

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE SMC BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.111/Ind/2023
(Assessment Years:2011-12)

Shri Islam Patel 13, Mayakhedi Jhalariya Indore	Vs.	ITO, 5(5) Indore
(Appellant / Assessee)		(Revenue)
PAN: DPCPP 7925 D		
Assessee by	Shri Pranay Goyal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.11.2023	
Date of Pronouncement	16.11.2023	

ORDER

This appeal by the Assessee is directed against the order dated 20.01.2020 of Commissioner of Income Tax(Appeal)-2 Indore for Assessment Year 2011-12.

2. The assessee has filed present appeal on 31.03.2023 against the impugned order dated 20.01.2020 therefore, there is a delay of about three years in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the assessee. Ld. AR of the assessee has submitted that the assessee filed the appeal before the Ld. CIT(A) on 12.10.2019 in physical form, later on the system of the appeal was shifted to electronic mode and therefore, the notices mentioned by the CIT(A) fixing various date of hearing were not received by the assessee. As the assessee was not aware about the appeal proceedings shifted to electronic mode and notice sent through e-mail

were not received by the assessee. Even the assessee did not receive the impugned order because the assessee is an illiterate person not well-versed with the technology. Thus, Ld. AR has submitted that the assessee was unable to receive order sent by CIT(A) electronically and later on when the assessee has consulted with his counsel was informed about the online proceedings and procedure but the portal of the assessee was not accessible as the assessee's Aadhar was linked to old unused mobile number and therefore, OTP could not be received by the assessee for setting of the Password. Later on, the assessee got the mobile number updated on Aadhar and then was able to access to the portal online after 28.02.2023. Thus, Ld. AR has submitted that the delay in filing the present appeal is also attributable to Covid-19 pandemic prevailing at the time of passing impugned order and assessee was not able to have access to the relevant information. He has thus pleaded that the delay in filing the appeal may be condoned.

3. On the other hand, ld. DR has not seriously objected to the condonation of delay.

4. Having considered the rival submissions and careful perusal of the contents of the application for condonation of delay as well as affidavit filed by the assessee I am satisfied that the assessee was having for reasonable cause for delay in filing the present appeal. Even otherwise the delay up to 31st May 2022 is covered by the judgment of Hon'ble Supreme Court in case of Suo Motu Cognizance for extension of Limitation reported in 441 ITR 722 (SC). Accordingly in the facts and circumstances of the case and interest of justice the delay in filing the appeal is condoned.

5. The assessee has raised following grounds:

"1. That, the appellate order passed by Ld. CIT-A is erroneous on the facts and in law.

2. That, the appellate order passed by Ld. CIT-A, is contrary to the weight of evidence on record, perverse, unjustified and, therefore the additions are liable to be struck down.

3. That, the CIT-A erred not to follow the principal of natural justice as Ld. CIT-A passed an ex-parte order without sufficient opportunity of being heard, as all the notice as stated in the order are not duly served to the assessee.

4. That, the Ld. CIT-A erred in confirming the addition made by the Ld. AO to the tune of Rs. 20,25,000/- treating the same as undisclosed income, not considering the fact that such amount is net sales consideration on sale of agricultural land and indexed cost of acquisition as well as various deductions under the provision of the Act on reinvestment is applicable upon the appellant.

5. That, the appellant, carves leave to add, amend or modify any of the grounds of the appeal.”

6. Ld. AR of the assessee has submitted that the AO was passed ex-parte order u/s 144 r.w. section 147 of the Act and made the addition of the entire sale consideration of agricultural land sold by the assessee along with other family members. He has further submitted that the CIT(A) has also not decided the appeal of the assessee on merits but the same was dismissed for non-prosecution. Ld. AR has filed the relevant details and documents regarding the sale of agricultural land and investment of the long term capital gain for claiming deduction u/s 54F of the Act as well as purchase of another agricultural land for claiming deduction u/s 54B of the Act. Thus, Ld. AR has submitted that the addition made by the AO without considering relevant fact is unjustified and highly arbitrary. He has thus pleaded that the impugned order of the CIT(A) passed ex-parte be set aside and matter may be remanded to the record of the AO for fresh adjudication.

7. On the other hand, Ld. DR has submitted that since the assessee has not appeared before the AO as well as before the Ld. CIT(A) therefore, relevant facts and documentary evidence in support of the claim of the assessee is required to be verified and examined at the level of the AO. Thus, he has submitted that it will be appropriate to remand the matter to the record of the AO for fresh adjudication.

8. Having considered the rival submission as well as relevant material on record it is noted that the AO has reopened assessment by issuing u/s 148 of the Act on 12.03.2018 to assess the income derived by the assessee from sale of immovable property. The AO has assessed the 1/4th share of the assessee in the sale consideration of the said property amounting to Rs.20,25,000/- to tax. Thus, it is clear that the AO has assessed the entire sale consideration without even considering the cost of acquisition of the said property and other benefit of indexation etc. The AO has passed the assessment order ex-parte due to non-appearance and participation of the assessee in the assessment proceedings. The CIT(A) has dismissed the appeal of the assessee for non-prosecution without going into merit of the case. Therefore, the impugned order of the CIT(A) is not in conformity with the provisions of section 250(6) of the Act. The assessee has now filed the sale deed regarding sale and purchase of land in question and also produced the details and documents for claiming deduction u/s 54B and 54F of the Act. Since the AO has assessed the entire sale consideration to tax without even allowing the cost of acquisition of the land in question therefore, in the facts and circumstances of the case and in the interest of justice the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the AO for fresh adjudication after considering the relevant record/evidence as well as details for sale and purchase of land and other claim of deduction to be filed by the assessee. Needless to say the assessee be given an appropriate opportunity of hearing before passing fresh order.

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

Order pronounced in the open court on conclusion of hearing on 16.11.2023 and reduced in writing and signed on the date indicated below.

Sd/-

(VIJAY PAL RAO)

JUDICIAL MEMBER

Indore; दिनांक Dated : 20/11/2023

Patel/Sr. P.S.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary

ITAT, Indore