

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.499/Ind/2023
(Assessment Year: 2011-12)

Smt. Seema Sinha C-508, Shehnai Residency A.B. Road, Indore (Appellant / Assessee)	Vs.	ITO-3(4) Bhopal (Respondent/ Revenue)
PAN: ALUPS4142A		
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Harshit Bari , Sr. DR	
Date of Hearing	18.03.2024	
Date of Pronouncement	18.03.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi dated 20.10.2023 for A.Y. 2011-12. The assessee has raised following grounds of appeal:

“1.That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not condoning the delay in filing of appeal and consequently, also erred in not admitting such appeal without properly appreciating the facts of the case.

2 That on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in upholding the validity of reassessment proceedings initiated under section 147 of the Income-Tax Act, 1961 even when reopening was done in absence of any tangible material and live link of concealment of income and merely for verification of source of cash deposits in the bank account.

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 13,00,000/- made by the Assessing Officer to the total income of the appellant on account of cash deposited in the bank account by treating it as unexplained investment and unexplained money without properly appreciating the facts of the case.

4.The appellant reserves the right to add, alter and modify the grounds of appeal as taken by her.”

2. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee in limine as barred by limitation. He has further submitted that the CIT(A) has declined to condone delay of 162 days in filing the appeal before CIT(A). He has referred to form 35 and submitted that the assessee has explained the reasons for delay in form 35 itself which were not considered by the CIT(A). Thus, Ld. AR has submitted that the delay in filing the appeal before the CIT(A) may be condoned and the appeal of the assessee may be decided on merits. He has also contended that reopening of the assessment is not valid when the AO has already conducted an inquiry by issuing letters to the assessee before the notice u/s 148 of the Act was issued and the assessee has duly replied those letters issued by the AO.

3. On the other hand, ld. DR has submitted that though the assessee has mentioned in the form 35 the ground for delay

however, there is no application on behalf of the assessee for condonation of delay nor any other details or evidence was filed by the assessee in support of cause of delay in filing the appeal before the CIT(A). Therefore, in absence of any explanation on behalf of the assessee with documentary proof the mere mentioning of delay in the form 35 is not sufficient for condonation of delay. He has relied upon impugned order of the CIT(A).

4. We have considered rival submission as well as relevant material on record. The CIT(A) has though considered the reasons explained by the assessee in form 35 however, the same were not found to be satisfactory and consequently declined to condoned delay of 162 days in filing the appeal before the CIT(A). The CIT(A) has given concluding finding in para 2.5 as under:

“2.5. In view of the above judicial pronouncements, the basic principle emerges that the delay should be bonafide and there should not be any negligence on the part of the appellant. However in the appeal under consideration, the appellant has not submitted any evidence either along with the appeal or during appellate proceedings to establish the genuine hardship. The contention of the appellant is very vague and general and doesn't hold any merit. It is established law that ignorance of law is not a valid excuse and no relief can be given on this count. Therefore, the delay made in filing the appeal does not deserve to be condoned. Therefore, the delay is not condoned and appeal is rejected as unadmitted.”

5. It is pertinent to note that the impugned order has been passed by the CIT(A) without issuing a notice to the assessee to explain the cause of delay in filing the appeal. It is manifest from the impugned order that the CIT(A) has dismissed the appeal of the

assessee unilaterally without even giving an opportunity to the assessee to explain cause of delay. Accordingly in the facts and circumstances of the case and in the interest of justice we set aside the impugned order of the CIT(A) and the matter is remanded to the record of the CIT(A) for fresh adjudication after giving appropriate opportunity of hearing to the assessee to explain cause of delay as well as on merits.

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

Order pronounced in the open court on conclusion of hearing on
18 .03.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 18.03.2024

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*