

**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. 165/Ind/2024**  
**Assessment Year : 2011-12**

Shri Nayan Prajapati, 469, Govind Colony, Malwa Bharti School, Indore.	<b><u>बनाम/</u></b> Vs.	Income-tax Officer, Ward 4(4), Indore.
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN : AIRPP7549J</b>		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.06.2024	
Date of Pronouncement	27.06.2024	

**आदेश / O R D E R**

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

Feeling aggrieved by appeal-order dated 23.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 17.12.2018 passed by learned ITO-4(4), Indore ["AO"] u/s 144/147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides and case records perused.

3. Ld. AR for assessee drew our attention to the impugned order passed by CIT(A) and pointed out that the Ld. CIT(A) has dismissed assessee's first-appeal on the reasoning that the said appeal was time-barred having been filed on 23.03.2019 after expiry of 96 days from assessment-order dated 17.12.2018 passed by AO, which was beyond the statutory time-period of 30 days prescribed in section 249(2) of the Act. But the correct fact is that the assessment-order dated 17.12.2018 alongwith demand-notice u/s 156 was actually served upon assessee on 20.03.2019 which is clearly mentioned in the acknowledgement given by assessee to department at the time of service; the assessee's acknowledgement with date and signature appearing on the demand-notice available in file of department as obtained by assessee through inspection of departmental record, is scanned and re-produced below:

Notice of Demand under Section 156 of the Income-tax Act, 1961

2

D&CR No. 91/23

PAN: AIRPP7549J

Status: Individual

To

Shri Nayan Prajapati  
469, Govind Colony,  
Near Malwa Bharti School, Indore

1. This is to give you notice for the Assessment Year 2011-12 a sum of Rs. 17,79,980/- (D) detail of which are given on the reverse, has been determined to be payable by you.
2. The amount should be paid to the Manager authorized Bank/ State Bank of India, Reserve Bank of India at any within 30 days of the service of this notice. A Challan is enclosed for the purpose of payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one percent for every month or part of a month from the date commencing after end of the period aforesaid in accordance with section 220(2).
4. If you do not pay the amount of the tax within the period specified above penalty (which may be as much as the amount of tax in arrear) may be imposed upon you a reasonable opportunity of being heard in accordance with section 221.
5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with sections 222 to 229, 231 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the Assessment order u/s 144/147 of the IT Act, 1961, you may present an appeal under Part A of Chapter XX of the Income-tax Act, 1961, to the Commissioner of Income-tax-(Appeals)-II, Indore, within thirty days of the receipt of this notice, in Form No. 35, duly stamped and verified as laid down in that form.
7. The amount has become due as a result of Commissioner of Income-tax-(Appeals)-II, Indore under section -----, of the Income-tax Act, 1961. If you intend to appeal against the aforesaid order, you may present an appeal under Part B of Chapter XX of the said Act to the Income-tax Appellate Tribunal, Indore Bench, Indore within 60 days of the receipt of that order, in Form No. 36 duly stamped and verified as laid down in that form.

Place: Indore

Date: 17.12.2018



Birendra Kumar  
Income Tax Officer-4(3),  
INDORE

*Brinda Rajesh*  
(Brinda Rajesh)  
Income Tax Officer  
Ward- 4(4), Indore

*Nayan Kumar*  
20-3-19

*Be*  
True Copy

4. Thus, Ld. AR submitted, the assessment-order though passed on 17.12.2018 was actually served upon assessee on 20.03.2019. The assessee has also mentioned these very details in the space prescribed in Form No. 35 filed to the CIT(A) as under:

2	Details of the order appealed against/ Appeal u/s 248	
b	Date of order	17/12/2018
c	Date of service of Order / Notice of Demand	20/03/2019

5. Furthermore, the assessee has also filed a solemnized affidavit making averment that the assessment-order was served upon him on 20.03.2019.

6. In the light of above facts, Ld. AR submitted that the first-appeal was timely filed on 23.03.2019 after service of assessment-order/demand-notice on 20.03.2019 and as such there was no delay in filing first-appeal. Ld. AR, therefore, prayed to restore this matter to lower-authorities for adjudication on merit.

7. Ld. DR agreed to assessee's submission but, however, submitted that the AO's assessment-order was also ex-parte u/s 144 in absence of details from assessee, therefore the CIT(A) cannot carry this matter to its logical conclusion. Hence, in the situation, it would be more appropriate to restore this matter back to the level of AO instead of CIT(A). Ld. AR for assessee agreed.

8. In view of above submissions of parties, firstly we agree that the assessee filed first-appeal in statutory time after service of demand-notice, therefore there was no delay in filing first-appeal. We next agree to the consensus made by both sides and also having regard to the principle of natural justice and fair play, we deem it fit to remand this matter to AO for adjudication afresh after giving opportunity of hearing to the assessee uninfluenced by his earlier order in any manner. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law.

**9. Resultantly, this appeal is allowed for statistical purpose.**

Order pronounced in open court on 27.06.2024.
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Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER  
Indore

दिनांक /Dated : 27.06.2024.  
CPU/Sr. PS

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

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