

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.176/Ind/2023
Assessment Year: 2013-14

Ms.Sarika Agrawal, 53/1, Chatribagh, 503, Nidhi Apartment, Indore.	<u>बनाम/</u> Vs.	ITO, 2(4), Indore.
(Assessee / Appellant)		(Revenue / Respondent)
PAN:APPPA8768K		
Assessee by	Shri N.D.Dave and Shri Vijay Bansal, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.10.2023	
Date of Pronouncement	26.10.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 21.02.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 29.03.2016 passed by learned ITO-2(4), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal.

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

3. The registry has informed that the present appeal is delayed by 16 days and therefore time-barred. Ld. AR submits that the assessee has filed

an application for condonation of delay supported by an affidavit on stamp. On perusal of the application/affidavit, we observe that the assessee has made an averment that the appeal-papers were ready for filing and even the filing fee of Rs. 10,000/- was also deposited on 11.04.2023 which was well within the prescribed time-limit for filing of appeal. However, due to illness of assessee's counsel, there occurred a small delay of 16 days in filing appeal. Ld. AR very humbly submits that 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. He further submits that the sole reason of delay is the illness of assessee's counsel. He prayed for condonation of 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.

4. Ld. AR carried us to the impugned order and demonstrated that the CIT(A) fixed hearing of appeal on 22.02.2023 but passed the impugned order on 21.02.2023 due to oversight. Then, he submitted that the CIT(A) has dismissed appeal for non-prosecution without following the mandate of section 250(6) of the Income-tax Act, 1961 which 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.*". Therefore, the impugned order of first-appeal passed by CIT(A) deserves to be set aside and the matter is fit for remand to the file of Ld. CIT(A) for a proper adjudication. Ld. DR fairly agrees to this but prays to direct the assessee to represent his case before Ld. CIT(A) and do not seek unnecessary adjournments. In view of this and also having regard to the principle of natural justice and fair play, we deem it fit to give one more opportunity to assessee so that the assessee can represent his case before

CIT(A) for a proper adjudication. Accordingly, we remand this matter back to the file of Ld. CIT(A) for a fresh adjudication after giving opportunity of hearing to assessee. The assessee is also directed to ensure participation in the hearings fixed by Ld. CIT(A) and do not seek unnecessary adjournments.

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

Order pronounced in open court on 26.10.2023 immediately after conclusion of hearing and subsequently reduced in writing on the same day

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 26.10.2023

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