

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 Nos.79 & 80/Ind/2021
Assessment Years: 2011-12 & 2012-13

The Branch Manager, Bank of India, Laxmibai Nagar Branch, Ramchandra Nagar, Indore	<u>बनाम/</u> Vs.	ITO(TDS)-2, Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AAACBO472C / TAN: BPLB02292D		
Assessee by	Shri S.N.Agrawal, C.A.	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	24.05.2023	
Date of Pronouncement	22.06.2023	

आदेश/O R D E R

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

These two appeals by the assessee are directed against the appeal-order dated 17.06.2019 (AY 2011-12) and 01.08.2019 (AY 2012-13), both passed by CIT(A)-2, Indore, which in turn arises out of order dated 16.03.2018 and 14.03.2019 respectively passed by ITO(TDS)-2, Indore u/s 201(1)/201(1A) of the Income-tax Act,1961. Since the issues for adjudication are identical in both cases, we have heard both of these appeals together and they are being disposed of by this common order.

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

I.T.A.No. 79/Ind/2021 - A.Y.2011-12:

3. This appeal challenges the order dated 17.06.2019 passed by Ld. CIT(A). On perusal of Form No. 36, it is found that the assessee has mentioned date of service of impugned order as "19.12.2020"; accordingly the registry has calculated delay of 34 day in filing of appeal. On perusal of record, we find that the assessee has filed a condonation application supported by an affidavit dated 04.04.2023; the affidavit is scanned below:

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अनुक्रमांक नं. 233/2023
दिनांक 04.04.2023

AFFIDAVIT

Name Shri Surendra Kumar Meena
Father Name Shri Jagdish Narayan Meena
Address Bank of India, Ramchandra Nagar Branch (Earlier known as Laxmibai Nagar Branch)
Ramchandra Nagar, Airport Road Indore [M.P.]

I, solemn affirm on oath as under:

1] I am presently working at the post of Sr. Branch Manager in Bank of India Ramchandra Nagar Branch (Earlier known as Laxmibai Nagar Branch), Ramchandra Nagar Airport Road, Indore [M.P.].

2] The appellate order in the case of Bank of India Ramchandra Nagar Branch (Earlier known as Laxmibai Nagar Branch), Ramchandra Nagar Airport Road, Indore [M.P.] was passed by the Ld CIT [A]-2, Indore on 17-06-2019 which was actually received to the branch on 19-12-2020.

I further affirm and confirm that whatever is stated in Para 1 to 2 of this affidavit is true and correct to the best of my knowledge, information and belief and that nothing has been concealed from being disclosed.

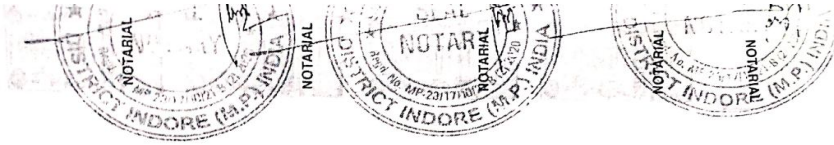
Solemnly declared and affirmed on this 4th day of April , 2023

Shri Surendra Kumar Meena
Shurendra
Sr. Branch Manager
Bank of India, Ramchandra Nagar Branch (Earlier known as Laxmibai Nagar Branch)
Ramchandra Nagar, Airport Road, Indore

SWORN BEFORE ME

Sworn in before me on this 04
the day of Apr 2023 by Shri Surendra
Kumar Meena Sr. Shri Jagdish Narayan Meena
who has been identified by Shri self
who is personally known

4. Thereafter, the assessee has filed a revised condonation application supported by a revised affidavit dated 02.05.2023; the revised affidavit is scanned below:



संक्रमांक नं. 265/2023
दिनांक 02.05.2023

AFFIDAVIT

Name Shri Surendra Kumar Meena
Father Name Shri Jagdish Narayan Meena
Address Bank of India, Laxmibai Nagar Branch
Ramchandra Nagar, Airport Road Indore [M.P.]

I, solemn affirm on oath as under:

1] I am presently working at the post of Sr. Branch Manager in Bank of India Laxmibai Nagar Branch, Ramchandra Nagar Airport Road, Indore [M.P.].

2] The appellate order in the case of Bank of India Laxmibai Nagar Branch, Ramchandra Nagar Airport Road, Indore [M.P.] for Financial Year 2010-11 was passed by the Ld CIT [A]-2, Indore on 17-06-2019.

3] According to certificate of service of order dated 17-06-2019 as obtained from the Ld Commissioner of Income-tax [A]-II, Indore, the said CIT(A)'s order dated 17-06-2019 was dispatched to the Branch on 29-07-2019.

4] However, the said CIT(A)'s order dated 17-06-2019 was actually received/ obtained by the person responsible for handling such matters of the Branch on 19-12-2020 only. It may have happened that the said order was handed over to any person in Branch on 29-07-2019 or in any later date, however was not handed over to the concerned person responsible for such matters. Our branch got to notice about the passing of the said order on 19-12-2020 only.

I further affirm and confirm that whatever is stated in Paras 1 to 4 of this affidavit is true and correct to the best of my knowledge, information and belief and that nothing has been concealed from being disclosed.

Solemnly declared and affirmed on this 2nd day of May, 2023

Sworn in before me on this 02
the day of ...e.S. 20.23 by Shri. Surendra
Kumar Meena Sr. Sw. Jagdish Narayan
Meena
who has been identified by
Shri. S.K.P.
is personally known
to me/whose signature are attested.
S. No. 265/23 Date 02/05/23



Shri Surendra Kumar Meena

Surendra
Sr. Branch Manager

Bank of India, Ramchandra Nagar Branch,
(Earlier Laxmibai Nagar Branch)
Ramchandra Nagar, Airport Road, Indore

94 Nii Kanth Pathan INDORE (M.P.)
SUDHIR KUMAR JAISWAL
Advocate/Notary

SUDHIR KUMAR JAISWAL

5. Ld. AR representing the assessee very humbly submitted that the assessee is a bank and it is seeking condonation of delay in filing of appeal for the reason that the impugned order dated 17.06.2019 was actually received by the person responsible for handling the matter on 19.12.2020. He submitted that the assessee applied to the office of CIT(A) for providing exact date of service of impugned order, whereupon the concerned office has intimated vide letter F.No. CIT(A)-U-II/Ind/2022-23/81 dated 13.04.2023 that the impugned order dated 17.06.2019 was dispatched on 29.07.2019. Referring to averment in Para No. 4 of revised-affidavit, Ld. AR submitted that it may have happened that the impugned order was handed over to any person in assessee-bank on 29.07.2019 or a later date but the same reached to the responsible person of assessee-bank on 19.12.2020 only and thereafter, the appeal was filed on 23.03.2021 which is within extended time-limit as per Hon'ble Supreme Court decision in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications** on account of Covid-19 pandemic. With these facts, Ld. AR submitted that the delay in filing appeal is owing to a reasonable cause; the same be condoned and the appeal be admitted.

6. Per contra, Ld. DR representing the Revenue strongly opposed the condonation-application and submitted that the Income-tax Department has dispatched the copy of impugned order on 29.07.2019 and the same was also received by the assessee-bank on the very same day which is very much evident from the copy of "acknowledgement" given by postal authorities, the

same is affixed on back of the aforesaid letter F.No. CIT(A)-U-II/Ind/2022-23/81 dated 13.04.2023 given by office of CIT(A). Ld. DR strongly contended that there is a gross contradiction in the original affidavit and revised affidavit of assessee. He submitted that the assessee in the original affidavit dated 04.04.2023 made a straightforward averment that the impugned order was received on 19.12.2020 just to take advantage of the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications (supra)**. Thereafter, when the assessee got a letter from CIT(A)'s office that the impugned order was served on 29.07.2019, the assessee changed/improved his stand and came out with a newer declaration in revised affidavit that the impugned order may have been received on 29.07.2019 or any later date, but it was handed over to responsible person on 19.12.2020. Ld. DR submitted that the assessee's explanation is not bona fide and moreover there is no explanation from assessee as to where the order remained in the intervening period of 29.07.2019 to 19.12.2020 and what action was taken by assessee-bank on the personnel who was negligent in delivering it to the responsible person. Ld. DR submitted that in any case the Income Tax Department had served the impugned order upon assessee on 29.07.2019 itself and handling or mis-handling of the order is an internal matter of assessee. Ld. DR submitted that there is a gross delay on the part of the assessee in filing this appeal and the condonation-application is not bona fide. Therefore, the appellant should not be granted condonation and this appeal ought to be dismissed.

7. We have considered submissions of both the sides and perused the material held on record. After careful consideration, we find full weightage in the submission of Ld. DR representing the revenue. Without repeating the contentions of Ld. DR, since we have already noted the same, we find no merit in the condonation prayer of assessee. Therefore, we do not find it fit to condone the delay in filing this appeal. The appeal is dismissed being time-barred.

I.T.A.No. 80/Ind/2021 – A.Y.2012-13:

8. Learned AR fairly admitted that the position of this appeal is also same except change in the dates and accordingly the period of delay. In that view of matter, we do not find it fit to condone the delay in filing this appeal. The appeal is dismissed being time-barred.

9. Resultantly, both of these appeals are dismissed.

Order pronounced in the open court on 22/06/2023.

Sd/-
VIJAY PAL RAO
JUDICIAL MEMBER

Sd/-
B.M.BIYANI
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 22.06.2023

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

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