

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No.528/Ind/2023
Assessment Year: 2012-13

Shri Pradeep Kumar Lunia, 79, Kanchan Bagh, Indore.	<u>बनाम/</u> Vs.	N.F.A.C., Delhi
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AARPL6197Q		
Assessee by	Ms.Ruchira Singhal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.05.2024	
Date of Pronouncement	15.05.2024	

आदेश/ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 20th October, 2023 of Ld. CIT(A), NFAC, Delhi, for the A.Y. 2012-13. There is a delay of one day in filing the present appeal. The assessee has filed an application for condonation of delay, which is supported by an affidavit of assessee.

2. The Ld. Authorized Representative of the assessee submitted that the assessee took the steps to file the appeal within the time of limitation and also paid appeal fees vide challan dated 20.12.2023. However, due to some technical glitch prevailing at the portal the appeal could not be filed on the

same day, but could be filed only on 21st December, 2023. Therefore, because of technical problem, there is a delay of one day in filing the present appeal. The Ld. Authorized Representative of the assessee submitted that the delay of one day in filing the appeal may be condoned.

3. On the other hand, the Ld. Departmental Representative has raised no objection if the delay of one day in filing the appeal is condoned.

4. We have considered the cause of delay explained by the assessee as well as submissions of both the parties. The assessee has explained the delay of one day in filing the present appeal is due to some technical glitches in the portal, which has caused an un-intentional delay of one day. We find that the assessee has paid the appeal fee vide challan dated 20th December, 2023. Therefore, it corroborates the explanation of the assessee for delay of one day. Accordingly, in the facts and circumstances of the case and in the interest of justice, the delay of one day in filing the appeal is condoned.

5. The assessee has raised the following grounds of appeal :-

1. *That the Ld. CIT(A) erred in dismissing the appeal filed by the appellant for non-prosecution and thereby confirming the addition made by the AO. That on the facts and in the circumstances of the case, the said dismissal of appeal being wrong and bad in law, it is prayed that the matter may very kindly be restored back to the file of the Ld. CIT(A) to dispose the appeal on merits of the case after giving proper opportunity of being heard to the appellant.*
2. *That the Ld. CIT(A) erred in dismissing the appeal filed by the appellant and in effect erred in confirming the addition of Rs. 63,84,000/- made*

to the total income of the appellant on account of alleged unaccounted cash transactions. That on the facts and circumstances of the case the addition made on surmises and conjectures is wrong and bad in law and it is prayed that the same very kindly be deleted.

3. *The assessment order passed u/s 144 r.w.s. 143(3) dated 09.10.2019 is issued without any Document Identification number (DIN) is invalid, wrong and bad in law and is prayed to be set aside.*
4. *That the Ld. CIT(A) erred in dismissing the appeal filed by the appellant and in effect erred in confirming the action of the Id. AO of drawing adverse inferences on the basis of certain information found as a result of a survey, of which the appellant was not a party, without providing and without confronting the said information from the appellant.*

6. At the time of hearing, the Ld. Authorized Representative of the assessee has submitted that the Ld. CIT(A) has dismissed the appeal of the assessee due to non-prosecution and by ex-parte order. The Ld. Authorized Representative of the assessee has further submitted that the assessee challenged the validity of reopening on various grounds. However, the Ld. CIT(A) has not adjudicated the appeal of the assessee on merit. Thus, the Ld. Authorized Representative of the assessee has pleaded that the impugned order of the Ld. CIT(A) may be set-aside and the matter may be remanded for fresh adjudication on merits.

7. On the other hand, the Ld. Departmental Representative has submitted that despite several notices issued by the Ld. CIT(A), there was no response on behalf of the assessee except on one occasion when the assessee has sought adjournment for hearing. He has further submitted that even assessment order was also passed ex-parte and on best judgment basis u/s 144 of the Act. Therefore, the assessee even did not respond to the various notices issued by A.O. Thus, the Ld.

Departmental Representative has fairly submitted that the matter may be remanded to the record of the Jurisdictional A.O. for proper verification and examination of the relevant records to be filed by the assessee.

8. We have carefully considered the rival submissions as well as the material placed on record. The assessee filed return of income u/s 139 on 25.03.2013 declaring total income of Rs. 4,33,020/-. Later on the AO reopened assessment by issuing the notice u/s 148 on 30.03.2019, after recording the reasons for reopening of the assessment. The reopening of the assessment was triggered by a survey action u/s 133A conducted in case of Shri Dinesh Lunia and Shri Lavish Lunia on 19th September, 2018, wherein various incriminating documents and other material was found and impounded disclosing the transactions of cash received by the assessee from various persons which were not disclosed by the assessee in the original return of income. In response to notice u/s 148, the assessee did not file return of income. The AO then issued show cause notice u/s 144, which was also not responded by the assessee. Consequently, the assessment was framed u/s 144 read with Section 147 whereby the AO has made an addition of Rs. 63,84,000/-. The assessee challenged the action of the AO before the Ld. CIT(A). However, the appeal of the assessee was dismissed, when the assessee did not file any reply or submissions to the various notices issued by the Ld. CIT(A). The appeal of the assessee was dismissed for non-prosecution and has not been decided on merit by the Ld. CIT(A). Therefore, the impugned order is not in accordance with the provisions of Section 250(6) of the Income-tax Act, 1961. Accordingly, in the facts and circumstances, when the appeal of the assessee was not adjudicated on merit by a speaking order, the same is set-aside and the matter is remanded to the

record of the AO for fresh adjudication after giving one more opportunity to the assessee to produce the relevant details and evidences.

9. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 15.05.2024.

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

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Indore

दिनांक/Dated :15.05.2024

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*