

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.69/Ind/2024
AY: 2013-14

Shri Balkishan Koshal, 31, Bhagirathpura, Indore. (PAN: BKIPK5435L) (Assessee/Appellant)	बनाम/ Vs.	Income-tax Officer, NFAC, Delhi (Revenue/Respondent)
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ITA No.72/Ind/2024
AY: 2013-14

Shri Balkishan Koshal, 31, Bhagirathpura, Indore. (PAN: BKIPK5435L) (Assessee/Appellant)	बनाम/ Vs.	Income-tax Officer, NFAC, Delhi (Revenue/Respondent)
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Assessee by	Shri R.S. Dave, Adv.
Revenue by	Shri Ashish Porwal, Sr. DR

Date of Hearing	10.07.2024
Date of Pronouncement	12.07.2024

आदेश / O R D E R

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. 69/Ind/2024* is a quantum-appeal directed against appeal-order dated 28.12.2023 passed by Commissioner of Income-tax

(Appeals), NFAC, Delhi [“CIT(A)”] which in turn arises out of assessment-order dated 09.09.2021 passed by NFAC, Delhi [“AO”] u/s 147 of the Income-tax Act, 1961 [“Act”].

- (ii) *I.T.A. No. 72/Ind/2024* is a penalty-appeal directed against appeal-order dated 28.12.2023 passed by CIT(A) which in turn arises out of penalty-order dated 03.02.2022 passed by AO u/s 271(1)(c) of the Act.

2. The grounds raised in these appeals are as under:

I.T.A. No. 04/Ind/2024 (Quantum appeal):

1. *The Ld. CIT(A), Faceless Delhi had not considered reasonable and sufficient cause to condone delay u/s 249(3) of the Act, 1961, hence appeal-order is prejudice, unjustified and deserve to be set-aside according to law.*
2. *The Ld. CIT(A), Faceless Delhi had not considered the response filed by appellant, hence appeal-order is incomplete, prejudice, unjustified and deserve to be set aside according to law.*
3. *The Ld. CIT(A), Faceless Delhi had not considered primary facts of the case and involved law of section 147 and section 68-69 of the Act, hence assessment and appeal-order is prejudice, unjustified and deserve to be set-aside according to law.*

I.T.A. No. 05/Ind/2024 (Penalty appeal):

1. *The Ld. CIT(A), Faceless Delhi had not considered reasonable and sufficient cause to condone delay u/s 249(3) of the Act, 1961, hence appeal-order is prejudice, unjustified and deserve to be set-aside according to law.*
2. *The Ld. CIT(A), Faceless Delhi had not considered the response filed by appellant, hence appeal-order is incomplete, prejudice, unjustified and deserve to be set aside according to law.*
3. *The Ld. CIT(A), Faceless Delhi had not considered primary facts of the original assessment case and involved law of section 147 and section 68-69 of the Act hence, assessment and penalty appeal-order is prejudice, unjustified and deserve to be set-aside according to law.*

3. These appeals are inter-related; therefore they were heard together and are being disposed of by this common order for the sake of convenience, brevity and clarity.

4. The background facts leading to these appeals are such that the AO, acting on the basis of an information of cash deposits of Rs. 14,00,000/- having been made by assessee in his bank a/c, issued notice u/s 148 dated 26.02.2020 in response to which the assessee filed return declaring income of Rs. 1,90,040/-. Ultimately, the AO completed assessment vide assessment-order dated 09.09.2021 after making an addition of Rs. 14,00,000/- treating the impugned bank deposits as unexplained income u/s 69. Simultaneously, the AO initiated penalty proceeding u/s 271(1)(c) by issuing show-cause notice dated 09.09.2021 u/s 274 r.w.s. 271(1)(c) and ultimately passed penalty-order dated 03.02.2022 imposing a penalty of Rs. 4,20,000/- qua the addition of Rs. 14,00,000/-. Aggrieved by both orders, namely assessment-order and penalty-order, the assessee filed two separate appeals to CIT(A) but the CIT(A) noted that the appeals filed by assessee were belated by 239 days after expiry of prescribed time-limit (as extended by Hon'ble Supreme Court due to Covid-2019) but the assessee did not have any 'sufficient cause' to explain the delay and accordingly the CIT(A) dismissed assessee's both appeals. Now, the assessee has come before us in next appeals impugning the twin orders passed by CIT(A).

5. Ld. AR for assessee explained some more facts of the case which are very much relevant. Firstly, he submitted that the assessee filed first-appeals in both quantum and penalty matters on 23.01.2023 to CIT(A). Then, he drew our attention to the demand-notice dated 09.09.2021 u/s 156 issued by AO pursuant to the assessment-order dated 09.09.2021 (copy held in case-record) to show that the AO determined the demand payable by assessee at a sum of "0". Subsequently, the AO passed rectification-order dated 24.01.2023 u/s 154 amending the assessment-order and pursuant to the same, issued a newer demand-notice u/s 154 dated 24.01.2023 determining a sum of Rs. 12,97,800/- payable by assessee. In this situation, Ld. AR contended, when there was no demand payable by assessee under the demand-notice dated 09.09.2021, the assessee had no grievance and there was no necessity to file any appeal. It is only the demand-notice dated 24.01.2023 which has fastened a liability of Rs. 12,97,800/- payable by assessee and which obligated the assessee to filed appeal to CIT(A). Therefore, the assessee could very well file appeal within 30 days from 24.01.2023. Since the assessee filed appeals on 23.01.2023, it was before expiry of permissible time and cannot be termed as a case of belated appeals. The assessee explained this aspect very clearly to the CIT(A) but the CIT(A) reckoned time-limit of 30 days from date of original assessment/penalty orders, allowed limited relaxation due to Covid-2019 and wrongly arrived at a delay of 239 days. Since the assessee's appeals filed to CIT(A) were well within 30 days of demand-notice

dated 24.01.2023, the CIT(A) has wrongly considered it as a case of delay. Ld. AR prayed that the case of assessee must be evaluated properly and it must be held that there was no delay on the part of assessee in filing first-appeals.

6. Ld. DR for revenue did not make any rebuttal to the submission of Ld. AR and left the matter for the wisdom of bench.

7. We have considered the submissions of both sides and perused the documents to which our attention has been drawn. Section 249(2) of the Act prescribes following time-limits for filing of appeal before CIT(A):

“249(2). The appeal shall be presented within thirty days of the following date, that is to say, --

(a) XXX (not relevant)

(b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty.”

Thus, the law requires filing of appeal to CIT(A) within 30 days from date of service of the demand-notice and not from date of assessment-order. In the present case, the assessment-order was passed on 09.09.2021 and the original demand-notice was also issued on 09.09.2021. But, in such original demand-notice, the AO determined and accordingly asked the assessee to pay “0” amount. Subsequently, the AO passed rectification-order dated 24.01.2023 to determine the amount of tax + interest payable by assessee which culminated into issuance of a newer demand-notice dated 24.01.2023 requiring the assessee to pay a demand of Rs.

12,97,800/- . Therefore, it was the subsequent demand-notice dated 24.01.2023 by which the assessee could be said to be aggrieved and for which the assessee needed to file appeal before CIT(A). Therefore, in this peculiar situation, the assessee had a time-limit of 30 days from 24.01.2023 to file a valid appeal. Faced with this situation, the quantum-appeal filed by assessee to CIT(A) on 23.01.2023 can be said to be within statutory time. In a worst scenario, which though should not be, even if it is considered as a case of delay, the assessee will get a direct support from landmark decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** holding 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 and the delay should be condoned. Therefore, we have no hesitation in holding that the quantum-appeal filed by assessee to CIT(A) on 23.01.2023 was a valid appeal. Since the penalty-proceeding of section 271(1)(c) are directly dependent upon quantum-proceeding, the penalty-appeal filed on 23.01.2023 must also follow the same suit. Consequently, we hold that the twin appeals filed by assessee to CIT(A) were valid appeals filed in time.

8. On merits of the case, Ld. AR drew our attention to Para 4 of assessment-order to show that the AO has alleged that the assessee made a cash deposit of Rs. 14,00,000/- in his account with Central Bank of India but the AO has not given any detail of branch or a/c number in which the

alleged deposit was made. Even during assessment-proceeding when the AO show-caused assessee, the assessee filed statements of three a/cs with Central Bank of India held by assessee or his wife (copies also filed at Page 18-20 of Paper-Book) wherein there was no such deposit as alleged by AO. However, the AO made addition without giving weightage to assessee's submission. Ld. AR made a strong contention that the AO has made addition on mere suspicion without having any tangible material in hand, therefore the addition deserves to be deleted. *Per contra*, Ld. DR for revenue made a proposal that the present matters should be restored back to the AO so that the AO can take a proper call after making cogent enquiries from concerned bank and after considering the submission of assessee, if any. After a careful consideration, we find that in the very same Para 4 of assessment-order, the AO has also mentioned as under:

"4.It can be seen that the no meaningful conclusion can be drawn from the information submitted. In fact a notice u/s 142(1) dated 07/07/2021 was issued calling for complete details. In view of these facts a Final Show Cause Notice dated 12.08.2021 was issued giving time till 23.08.2021 for the assessee to respond. The said notice was delivered to the email ID of the assessee. However, till date no reply is received. Under the circumstances there is no option but to complete the assessment on the merits of the case."

Therefore, the assessee has not filed any response to the final show-cause notice issued by AO. Faced with this situation, we find merit in the proposal of Ld. DR to restore this matter back to the level of AO to enable

the AO to make detailed enquiry from bank and also consider the submission of assessee. Therefore, the quantum-matter being *ITA No. 69/Ind/2024* is restored to AO for a fresh adjudication.

9. The penalty-matter *ITA No. 72/Ind/2024* is consequential to quantum. Hence, the same is also restored to the AO for taking a fresh call based on outcome of quantum.

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

Order pronounced in open court on 12.07.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक/ Dated : 12.07.2024
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