

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**ITA No. 357/Ind/2022
Assessment Year: 2010-11**

Sunita Gupta 404 Suraj Villa, 9/2, New Palasia, Indore-452001 PAN No: ADCPG7885L (Appellant)	Vs	ACIT Circle-2(1), Raipur (Respondent)
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**Assessee Represented: Shri Ashish Goyal &
Shri N.D. Patwa, A.Rs.
Revenue Represented: Shri Ashish Porwal, Sr. D.R.**

Date of hearing : 18-01-2023
Date of pronouncement : 21-04-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee against the Appellate order dated 16.11.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out the Assessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. The registry has noted that there is delay of 269 days in filing the appeal before the Tribunal. The assessee has filed a notarized affidavit stating that her husband Shri Mahendra Gupta was looking after the Income tax proceedings. However, he was imprisonment between February, 2019 to 22nd October, 2021. Hence, he could not appear before Ld. CIT(A)-NFAC and cooperate for the hearing of the appeal.

2.1. After release from imprisonment, the assessee's husband enquire from the present Counsel about the Income tax proceedings and on going through the Income Tax Portal that he came to know about the ex-parte order passed on 16.11.2021. Immediately, thereafter the appeal is filed with a delay of 269 days and therefore pleaded to condone the genuine reasons for the delay in filing the above appeal in the interest of justice.

2.2. The Ld. Sr. D.R. Mr. Ashish Porwal has no serious objection in condoning the delay. However since the assessment order itself is an ex-parte order, so the assessee should cooperate with the Department in completing the adjudication. Considering the above submissions of the Ld. Sr. D.R., we hereby condone the delay of 269 days in filing the appeal before the Tribunal.

3. The brief facts of the case is that the assessee is an individual who filed her Return of Income for the Assessment Year 2010-11 on 14.03.2011 declaring total income of Rs. 7,89,970/-. Thereafter

assessment was reopened u/s. 147 on the ground that the assessee sold 30,000 shares of Konark Commerce Industries Ltd. and earned capital gain of Rs. 29,19,000/- but no capital gain was offered in the Return of Income filed by the assessee. The assessee has not replied to the reopening notice as well as 142(1) notices. Therefore the Assessing Officer completed the best judgment assessment under section 144 treating the sale of shares amounting to Rs. 29,19,000/- as income from unexplained sources u/s. 68 of the Act r.w.s. 115BBE of the Act.

4. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A)-NFAC. The Ld. NFAC given five opportunities of hearing of the appeal, however the assessee neither responded nor not sought for any adjournment. Therefore the Ld. CIT(A) confirmed the addition made by the Assessing Officer being the sale of shares is a Penny Stock Company.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

On the facts and the circumstances of the case:-

1. *That the Ld. CIT(A), NFAC was not justified in confirming the assessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

2. *The Ld. CIT(A), NFAC was not justified in providing sufficient opportunity to the appellant to furnish document or reply in support of the claim and confirming the addition.*

3. *The Ld. CIT(A) NFAC not justified in confirming the addition amounting to Rs. 29,19,000/~ as income from unexplained sources u/s. 68 without considering the facts & circumstances of the case.*

4. *The Id CIT(A) NFAC not justified in invoking the provisions of Section 115BBE of the Act.*

6. Ld. Counsel submitted since the assessee's husband was imprisonment statutory appeal could not be pursued before Ld. CIT(A), therefore requested one more opportunity be given so that the assessee can make out a good case before Ld. CIT(A).

7. Per contra, the Ld. Sr. D.R. submitted that the assessment order itself is an ex-parte order so the assessee should cooperate with the Department in completing the assessment.

8. We have given our thoughtful consideration and perused the materials available on record. After considering the submissions of the rival parties, we are of the considered opinion that in the interest of natural justice, the matter be set aside to the file of the Ld. CIT(A) to give one more opportunity to the assessee to make out its case by filing relevant and necessary documents before the Ld. CIT(A)-NFAC.

9. With this observations, the appeal filed by the assessee is allowed for statistical purpose. Needless to say, the assessee should cooperate with the Ld. CIT(A) to decide the appeal on merits of the case.

10. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in open court on 21 -04-2023

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore: Dated 21/04/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. **Concerned CIT**
4. **CIT (A)**
5. **DR, ITAT, Ahmedabad**
6. **Guard file.**

By order

**Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore**

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	10/04/2023
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/04/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	04/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/04/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/04/2023
6) Date on which the file goes to the Bench Clerk	/04/2023
7) Date on which the file goes 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	