

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. 3/Ind/2024
Assessment Year : 2017-18

Chandumal Tharwani, Betul Ganj, Betul	<u>बनाम/</u> Vs.	DCIT, Itarsi,
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAMPT3620R		
Assessee by	Ms.Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	28.05.2024	
Date of Pronouncement	29.05.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 29.08.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 22.12.2019 passed by learned DCIT/ACIT, Itarsi ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal.

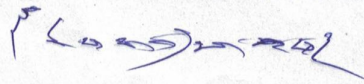
2. The registry has informed that the present appeal is filed after a delay of 67 days and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed following application for condonation of delay stating therein the reasons of delay:

To,
The Income Tax Appellate Tribunal,
CGO Complex,
ShivajiChouraha,
A. B. Road,
INDORE-452 001

Sub: - Application for Condonation of Delay in filing an appeal of Chandumal Tharwani against /NFAC/CIT(A)'s order dtd. 29.08.2023 for the Asst. Year 2017-18.


Respected Sir,

1. This is an appeal against the order of CIT(A) National Faceless Appeal Centre dated. 29.08.2023 under Din & Order No. ITBA/NFAC/A/250/2023-24/1055563682(1). The said Appellate Order was sent by the National Faceless Appeal Centre on 29.08.2023 at the mail address of his grandson (Avinash Tharwani) of the assessee at his mail address avinash.tharwani@gmail.com.
2. I, the assessee submits that I am aged about 80 years living in Betul from last many years. Initially I setup my business of whole and retail sale of oil, grain sugar and others. I am illiterate person and I don't have any knowledge of computers. My son is also suffering from paralysis from long time. Due to my advancing age from last many years I am not looking after my business and on my behalf all my business has been looked by my grandson Avinash Tharwani. It is submitted that My grandson son Avinash Tharwani looks after all tax matter and related work on day-to-day basis. The Income Tax appeal was filed through my counsel by my grandson Avinash Tharwani and all the communication is also done by him. It is submitted that Avinash Tharwani was not keeping up well since June-July and unfortunately, he got diagnosed with Accelerated Hypertension, Hypertensive Vasculopathy, Hypertensive Retinopathy, Acute Kidney Injury & Brain Stroke.



3. It is submitted that on the said date 29.08.2023 as , his grandson was in a critical condition and therefore was admitted in CritiCare hospital and research institute Nagpur. Because he was diagnosed with a chronic disease Accelerated Hypertension, Hypertensive Vasculopathy, Hypertensive Retinopathy, Acute Kidney Injury. He was actually was suffered with the brain stroke. It is submitted that he was under terrible pain due to ill health and local doctors of Betul was advised him to go Nagpur for checkup and treatment. He went to Nagpur and was under strict doctor supervision and got hospitalized from 29th Aug 2023 to 06th Sep 2023. After Discharge he was still on complete bed rest as per doctor's advised and not allowed to do any work. Since he is not well and we all are occupied with our grandson's health, he failed to check his email. The doctor's certificate and required documents for valid proof are enclosed herewith. It is submitted that when his condition was slightly improved and he resumed his work on part time basis he checked his email and found that aforesaid CIT(A) order dated. 29.08.2023 and then, he forwarded the said order on 12.12.2023 to his counsel at Bhopal.
4. The copy of all related medical documents are enclosed herewith for your Honour Perusal. The counsel at Bhopal after the receipt of above appellate order studied the documents and prepared the appeal on 26.12.2023 for filing before the Honable Appellate Tribunal.
5. The assessee submits that as the appeal was required to be filed before 29.10.2023 but due to reasons above it could not be filed before that date and therefore there is a delay of 61 days in filing the appeal. the assessee in the circumstances above, humbly submits that the delay be kindly condone and the appeal may be admitted for the adjudication.

Yours faithfully,


Chandumal Tharwani
(Appellant)

Encl. as above
Date: 27.12.2023



3. The reasons submitted by assessee in above application are explained by Ld. AR in open court. After deliberation, it is found that the various difficulties narrated by assessee in Para No. 2 to 4 of application adequately demonstrate a 'sufficient cause' for occurrence of delay. Finding strength therein, Ld. DR for revenue did not show any objection against condonation of delay. 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.

4. Ld. AR drew us to the impugned order passed by CIT(A) and showed that the CIT(A) has passed ex-parte qua assessee due to non-prosecution by assessee. Ld. AR submitted that the reason of non-prosecution of first appeal by assessee is also same as narrated in condonation application. Therefore, the assessee should be given an opportunity to represent his case before the lower authorities. Ld. DR for revenue proposed that the case of assessee should be restored to AO because the AO has also passed ex-parte assessment-order due to non-reply by assessee to show cause notice. Ld. AR

agreed to the proposal of Ld. DR. In view of consensus by both sides and also having regard to the principle of natural justice and fair play, we deem it fit to give one more opportunity to assessee so that the assessee can represent his case before AO for a proper adjudication. Accordingly, we remand this matter back to the file of AO for a fresh adjudication after giving opportunity of hearing to assessee. The assessee is also directed to ensure participation in the hearings fixed by AO and do not seek unnecessary adjournments.

5. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 29.05.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 29.05.2024.
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