

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.395 & 396/Ind/2023
(Assessment Year: 2015-16 & 2017-18)

Ashish Kothari C/o Kothari Nursing Home AB Road, Dewas (Appellant / Assessee)	vs.	DCIT-1(1) Ujjain (Respondent/ Revenue)
PAN: AGZPK2602B		
Assessee by	Shri Ranjan Agrawal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	29.01.2024	
Date of Pronouncement	29.01.2024	

O R D E R

Per Bench :

These two appeals by the Assessee are directed against the two separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) dated 29.05.2003 & 15.08.2023 for A.Ys. 2015-16 & 2017-18 respectively.

2. There is a delay of 76 days in filing appeal for A.Y.2015-16. The assessee has filed an application for condonation of delay.

3. We have heard Ld. AR as well as Ld. DR on the condonation of delay in filing the appeal for A.Y.2015-16. The Ld. AR has submitted that the assessee has been suffering regular losses in the business and finally the business was closed therefore, the assessee was very disturbed and not in the proper state of mind to look after the tax matters. He has pointed out that due to these financial problems and business losses the assessee also could not make any submissions or explanation before the AO as well as CIT(A) and the assessment order as well as the impugned order by the CIT(A) are passed ex-parte. Thus, Ld. AR has submitted that the delay in filing the appeal is neither intentional nor deliberate but due to the bona fide reasons and the same may be condoned.

4. On the other hand, Ld. DR has not seriously objected to the condonation of delay and left the matter to the wisdom of the Bench.

5. Having considered the rival submission and careful perusal of the reasons explained by the assessee in the application for condonation of delay we are satisfied that the assessee was having a reasonable cause for delay in filing the appeal for A.Y.2015-16. The assessee has also placed medical report regarding the health issue of the assessee as suffering from various ailments due to the mental stress. Accordingly delay of 76 days in filing the appeal for A.Y.2015-16 is condoned.

6. The assessee has raised following grounds of appeal:

For A.Y.2015-16

“1. The Ld. CIT (A) erred in confirming the disallowance of loss of Rs. 16,38,100/- claimed by the appellant. That on the facts and the circumstances of the case, the disallowance being wrong requires to be deleted.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the additions on account of cash of Rs.15,62,000/- deposited in bank account. That on the facts and the circumstances of the case, the addition being wrong requires to be deleted.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the additions on account of payment to credit card for an amount of Rs.5,27,406/-. That on the facts and the circumstances of the case, the addition being wrong requires to be deleted.”

For A.Y.2017-18

*“1. The Ld. CIT (A) erred in confirming the addition for an amount of Rs * 0.2, 87 ,62,815/-, being the credit entries in the capital account of the proprietary firm, as unexplained cash credit. That on the facts and the circumstances of the case, the addition being wrong requires to be deleted.*

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the disallowance for an amount of 4 ,00,500/- , being 30% of the rent expenses of Rs. 13,35,000/- claimed by the appellant in the proprietary firm u / s 40(a)(ia) That on the facts and the circumstances of the case, the disallowance being wrong requires to be deleted.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the disallowance for an amount of Rs.38,359/- claimed by the appellant in the proprietary firm on account of interest and penalty expenses. That on the facts and the circumstances of the case, the disallowance being wrong requires to be deleted.

4. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the disallowance for an amount

of Rs. 44,580/- claimed by the appellant in the proprietary firm on account of depreciation on fixed assets. That on the facts and the circumstances of the case, the disallowance being wrong requires to be deleted

5. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in confirming the disallowance for an amount of Rs.1,24,600/- claimed by the appellant in the proprietary firm on account of travelling expenses and discount expenses. That on the facts and the circumstances of the case, the disallowance being wrong requires to be deleted.

7. At the time of hearing Ld. AR of the assessee has submitted that the assessee could not represent his case properly before the AO as well as CIT(A) and the CIT(A) have passed the impugned order ex-parte whereby the additions made by the AO were confirmed. Thus, he has prayed that the impugned orders of the CIT(A) may be set aside and the matter may be remanded to the record of the AO for fresh adjudication. He has undertaken that the assessee will cooperate and submit the necessary details and record in remand proceeding before the AO.

8. On the other hand Ld. DR has submitted that he has no objection if matter is set aside for fresh adjudication.

9. Having considered the rival submission and careful perusal of the impugned orders we note that the CIT(A) has passed ex-parte orders when there was no response on behalf of the assessee to the various notices issued by the CIT(A). Finally the CIT(A) has dismissed the appeals of the assessee in para 5 & 6 as under:

“5. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the assessee via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the additions made by the AO should not be sustained.

6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am constrained to agree with the approach adopted by the AO in making additions. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.”

10. Thus, due to non-appearance and non-submission of any reply to the notices issued by the CIT(A) the appeals of the assessee were dismissed by the CIT(A). Since the assessee has explained the reasons for not representing his case properly and therefore, in the facts and circumstances of the case as well as in the interest of justice we set aside the impugned orders of the CIT(A) which were passed summarily without giving any finding on merits. The matters for A.Y.2015-16 & 2017-18 are remanded to the record of the AO for fresh adjudication after verification of the necessary details and evidence to be produced by the assessee.

11. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on conclusion of hearing on
29.01.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 29 .01.2024

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