

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. 198/Ind/2023
Assessment Year: 2017-18

Shri Chatur Lal Gond, 72, Balajee Niwas, Royal Market Road, Bhopal (Assessee / Appellant)	<u>बनाम/</u> Vs.	ITO-1, Itarsi. (Revenue / Respondent)
PAN: AUYPG 1196 M		
Assessee by	Ms. Nisha Lahoti, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	11.10.2023	
Date of Pronouncement	13.10.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 16.12.2022 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["Ld. CIT(A)"] which in turn arises out of assessment-order dated 14.12.2019 passed by learned ITO-1, Itarsi ["Ld. AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal.

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

3. The registry has informed that there is a delay of 93 days in filing this appeal and therefore the appeal is time-barred. Ld. AR for assessee

submitted that the assessee has filed an application for condonation of delay supported by an affidavit on stamp. Drawing our attention to same, Ld. AR submitted that the assessee, after receipt of order of CIT(A), communicated to his counsel but the counsel did not give any direction pertaining to the time-limit within which appeal has to be filed. Subsequently, when the assessee re-communicated with the counsel, then only it came to assessee's knowledge that the appeal had not been filed. Ld. AR submitted that as soon as the assessee came to know of this situation, the arrangement was made to file appeal immediately without further delay. Ld. AR submitted that the delay has been caused due to this reason only and there is no deliberate lethargy, negligence or mala fide intention of assessee in making delay and the assessee does not stand to derive any benefit because of delay. Therefore, Ld. AR prays to condone the delay. Ld. DR left the matter to the wisdom of Bench. We have considered the explanation of assessee and in absence of any contrary fact or material on record, the assessee is found to have a reasonable cause for delay in filing the present appeal. Placing reliance on the decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with appeal.

5. Section 250(6) of the Income-tax Act, 1961 provides "*The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*". We observe that in the present case, the Ld. CIT(A) has dismissed the assessee's appeal, although due to non-prosecution by assessee on the dates of hearing fixed by Ld. CIT(A), but still without complying with the mandate of section 250(6). Therefore, the impugned first appeal-order passed by Ld. CIT(A) deserves to be set aside and the matter is fit for remand to CIT(A).

5. However, Ld. Representatives of both sides were *ad idem* on the point that the AO has passed assessment-order u/s 144 and therefore this case

should be remanded to AO instead of CIT(A). Ld. DR also prayed to direct the assessee to represent his case before AO and do not seek unnecessary adjournments.

6. In view of fair congruence of parties, we remand this case to AO for assessment afresh after giving opportunity to assessee. The assessee is also directed to ensure participation in the hearings fixed by AO and do not seek unnecessary adjournments.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in the open court on 13.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 13.10.2023.

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