

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. 300/Ind/2023 (AY: 2007-08)

ITA No. 301/Ind/2023 (AY: 2007-08)

ITA No. 302/Ind/2023 (AY: 2007-08)

Shri Pramod Kumar Singh, 58, Vrindavan Nagar, Ayodhya Bye Pass Road, Piplani, Bhopal (PAN: AXNPS4241H)	बनाम/ Vs.	I.T.O., Ward-3(1), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)

Assessee by	Shri Harsh Vijaywargiya, CA & AR
Revenue by	Shri Ashish Porwal, Sr. DR

Date of Hearing	25.04.2024
Date of Pronouncement	30.04.2024

अदेश / O R D E R

Per Bench:

The captioned three appeals are filed by same assessee, the details are as under:

- (i) ITA No. 300/Ind/2023 is directed against appeal-order dated 26.04.2023 passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arise out of assessment-order dated 26.03.2015 passed by ITO-3(1), Bhopal

["AO"] u/s 144 read with section 147 of the Income-tax Act, 1961
["the Act"].

- (ii) ITA No. 301/Ind/2023 is directed against appeal-order dated 26.04.2023 passed CIT(A) which in turn arise out of penalty-order dated 28.09.2015 passed by AO u/s 271(1)(c) of the Act.
- (iii) ITA No. 302/Ind/2023 is directed against appeal-order dated 15.09.2022 passed CIT(A) which in turn arise out of penalty-order dated 28.09.2015 passed by AO u/s 271(1)(b) of the Act.

2. Since these appeals relate to same assessee and the issues involved are inter-related, they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

3. The registry has informed that there is a delay of 46 days in first two appeals and 269 days in third appeal, therefore all three appeals are time-barred. Ld. AR for assessee submitted that the assessee has filed an application for condonation of delay supported by an affidavit on stamp, the same is scanned and re-produced below:

शपथ पत्र

प्रमोद कुमार सिंह आत्मज स्वर्गीय श्री राम चंद्र आयु लगभग 65 वर्ष निवासी 58 वृन्दोवन नगर अयोध्या ब्राईपास
भोपाल निम्नलिखित शपथपूर्वक कथन करता हूँ -

- 1 यह की मैं 65 वर्षीय वृद्ध हूँ एवं रिटायरमेंट का जीवन व्यतीत कर रहा हूँ एवं यह की मैं दयनीय जीवन व्यतीत कर रहा हूँ पूर्व में व्यापार किया करता था जोकि आज दिनांक में बंद हो चुका है यह की मैं गत 20 वर्षों से उच्च रक्तचाप एवं हार्ट की बीमारी से ग्रसित हूँ एवं मेरा वर्ष 2021 में भयंकर रोड एक्सीडेंट हो गया था जिसमें मेरे एक पैर में फ्रैक्चर हो गया तथा फल स्वरूप नए 10 महीने तक चलने में असमर्थ रहा
- 2 यह की वर्ष 2020 से लेकर 2023 में मेरे स्वास्थ्य समस्याओं, मेरी पत्नी की स्वास्थ्य समस्याएं एवं पारिवारिक समस्याओं के कारण बहुत परेशान रहा एवं मुझे अनिद्रा, अवसाद एवं दीप डिप्रेशन जैसी घोर बीमारियों ने घेर लिया। इन वर्षों में, मैं अपनी पारिवारिक समस्याओं के कारण मूलतः मेरी बेटी के वैवाहिक जीवन में विच्छेद एवं उक्त विषय पर पुलिस कार्यवाही एवं जिसकी एफ आई आर दिनांक 29-10-2019 को अयोध्या नगर पुलिस थाने में की गई उक्त प्रकरण में आज भी कोर्ट में लंबित है एवं हर तारीख पर मुझे और मेरी बेटी को कोर्ट में उपस्थित होना पड़ता है एवं अन्य कानूनी प्रक्रियाओं के कारण आयकर अपील में उपस्थित होना संभव नहीं हो पाया।
- 3 यह की वर्ष 2020 में मेरे दो भाइयों (उमेश एवं सुमेश) का निधन हो गया जिस वजह से मैं पूरी तरह से टूट गया था इतना ही नहीं 28 नवंबर 2022 में मेरे भाई रमेश का भी निधन हो गया इसी वजह से मेरे मस्तिष्क में गहरा आघात पहुंचा मेरे भाइयों का निधन होने के कारण एवं स्वयं एवं परिवार के स्वास्थ्य समस्याओं के कारण एवं पारिवारिक समस्याओं के कारण आयकर अपील में उपस्थित होना संभव नहीं हो पाया था
- 4 यह की मेरा व्यापार पूरी तरह से चौपट हो चुका है आए का कोई स्रोत नहीं है एवं मैं एवं मेरा परिवार घोर आर्थिक समस्याओं से जूझ रहा है मेरे ऊपर इस आयु में अत्यधिक जिम्मेदारियां है स्वास्थ्य की विषम समस्याएं हैं इस कारण से मेरा मानसिक संतुलन स्थिर नहीं है इस कारण आयकर अपील में उपस्थित होना संभव नहीं हो पाया था
- 5 यह की वर्ष 2020 से 2023 तक में अपने, अपने परिवार एवं अपनी पत्नी के स्वास्थ्य को लेकर बहुत परेशान रहा हूँ जिसकी जानकारी (मेडिकल सर्टिफिकेट एवं डॉक्टर का पर्चा) मैं पृथक रूप से इस शपथ पत्र के साथ संलग्न कर रहा हूँ इन्हीं कारणों की वजह से मेरा आयकर अपील में उपस्थित होना संभव नहीं हो पाया था
- 6 यह की उपरोक्त घटनाक्रम एवं कठिन समय के कारण मैं एवं मेरा परिवार डिप्रेशन में चला गया था एवं मेरी साददाश्त क्षीण होने लगी आर्थिक तंगी एवं समस्याओं के कारण मेरा जीवन रिश्तेदारों से आर्थिक सहायता पर निर्भर हो गया इसी कारण से मैं आयकर अपील वर्ष A Y 2007-08 में उपस्थित नहीं हो सका
- 7 यह की मेरे द्वारा पूर्व में समय-समय पर आयकर विवरण दाखिल की गई वर्ष 2007 2008 में आयकर विवरणी 30 जुलाई 2007 को एक्नॉलेजमेंट नंबर 33 3101 2088 द्वारा आयकर विवरणी दाखिल की गई
- 8 यह की उपरोक्त कारणों से मुझे मेरी अपील का निर्धारण होने की जानकारी नहीं प्राप्त हुई यह जानकारी मुझे 28.06.2023 को आयकर विभाग पत्र के माध्यम से हुई एवं इसी कारण से अपील फाइल करने में 90 दिन का विलंब हुआ



शपथग्रहीता

सत्यापन

मैं प्रमोद कुमार सिंह आत्मज स्वर्गीय श्री रामचंद्र शपथग्रहीता शपथ पूर्वक कथन करता हूँ की उपरोक्त 1 to 7 जानकारी मेरे द्वारा पूर्णता सत्य एवं होश और हवास में आयकर अपीलीय प्राधिकरण में शपथ पत्र के लिए दी जा रही है जो पूर्णतः सत्य है

SWORN BEFORE ME

4. Drawing our attention to the averments made by assessee, Ld. AR submitted that the assessee is a senior citizen. The assessee's business had closed and there is no source of income. The assessee is suffering from high blood pressure and heart disease, copies of medical reports/prescriptions of various dates and doctors are filed at Page 1-39 of Paper-Book. The assessee also met a serious road accident in the year 2021. The assessee's daughter also got divorced and the legal battle is going since the year 2019. The assessee's twin brothers also expired in the year 2020. This way, the assessee had been passing through an extremely difficult phase of life. In assessee's words, he is facing a 'merciful' state. Therefore, due to such onerous circumstances, the assessee could not make statutory compliances. Ld. AR submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He prayed with folded hands that the sole reason of delay is the onerous circumstances only, therefore a liberal approach be taken and delay be condoned to meet the end of justice. Ld. DR for Revenue was fair enough in not raising any objection against assessee's prayer and left the matter to the wisdom of Bench. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a 'sufficient cause' for delay in filing present appeals. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a sufficient cause for not presenting appeal

within prescribed time. It is also a settled position by Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

5. Briefly stated, the background facts leading to present appeals are such that the AO, on the basis of AIR information revealing that the assessee had made cash-deposits in bank a/c, issued notice u/s 148 dated 28.02.2014 to initiate proceeding u/s 147 of the Act. The notice issued by AO u/s 148 as well as subsequent notices issued u/s 142(1) from time to time remained uncompiled by assessee. Ultimately, the AO framed assessment u/s 144 vide assessment-order dated 26.03.2015 determining total income at Rs. 35,02,709/- consisting solely of the addition u/s 68 on account of unexplained deposits in bank a/c. The AO also initiated penalty proceeding u/s 271(1)(c) for concealing particulars of income as well as u/s 271(1)(b) for non-compliances of notices u/s 142(1). Ultimately, vide order dated 28.09.2015, the AO imposed penalty of Rs. 12,00,000/- u/s 271(1)(c) qua the impugned addition of Rs. 35,02,709/- made in assessment-order. Further, the AO, vide a separate order dated 28.09.2015, imposed penalty of Rs. 40,000/- u/s 271(1)(b) for non-compliances of notices u/s 142(1).

Against assessment-order as well as both penalty-orders as aforesaid, the assessee went in three separate appeals to CIT(A) but could not prosecute on the dates of hearing fixed by CIT(A). Therefore, the CIT(A) dismissed those appeals for non-prosecution. Now, the assessee has come in captioned appeals before us assailing the orders of lower authorities.

6. During hearing, it transpired that all three original orders by AO as well as the orders of first-appeals by CIT(A) have been passed *ex-parte* due to non-representation by assessee. It further emerged (i) that the AO has made addition in assessment-order in absence of details by assessee; (ii) the penalty u/s 271(1)(c) is linked with the outcome of assessment; and (iii) the penalty u/s 271(1)(b) is also linked with compliances by assessee during assessment-proceeding. Ld. AR for assessee submitted that considering assessee's advanced age and extremely difficult state of life, it would be most appropriate to restore these matters back to AO for adjudication afresh in accordance with law after considering assessee's representation. He further acknowledged that the assessee will co-operate the AO and ensure adequate representation. Ld. DR for revenue fairly agreed to the proposal of Ld. AR. In view of these submissions of parties and to afford substantial justice to assessee, we are agreeable to the prayer made before us. Accordingly, we remit all three matters to AO for consideration afresh after giving necessary opportunities to assessee. Needless to mention that the AO shall take a proper view in accordance with law after considering assessee's representation without being influenced by his previous orders. The

assessee is also directed to make adequate representation before AO failing which the AO shall be at liberty to pass orders as thought fit.

7. Resultantly, all these appeals are allowed for statistical purposes.

Order pronounced in open court on 30.04.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक/ Dated : 30.04.2024
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