

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. 04/Ind/2024 (AY: 2013-14)

Shri Sanjay Sharma, 41, Kelod Kartal, Khandwa Road, Indore. (PAN: EFFPS8527L) (Assessee/Appellant)	<u>बनाम/</u> Vs.	National e-Assessment Centre, Assessment Unit, Income Tax Department, NFAC, Delhi (Revenue/Respondent)
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ITA No. 05/Ind/2024 (AY: 2013-14)

Shri Sanjay Sharma, 41, Kelod Kartal, Khandwa Road, Indore. (PAN: EFFPS8527L) (Assessee/Appellant)	<u>बनाम/</u> Vs.	Income-tax Officer, 1(1), Indore. (Revenue/Respondent)
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Assessee by	Ms. Nisha Lahoti, AR
Revenue by	Shri Ashish Porwal, Sr. DR

Date of Hearing	22.05.2024
Date of Pronouncement	27.05.2024

आदेश / ORDER

Per B.M. Biyani, AM:

The captioned two appeals are filed by assessee. The details of appeals are as under:

- (i) *I.T.A. No. 04/Ind/2024* is a quantum-appeal directed against appeal-order dated 12.09.2023 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. 144B of the Income-tax Act, 1961 [“Act”].

- (ii) *I.T.A. No. 05/Ind/2024* is a penalty-appeal directed against appeal-order dated 12.09.2023 passed by CIT(A) which in turn arises out of penalty-order dated 15.09.2022 passed by ITO, Ward-1(1), Indore [“AO”] u/s 271F of the Act.

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

2. The Registry has informed that both of these appeals are filed after a delay of 53 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 referred the averments made by assessee and submitted that the assessee is engaged in a very small business of sale of agri-related products and the income earned by assessee is stated to be below taxable limit. That the assessee is not well educated and studied upto class 9th only, therefore does not have awareness of technology. That the notices of proceedings were sent to assessee on e-mail despite the fact that the assessee specifically mentioned “no” against the space provide in Form No. 35 filed to CIT(A) asking “Whether notices/communication may be sent on email?”. Therefore, the assessee was not aware of the proceedings conducted by CIT(A) and even the impugned orders passed by CIT(A). It is only when the Jurisdictional Assessing Officer

called for payment of demand that the assessee checked email and came to know that the adverse orders have been passed by CIT(A). Immediately, at the advice of counsel, the assessee filed these appeals without further delay. Ld. AR submitted that the delay of 53 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 assessee has strong cases on merit. Ld. AR prayed that considering the reason of delay and the merit of case, the delay in filing appeals must be condoned and these appeals 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 appeals 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 appeals and proceed with hearing.

I.T.A. No. 04/Ind/2024:

3. In this app-eal, the assessee is aggrieved by income of Rs. 48,37,000/- assessed by AO in assessment-order on account of difference between stamps authority valuation and actual sale consideration u/s 50C. 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. Ld. AR re-iterated the same submission that the assessee could not submit responses due to unawareness of notices sent by lower-authorities. Ld. AR prayed that looking into assessee's position, 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. In view of the consensus of both sides, 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.

I.T.A. No. 05/Ind/2024:

4. In this appeal, the assessee is aggrieved by a penalty of Rs. 5,000/- imposed by AO u/s 271F for non-filing of return. Ld. AR submitted that the assessee's total income was below taxable limit and therefore not required to file return. That apart, the penalty u/s 271F cannot be imposed if there is a reasonable cause for occurrence of default. However, the assessee could not

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make these submissions to AO. Therefore, it is prayed to remand this matter also back to the AO for consideration afresh. Ld. DR for revenue does not have objection. In view of consensus of both sides and also having regard to the fact that we have already remanded quantum-matter to AO, this appeal is also remanded to AO for fresh adjudication.

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

Order pronounced in open court on 27.05.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक/ Dated : 27.05.2024.
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