

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**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. 107/Ind/2023**  
**(Assessment Year:2019-20 )**

Mr. Vineet Shrivastava E-7/795, Arera Colony Bhopal	vs.	ITO (IT & TP) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: BCXPS 2544 H</b>		
Assessee by	Shri Rohit Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.06.2023	
Date of Pronouncement	22.06.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is against assessment order dated 30<sup>th</sup> June 2022 passed u/s 143(3) r.w.s 144C(13) of the Act for assessment year 2019-20. There is a delay of 211 days in filing the present appeal. The assessee has filed an application for condonation of delay.

2. We have heard Ld. AR as well as Ld. DR on the condonation of delay. The Ld. AR has submitted that the impugned assessment order has been passed by the AO without giving effect to the directions of the DRP dated 29.06.2022. Therefore, the assessee initially filed an application dated 17<sup>th</sup> August 2022 before the AO with request to complete the assessment based on the fresh direction issued by the DRP dated 29<sup>th</sup> June 2022. The Assessing Officer has not passed any fresh order despite

the application filed by the assessee and therefore, the assessee was left with no option but to file the present appeal before the Tribunal against the impugned assessment order passed by the AO which suffers illegality as not inconsonance with the directions of the DRP dated 29<sup>th</sup> June 2022.

3. Thus, Ld. AR has submitted that the delay in filing the appeal is neither wilful nor deliberate but the assessee was pursuant an alternative remedy before the AO for passing assessment order on the basis of the fresh directions issued by the DRP dated 29<sup>th</sup> June 2022.

4. On the other hand, Ld. DR has submitted that the AO has passed the impugned order as per earlier directions of the DRP dated 19<sup>th</sup> May 2022 thereby the objections filed by the assessee were rejected for want of signature of the assessee.

5. Having considered the rival submissions and carefully perusal of the records at the outset, we note that initially the assessee filed the objections on 08.11.2021 against draft assessment order dated 29.09.2021. The said objections of the assessee were found to be not maintainable for want of the signatures of the assessee or its agent. Thereafter, the assessee filed fresh objections on 30<sup>th</sup> May 2022 which were decided by the DRP vide directions dated 29.06.2022. The AO has passed the impugned final assessment order on 30<sup>th</sup> June 2022 based on the earlier order of DRP dated 19<sup>th</sup> May 2022 whereby the objections of the assessee were treated as not maintainable and no directions were issued by the DRP. Subsequently, the assessee approached the AO by filing the application dated 17<sup>th</sup> August 2022 but the same was not entertained by the AO as no order was passed on the said application. Therefore, we are satisfied that the assessee has explained a reasonable cause for delay in filing the present appeal because the assessee was trying to avail alternative remedy before the AO for passing final assessment order in pursuant to assessment of DRP dated 29<sup>th</sup> June 2022. Accordingly, the delay in filing the appeal is condoned and appeal of the assessee is taken up for adjudication on merits.

6. The assessee has raised following grounds of appeal:

*“1. That on the facts and circumstances of the case & in law, the impugned assessment order passed under section 143(3) r.w.s 144C(b) by Learned Income Tax Officer, International Taxation ITO (TT&TP), Bhopal ("Ld. AO") is barred by limitation in view of the provisions of section 144C (3) of the Act and liable to be quashed.*

*2. That on the facts and circumstances of the case & in law and without prejudice of Ground No. 1, the impugned assessment order passed under section 143(3) r.w.s 144C(b) Ld. AO in pursuant to the directions of Ld. Dispute Resolution Penal ("Ld. DRP") dated 19 May 2022 is liable to be set aside being bad in law as it failed to take cognizance fresh directions of the DRP dated 29 June 2022 passed within the stipulated period prescribed under section 144C(12) of the Act.*

*3. That on the facts and circumstances of the case & in law and without prejudice of Ground No. 1, the Ld. AO erred in not following the specific directions dated 29 June 2022 of the Ld. DRP with respect to making a reference to the valuation officer for correct valuation of cost of acquisition of property and allowing deduction of INR 6,250 on account of transfer fee expense in the impugned assessment order, even though the same are binding on the Ld. AO hence liable to be quashed as the same is not consonance with the provisions of section 144C(13) of the Act.*

*4. Without prejudice of above grounds and in alternate on merits of the case, the Ld. AO erred in disregarding the Fair Market Value (FMV) (as on 01.04.2001) of asset property of INR 28,50,000 and incorrectly computed the FMV (as on 01.04.2001) as INR 5,15,684.*

*5. Without prejudice of above grounds and in alternate on merits of the case, the Ld. AO erred in disallowing the expenses on transfer of capital asset amounting to INR 31,250 for want of evidence without appreciating that such amount is paid to RBI Employees Medhavi Cooperative Housing Society Ltd.*

*6. Without prejudice of above grounds and in alternate on merits of the case, the Ld. AO erred in disallowing the benefit of section 54 of the Act amounting to INR 64,04,260 on alleged ground that the deposit in capital gain account scheme was made on 3 September 2019 falling beyond the due date of filing return under section 139 of the Act.*

*6.1 That the Ld. AO failed appreciate that the account opening application along with cheque number 151360 to the bank branch on 31 August 2019 were submitted at the bank on August 31, 2019 and confirmed by the IDBI Bank Manager Fort Branch, Mumbai, thus the due compliance of the provisions of section 54 of the Act is complied by the assessee to make such deposit before the due date of filing of return of income under section 139 of the Act.*

*7. That on the facts and circumstances of the case & in law, the Ld. AO erred in law in proposing the initiation of penalty proceedings under section 270A of the Act for underreporting of income”*

7. We have heard the Ld. AR as well as Ld. DR and considered relevant material on record. As it is apparent that the impugned assessment order passed u/s 143(3) r.w.s. 144C(13) of the Act is without considering the directions of the DRP dated 29<sup>th</sup> June 2022 and therefore, the same is not maintainable being not in pursuant to the fresh directions of the DRP. It is pertinent to note that earlier objection of the assessee were rejected by the DRP vide directions dated 19<sup>th</sup> May 2022 for want of proper signature and verification on behalf of the assessee. Subsequently, the assessee filed fresh objections on 30<sup>th</sup> May 2022 which were disposed of by DRP vide directions dated 29<sup>th</sup> June 2022. However, the AO has passed the impugned order without considering these directions of the DRP. Once the DRP has passed the fresh directions dated 29.06.2022 then the earlier directions dated 19<sup>th</sup> May 2022 ceased to exist and therefore, the impugned order passed by the AO on the basis of the earlier directions and not in pursuant to the fresh directions dated 29.06.2022 suffers irregularity. Accordingly, in the facts and circumstances of the case and in the interest of justice we set aside the impugned assessment order and matter is remanded to the record of the AO to pass a fresh final assessment order in pursuant to the directions of the DRP dated 29.06.2022.

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

Order pronounced in the open court on 22.06.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 22 .06.2023**

**Patel/Sr. PS**

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

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*