

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

(THROUGH VIRTUAL HEARING)

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.03/JBP/2023
Assessment Year:2009-10

Stay Application No.01/JAB/2023
Assessment year:2009-10

Shri Naresh Poddar, 216, Gokul Dham, Rahul Baug, Near Mai Ghat, Vinoba Bhave Ward, Katni. PAN:ATJPP0521H (Appellant)	Vs.	Income Tax Officer, Ward-2, Katni. (Respondent)
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Appellant by	Shri Dhiraj Ghai, C.A. Learned Authorised Representative
Respondent by	Shri Ravi Mehrotra, Learned Senior Departmental Representative

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) For the sake of convenience the assessee's Stay Application No. 01/JAB/2023 and assessee's appeal vide I.T.A. No.03/JAB/2023 are hereby disposed of through this consolidated order.

(B) At the time of hearing before us, learned A.R. for the assessee drew our attention to Stay Application, relevant portion of which is reproduced as under:

- "1. *That assessee has filed his return of income for the assessment year 2009-10 on 31.03.2010 declaring income of Rs. 1,69,110/- being engaged in cheque issuance business by taking commission of Rs 100/- to Rs 150/-per lakh.*
2. *That, the assessment of the assessee for the assessment year 2009-10, was completed under section 144 r.w.s 147 on 22.12.2016. In the assessment the Id AO added all the debits in bank considering same to be income of Rs.87,72,12,835/- and also added 8% of all the debit transaction in bank assuming that the assessee is engaged in business. This has resulted into increase in taxable income from Rs 93,97,37,795/- declared in the return to Rs. 1,69,110/- assessed by the Id AO.*
3. *That the Id ITAT Jabalpur has in a deleted the addition in the case of Dassu Patel ITA No 95/JAB/2018 on the similar facts. Copy of order is enclosed as page no 3 to 15 of this reply.*
4. *That, the assessee has filed on 14.02.2017 an appeal against the assessment order before the Hon'ble CIT (A) Jabalpur. This appeal was dismissed for want of prosecution because the Hon'ble CIT (A) has denied relief stating that on fixed date of hearing the assessee neither appeared nor sought adjournment. While the fact was that assessee duly sought adjournment on e-portal.*
5. *That, the assessee has filed an appeal before the Hon'ble ITAT Jabalpur on 10.01.2023 Copy of acknowledgment of filing of appeal is enclosed on page no 16 to 22 of this application.*
6. *That, assessee is a very poor person and does not have funds to pay the tax.*
7. *For the above reason it is submitted that the demand of the assessment year 2009-10 may kindly be stayed till the disposal of appeal by the appellate authority."*

(C) In his oral submissions, he once again asserted that the assessee had sought adjournment by filing letter on e-portal of Income Tax Department which however, escaped attention of learned CIT(A). He further submitted that the learned CIT(A) passed ex-parte order only because the aforesaid application for adjournment escaped his attention which led him to the erroneous view that the appellant assessee was not keen to pursue the appeal and co-operate in finalization of appeal. At this stage the learned Sr. D.R. for Revenue as well as learned A.R. for assessee both submitted before us that the assessee's appeal vide I.T.A. No.03/JAB/2023 may also be taken up for hearing and disposed of. Further, representatives of both sides, learned Sr. D.R. for Revenue as well as learned A.R. for the assessee were in agreement that the impugned appellate order dated 27/12/2022 of learned CIT(A), against which the assessee has filed the aforesaid appeal vide I.T.A. No.03/JAB/2023, may be set aside and the issues in dispute in the appeal may be restored back to the file of learned CIT(A) with the direction to pass denovo order in accordance with law after providing reasonable opportunity to the assessee. The learned A.R. for the assessee assured that the assessee will extend full co-operation in finalization of the appellate proceedings in the office of learned CIT(A). In view of the foregoing, we set aside the impugned appellate order dated 27/12/2022 of learned CIT(A) and direct the learned CIT(A) to pass fresh appellate order in accordance with law after providing reasonable opportunity to the assessee.

(D) As the assessee's appeal vide aforesaid I.T.A. No.03/JAB/2023 is already disposed of vide our aforesaid directions, the assessee's Stay Application No.01/JAB/2023 has become infructuous. Accordingly, the Stay Application filed by the assessee is dismissed being infructuous. Representatives of both sides were in agreement with this as well.

(E) In the result, the assessee's appeal is partly allowed for statistical purposes and the assessee's Stay Application is dismissed.

(Order pronounced in the open court on 18/08/2023)

Sd/.
(SUDHANSHU SRIVASTAVA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:18/08/2023
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT

4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar