

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.558/Ind/2023
(Assessment Year: 2017-18)

Vaibhav Dosi C/o. Dosi Brothers 43, Tilak Marg, Neemuch (Appellant / Assessee)	Vs.	ITO, Neemuch Neemuch (Respondent/ Revenue)
PAN: AGWPD7974Q		
Assessee by	Shri Apurva Mehta, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.05.2024	
Date of Pronouncement	07.05.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 31.10.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2017-18. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in confirming the addition of Rs. 14,72,641/- u/s. 69 of the Act made by the Ld. AO,

which is wrong and contrary to the facts of the case and provisions of the Act. Thus, the addition of Rs. 14,72.641/- made u/s. 69 r.w.s. 115BBE of the Act is liable to be deleted.

2. On the facts and in the circumstances of the case and in law, the CIT(A), NFAC has erred in confirming the addition of Rs. 14,72.641/- u/s. 69 of the Act made by the Ld. AO without appreciating that the father of the appellant had already surrendered Rs. 15 Lakhs and as such, no addition could have been made in the hands of the assessee.

3. On the facts and in the circumstances of the Ld. CIT(A), NFAC has erred in passing Ex-Parte Order u / s 250 of the Act without considering the facts of the case and without providing sufficient and proper opportunity of being heard and thus, the Order u/s. 250 of the Act dated 31.10.2023 is liable to be quashed and the appellant may kindly be provided with an opportunity of being heard.”

2. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has passed ex-parte order and dismissed the appeal of the assessee for want of prosecution. He has pointed out that in para 3 of the impugned order the CIT(A) has given the details of the notices which shows that the first notice was issued on 18.01.2021 during the Covid-19 pandemic period and thereafter two other notices were issued on 16.10.2023 & 25.10.2023. Thus the last two

notices were issued within the period of nine(9) days and thereafter the CIT(A) has passed the impugned order on 31.10.2023 without giving sufficient opportunity to assessee to response to these notices. Thus, the Ld. AR has submitted that due to insufficient time given by the CIT(A) the assessee could not responded to notices issued by the CIT(A). Hence, the impugned order passed by the CIT(A) ex-parte and dismissing the appeal of the assessee for non-prosecution is liable to be set aside. He has pleaded that the matter may be remanded to the record of the CIT(A) for fresh adjudication after giving one more opportunity of hearing to the assessee.

3. On the other hand, ld. DR has raised no objection if the matter is remanded to the record of the CIT(A) for fresh adjudication.

4. We have considered rival submissions as well as relevant material on record. The CIT(A) has passed the impugned order and dismissed the appeal of the assessee for non-prosecution. The CIT(A) has given the details of three notices issued in para 5 as under:

5. Notices u/s 250 of the Act were issued on 18.01.2021, 16.10.2023 and 25.10.2023 to the appellant providing opportunities for furnishing of submissions (online) on 29.01.2021, 23.10.2023 and 30.10.2023 respectively in support of each of the Grounds of appeal filed by him. No response has been received from the appellant till date. All the hearing notices were sent on the e-mail address provided for communication, in item 17 of Form 35, which is captured below:

Appeal filing details	14	Whether there is delay in filing appeal ?			No
	15	If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)			
	16	Details of Appeal Fees Paid			
		BSR Code	Date of payment	Serial Number	Amount
		0023055	14/01/2020	3	1000
	17	Address to which notices may be sent to the appellant			
		Flat/ Door/ Block No.	Name of Premises / Building / Village	Road / Street / Post Office	
		SHOP NO 49, NEEMUCHI			
		Area/ Locality	Town/ City/ District	State	Country
		TAGORE MARG, TAGORE MARG	NEEMUCHI	MADHYA PRADESH	INDIA
	Pincode	Mobile No	Email Address		
	458441	7771977654	dosiivaibhav14@gmail.com		

5. The first notice was issued on 18.01.2021 and then after the gape of more than two years and 9 months the second and third notice were issued on 16.10.2023 & 25.10.2023 respectively. Ld. AR of the assessee has submitted that these last two notices were issued in short span of time and assessee was not provided sufficient opportunity to furnish the requisite details and submission before the impugned order was passed on 31.10.2023. We find force in the submissions of the Ld. AR that the assessee was not given an effective and appropriate opportunity of hearing

by the CIT(A) before passing the impugned order ex-parte and dismissing the appeal of the assessee for non-prosecution. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order is set aside and matter is remanded to the record of the CIT(A) for fresh adjudication after giving an appropriate opportunity of hearing to the assessee.

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

Order pronounced in the open court on 07.05.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 07 .05.2024

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