

**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.268/Ind/2023**  
**Assessment Year: 2021-22**

Shri Yashwant Singh Pawar, 15, Shivaji Marg, Alirajpur, Distt. Alirajpur (Assessee / Appellant)	<b>बनाम/ Vs.</b>	I.T.O., DHAR  (Revenue / Respondent)
<b>PAN: AJWPP6391E</b>		
Assessee by	Shri Venus Rawka, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.11.2023	
Date of Pronouncement	21.12.2023	

**आदेश / ORDER**

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

Feeling aggrieved by appeal-order dated 22.05.2023 passed by learned Commissioner of Income-Tax, National Faceless Appeal Centre, Delhi [**"Ld. CIT(A)"**], which in turn arises out of intimation dated 27.08.2022 passed by learned ADIT, CPC, Bangaluru [**"Ld. AO"**] u/s 143(1) of Income-tax Act, 1961 [**"the Act"**] for Assessment-Year [**"AY"**] 2021-22, the assessee has

filed this appeal on various grounds as mentioned in Appeal Memo (Form No. 36).

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

3. The controversy involved in present appeal relates to the relief of Rs. 61,585/- claimed by assessee u/s 89 of the act relating to arrears of salary received during the year but disallowed by AO while processing intimation u/s 143(1).

4. Ld. AR for assessee explained the facts of case: The assessee is a retired Govt. employee-cum-senior citizen. During the Previous Year 2020-21 relevant year to AY 2021-12 under consideration, the assessee received arrears of salary amounting to Rs. 4,71,278/- relating to earlier previous years from 2008-09 to 2017-18. While filing return of AY 2021-22, the assessee included the impugned arrears of Rs. 4,71,278/- as part of taxable income, computed tax thereon, claimed relief u/s 89 as legally admissible qua the arrears of salary and paid remaining tax. This exercise by assessee is in accordance with provisions of law and there is no fault noticed by AO. However, while processing return u/s 143(1), the AO denied the claim of relief u/s 89 for the reason that Form No. 10E prescribed under Rule 21AA was not filed by assessee before or at the time of filing return. Aggrieved by action of AO, the assessee went in first-appeal to CIT(A). But the CIT(A) dismissed assessee's appeal upholding the same premise that the assessee

had not filed Form 10E in time. Now, the assessee has come in this appeal before us.

5. Ld. AR submitted that the assessee is a retired Govt. employee as well as a senior citizen. He further submitted that the assessee has offered arrears of salary as part of taxable income and the same is accepted by AO. He submitted that it is true that the assessee did not file Form 10E before filing return of income but it was not a deliberate fault, it happened because of unawareness and since the assessee is a senior citizen. Ld. AR submitted that subsequently after getting intimation u/s 143(1) dated 27.08.2022 and before filing first-appeal on 15.09.2022, the assessee instantly filed Form No. 10E on 07.09.2022, which is evident from e-filing acknowledgement No. 495576950150922 downloaded from webportal of Income-tax Department, filed at Page No. 6-9 of the Paper-Book. Ld. AR submitted that except such belated filing of Form No. 10E, there is no other reason to deny the benefit of relief u/s 89 to assessee. Ld. AR submitted that in any case the defect is due to an inadvertent human error and the assessee should not be denied the benefit of legitimate relief which is legally allowable. Ld. AR submitted that if the Form No. 10E filed belatedly on 15.09.2022 is accepted, the assessee would be entitled to the benefit of relief. Ld. AR submitted that in several provisions of Income-tax Act, for example in the matter of filing Form No. 10B for giving exemption u/s 11/12 to a charitable trust, where the Form No. 10B is filed belatedly, it has been held in judicial rulings that the exemption should not be denied for procedural lapse. Similarly, there are

cases in which relief u/s 90 has been allowed even when the prescribed Form No. 67 is filed belatedly. While holding so, the courts have taken note that filing of form is a procedural-cum-directory requirement. Ld. AR also pointed an important fact that the assessee has been issued Form No. 16 (TDS certificate u/s 203) by Govt. employer in which not only the calculation of taxable salary including arrears of salary is mentioned but also relief of Rs. 61,585/- is also mentioned at entry No. 18. Ld. AR submitted that the said Form No. 16 is a part of online database of Income-tax Department and when the data of impugned relief is available in department's own record, the relief must have been allowed to assessee.

6. Ld. DR for revenue although dutifully supported the orders of lower-authorities yet agreed that it's a small matter of retired Govt. employee-cum-senior citizen. Hence the Bench may take a judicious call.

7. We have considered submissions of both sides and examined the documents. After a careful consideration, we find that the assessee has though not submitted Form No. 10E before filing return of income but immediately after receiving intimation u/s 143(1) and before filing first-appeal, it was filed. We are consciously aware that in many situations, particularly in the matters of exemption, relief, etc., whenever this issue has cropped before the courts that the filing of any prescribed form is a procedural requirement or mandatory, the courts are liberal and judicious in holding requirement as procedural and thereby directing the revenue to allow substantive benefit to assessee even if the form is filed belatedly. We

find that the assessee is a senior citizen and retired Govt. employee, hence there is no mala fide intention or attempted negligence on the part of assessee in not filing form in time. Therefore, taking a judicious note, we are inclined to hold that the assessee should be given the benefit of relief as per Form No. 10E subsequently filed. Hence, we remand this matter back to the file of AO. The AO shall verify Form No. 10E filed by assessee and allow the eligible relief. With these directions, the assessee's appeal is allowed.

**8. Resultantly, this appeal of assessee is allowed for statistical purpose in terms indicated above.**

*Order pronounced in the open court on 21.12.2023.*

sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

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

**Indore**

दिनांक /Dated : 21.12.2023

Patel/Sr. PS

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

*By order*

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