

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. 89/Ind/2023
(Assessment Year:2017-18)

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| ALI Hussain Sadriwala 104, Jai Prakash Marg Dewas | Vs. | ITO-2 Indore |
| (Appellant / Assessee) | | (Respondent/ Revenue) |
| PAN: AAWPH 3815 J | | |
| Assessee by | Ms. Sonam Khandelwal AR | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 19.07.2023 | |
| Date of Pronouncement | 19.07.2023 | |

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 10.02.2023 of Commissioner of Income Tax (Appeals) for Assessment Year 2017-18. The assessee has raised following grounds of appeal:

- i. Ex-parte order was issued by Hon CIT (Appeals) without giving proper opportunity of being heard.*
- ii. That the learned ACIT has erred in making addition of Rs.57,00,000/- as on account of unexplained cash deposited in bank account u/s 68 of the IT Act, 1961, As all records, documents and books of account has been produced.*
- iii. That the learned ACIT has erred in making addition of Rs.3,62,000/- as on account of rental income as per, As all records, documents and books of account has been produced.*

iv. That the learned A.O. has charged tax and surcharge on the basis of special rate of income tax U/s 115BBE of the IT act 1961, which is wrong unjustified and liable to set a said.”

2. At the time of hearing Ld. AR of the assessee has submitted that the Ld. CIT(A) has passed the impugned order *ex-parte* and the appeal of the assessee was dismissed for want of prosecution and appearance. She has pointed out that the assessee has filed the applications for adjournment of hearing however, the same were not considered by the Ld. CIT(A) while passing the impugned order and held that the assessee has nothing to offer any explanation in support of the grounds of appeal. She has referred to the online applications for adjournment filed by the assessee placed at page 14 to 16 of the paper book and submitting that in the details of hearing given by the Ld. CIT(A) there is no reference of adjournment application filed by the assessee. Thus, Ld. AR has pleaded that the impugned order may be set aside and matter is remanded to the record of the Ld. CIT(A) for fresh adjudication after giving appropriate opportunity of hearing to the assessee.

3. On the other hand, Ld. DR has fairly submitted that he has no objection if matter is remanded to the record of the CIT(A) for fresh adjudication.

4. We have considered the rival submissions as well as relevant material on record. The Ld. CIT(A) has passed impugned order *ex-parte* on the ground that despite several notices neither the assessee nor his AR has made his submission to support his claim. The Ld. CIT(A) has given the details of various notices issued to the assessee and remarks that the assessee-appellant has not responded to the notice whereas we find that the assessee has made three applications for adjournment of hearing on three occasions. The copies of the applications filed online are placed in the paper book which clearly show that one of the applications was made on 06.02.2023 for adjournment of hearing on 23.02.2023 whereas the Ld. CIT(A) has passed the impugned order on 10.02.2013 without considering

this request of adjournment of assessee. Even prior to the said application the assessee made two other applications dated 05.12.2022 for seeking adjournment up to 22.12.2022 and 17.01.2023 for seeking adjournment up to 22.02.2023. There may be possibility of some technical problem for not considering these adjournment applications by the Ld. CIT(A). In view of the facts and circumstances of the case when the Ld. CIT(A) has dismissed the appeal of the assessee *in limine* due to non-prosecution and not decided the same on merits as required u/s 250(6) of the Act the impugned order of the Ld. CIT(A) is set aside and matter is remanded to the record of the Ld. CIT(A) for fresh adjudication of appeal of the assessee on merits after giving an appropriate opportunity of hearing to the assessee.

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

Order is pronounced in Open Court on conclusion of hearing on 19/07/2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 19.07.2023

Patel/Sr. PS

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

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*