

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.60/Ind/2023
(Assessment Years:2013-14)**

GIRIJA COLONISERS, 06, ZONE-1, PRESS COMPLEX, M.P. NAGAR, BHOPAL, Madhya Pradesh PIN-462011.	Vs.	ACIT- 1(1), Aayakar Bhawan, Madhya Pradesh PIN-462011
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAHFG7019A		
Assessee by	Shri S.S. Deshpande, CA, AR	
Revenue by	Shri Ashish Porwal, ACIT- Sr.DR	
Date of Hearing	18.05.2023	
Date of Pronouncement	22.05.2023	

PER VIJAY PAL RAO (J.M.):

This appeal by the assessee is directed against the order dated 30/12/2022 of CIT(Appeals) NFAC Delhi for the assessment year 2013–14. The assessee has raised grounds of appeal as under:

- (1) *The reopening of the assessment is bad in law since there is no failure on the part of the assessee to disclose fully or truly all material facts. All material was disclosed by the assessee and the assessment was completed after considering all the facts.*
- (1.1) *The reopening of the assessment is bad in law.*
- (2) *The Ld. CIT(A) NFAC has erred in not providing the reasonable opportunity. The IT portal was not working in August 2021 and as such no compliance could be made.*
- (3) *The Ld. CIT(A) NFAC has erred in dismissing the appeal and upholding the addition of Rs.13,53,998/- being the disallowance of interest.*
- (4) *The addition of Rs.13,53,998/- may please be deleted.*
- (5) *The assessee craves to amend, alter or delete any of the grounds of appeal.*

2. At the time of hearing ld. counsel for assessee has submitted that ground number-1 has been raised by the assessee as additional ground first time before the tribunal. Since this ground goes to the root of matter and is purely legal ground which can be decided on the basis of the facts available on record and no new facts or material is required to be verified for adjudication of this ground therefore, this ground may be admitted for adjudication. He has relied upon the judgement of Hon'ble Supreme Court in case of National Thermal Power Corporation Limited versus CIT reported in 229 ITR 383 (SC).He has further submitted that the CIT (Appeals) has dismissed the appeal of the assessee while passing the ex-parte order. He has pointed out that the CIT(Appeals) has not afforded an effective opportunity of hearing to the assessee before passing the impugned order. He has submitted that none of the notices were sent in physical form but the same were sent at the registered email ID which could not be responded due to non-functioning of IT portal in the month of August 2021. Further, the issue involved in these appeals is regarding addition made on account of interest allowance by treating it as prior period expenditure which needs to be explained. Thus he has pleaded that the matter may be set aside to the record of the CIT(A) for fresh adjudication after giving an opportunity of hearing to the assessee.

3. On the other hand, Ld. DR has fairly submitted that since, the impugned order has been passed by CIT(Appeals) ex-parte therefore, he has no objection if the matter is set aside to the record of the Commissioner of Income Tax (appeals) for fresh adjudication.

4. We have considered the rival submissions as well as relevant material on record. At the outset we note that the CIT(A) has passed the impugned order ex-parte when nobody has made appearance nor any reply was filed to the notices issued by the CIT(Appeals). We find that the the CIT (Appeals) has dismissed these appeals of the assessee due to no reply/ submissions on behalf of the assessee. Since the assessee could not respond to the notices issued by the CIT(Appeals) due to some technical problem in the IT portal. Therefore, we are satisfied that the assessee was having reasonable reasonable cause for not filing the reply before the CIT(A). Hence, in the facts and circumstances of the case and in the interest of justice, we are of the considered view that the assessee be given one more opportunity to present it's case before the CIT(Appeals). Accordingly in the facts and circumstances and in the interest of justice we set aside the impugned order of CIT(A) and the matter is remanded to the

record of the CIT(A) for fresh adjudication of the same including the additional grounds raised by the assessee challenging the validity of reopening of the assessment after giving appropriate opportunity of hearing to the assessee.

7. In the result appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in open court on 22 /05/2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 22.05.2023

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*