

**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. 473/Ind/2023 (AY: 2017-18)

ITA No. 474/Ind/2023 (AY: 2017-18)

M/s Khandelwal Ginning Factory, C/o: Shri Kamal Chand Khandelwal, Khandelwal Lodge, Bhawani Mata Mandir Road, Khandwa <b>(PAN: AAEFS5392K)</b> (Assessee/Appellant)	<b>बनाम/</b> Vs.	ACIT, NFAC, Delhi (ITO, Ward-1, Khandwa)          (Revenue/Respondent)
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Assessee by	Ms. Shreya Jain, AR
Revenue by	Ms. Ila Parmar, CIT-DR

Date of Hearing	09.05.2024
Date of Pronouncement	10.05.2024

**आदेश / ORDER**

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

The captioned two appeals are filed by 'M/s Khandewal Ginning Factory', a partnership firm, hereinafter referred to as "assessee". The details of appeals are as under:

- (i) *I.T.A. No. 473/Ind/2023* is a quantum-appeal directed against appeal-order dated 27.07.2023 passed by Commissioner of Income-tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of

assessment-order dated 29.03.2022 passed by NFAC, Delhi ["AO"]  
u/s 147 r.w.s. 144 of the Income-tax Act, 1961 ["Act"].

- (ii) *I.T.A. No. 474/Ind/2023* is a penalty-appeal directed against appeal-order dated 04.10.2023 passed by CIT(A) which in turn arises out of penalty-order dated 22.09.2022 passed by ITO, Ward-1, Khandwa ["AO"] u/s 271AAC(1) of the Act.

Since these appeals are inter-related, they were heard together and are being disposed of by this common order.

***I.T.A. No. 473/Ind/2023:***

2. The Registry has informed that this appeal is filed after a delay of 63 days and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed a condonation-application supported by an affidavit. To explain the reason of delay, Ld. AR submitted that 'M/s Khandewal Ginning Factory' was originally a partnership firm which was dissolved on 31.03.2011 and an intimation of dissolution was given to Income-tax Department vide letter dated 18.04.2011, copy of the letter supported by a copy of 'Dissolution-Deed' is filed at Page No. 9 to 14 of Written-Synopsis of assessee. Upon and after dissolution, one of the partners 'Shri Kamal Chand Khandelwal' continued the same business in proprietorship by taking over all assets and liabilities of firm. Shri Kamal Chand Khandelwal was, however, not keeping good health and could not take care of income-tax

appeals. Subsequently, after receipt of order dated 04.10.2023 (impugned in ITA No. 474/Ind/2023) when he consulted, the consultant told that the said order related to the appeal filed in penalty-matter u/s 271AAC(1) and the consultant also enquired the status of appeal filed in quantum-matter against assessment-order. The consultant checked e-portal and found that the quantum-matter had already been dismissed. On further verification of assessee's e-mail account, the consultant also found that although the e-mail containing the order of first-appeal was received from department but it got directed to 'spam folder' in place of 'inbox'. For these reasons, Ld. AR submitted, Shri Kamal Chand Khandelwal could not file appeal in time but as soon as the consultant conveyed the status, the assessee immediately took necessary steps and arranged to file present appeal on 28.11.2023 without further delay. Ld. AR submitted that the delay of 63 days has occurred because of the circumstances narrated and there is no deliberate lethargy, negligence, mala fide intention or ulterior motive on the part of assessee in making delay and the assessee does not stand to derive any benefit because of delay. Ld. AR further pointed out that the addition made by AO relates to deposits/withdrawals in bank a/c containing PAN of assessee-firm because the PAN of new proprietor was not informed to bank due to inadvertence. However, the fact remains that the transactions in bank a/c were business transactions of proprietorship concern and therefore the addition made in the hands of assessee-firm is not tenable. Therefore, the assessee has a strong case on merit. Ld. AR prayed that

considering the reason of delay and the merit of case, the delay in filing appeal must be condoned and this appeal should be admitted. Ld. DR for Revenue left to the wisdom of Bench while showing no objection. 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 appeal. 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 coupled with the fact that the assessee-firm is already dissolved, we take a judicious view, condone delay, admit appeal and proceed with hearing.

3. On merits of case, Ld. AR submitted that the assessee has challenged the addition of Rs. 10,14,35,000/- made by AO in assessment-order on account of unexplained expenditure u/s 69C. But the AO has passed ex-parte assessment-order u/s 144 because of non-compliances of the notices by assessee. Similarly, the CIT(A) has also passed ex-parte order dismissing assessee's first-appeal due to non-prosecution. In this regard, Ld. AR has

mentioned following reasons in Written-Synopsis for non-compliances by assessee before lower-authorities:

*"8. As the notices issued by the Ld. AO on e-mail ID [cooldashingirl@gmail.com](mailto:cooldashingirl@gmail.com) which does not belong to firm, thus the assessee has not made the compliances consequent thereto Ld. AO passed an ex-parte order by computing total income u/s 115BBE amounting to Rs. 10,14,35,000/- and the said order is also sent on e-mail ID [cooldashingirl@gmail.com](mailto:cooldashingirl@gmail.com)."*

*"10. The notices issued by the Ld. CIT(A) have been skipped to verify on the e-mail ID by ex-partner Kamal Kumar Khandelwal due to the reason that he was mentally disturbed due to the auction of ginning factory i.e. Khandelwal, Ginning Factory and so also by harassment of creditors of the firm."*

4. Ld. AR further pointed out that the Ld. CIT(A) has given opportunity of hearing vide notices dated 10.11.22, 12.07.23 and 19.07.23 out of which the last two opportunities have been given with a period of seven days only. Ultimately, the CIT(A) passed impugned order very shortly on 27.07.2023 without giving sufficient opportunity to assessee.

5. Placing these points for our consideration, Ld. AR prayed that looking into all circumstances a judicious view should be taken and the case should be remanded back to AO for adjudication afresh after giving proper opportunity to assessee. Ld. DR for Revenue did not have any objection if the case is remanded to AO.

6. In view of the consensus of both sides and considering the peculiar fact that the assessee-firm could not be represented before AO due to its dissolution, we are restoring this matter back to the file of AO for fresh adjudication after giving opportunity to assessee. The assessee is also directed to extend full cooperation and ensure participation in the hearing to be fixed by AO. This appeal is disposed of accordingly.

**I.T.A. No. 474/Ind/2023:**

7. This appeal challenges a penalty of Rs. 78,35,853/- imposed by the AO u/s 271AAC(1). The said penalty is levied for the addition of Rs. 10,14,35,000/- made by the AO which is a matter of dispute in the preceding appeal. Since we have already remanded preceding appeal to AO for fresh adjudication, this appeal is also remanded to AO for fresh adjudication. Accordingly, this appeal is disposed of.

**8. Resultantly, both of these appeals are allowed for statistical purposes.**

Order pronounced in open court on 10.05.2024.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

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

**Indore**

दिनांक/ Dated : 10.05.2024.  
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