, the assessee is found to have a reasonable cause for delay in filing the present appeal. Placing reliance on the decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with appeal.

4. Ld. AR carried us to Para No. 5 of the order of Ld. CIT(A) and 'submitted that all notices of hearing of first-appeal were issued to the mail kailashsingh2504@yahoo.com of assessee. But those notices could not come to the knowledge of assessee since the assessee is not accessing the impugned mail id. Ld. AR carried us to Form No. 36 (Appeal Memo) to demonstrate that the assessee has given a different mail id even in the said Form No. 36 for the very same reason. Ld. AR submits that since the notices of hearing of first appeal were not received, the assessee could not attend the hearing, which has led to the passing of *ex-parte* order by Ld. CIT(A). Ld. AR prays that the matter may be remanded to the file of Ld. CIT(A) for a proper adjudication on merit after giving due opportunity of hearing to the assessee. Ld. DR does not have any objection but prays to direct the assessee to represent his case before Ld. CIT(A) and do not seek unnecessary adjournments. In view of such pleadings by parties and also having regard to the principle of natural justice and fair play, we deem it fit and appropriate to remand this matter back to the file of Ld. CIT(A) for a proper adjudication after giving opportunity of hearing to the assessee, uninfluenced by his earlier decision. We order accordingly. The assessee is also directed to ensure participation in the hearings fixed by Ld. CIT(A) and do not seek unnecessary adjournments.

5. Resultantly, this appeal of assessee is allowed for statistical purpose.

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

Order pronounced in the open court on 18/04/2023.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :18.04.2023

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	