

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.125/Ind/2024
(Assessment Year: 2009-10)

Late Tantwant Singh Keer (Through Legal Heir Shri Gursharan Singh Keer), Inder Bhawan, Lalbagh Road, Burhanpur (Appellant / Assessee)	Vs.	Income Tax Officer, Burhanpur (Respondent/ Revenue)
PAN: ACMPK3534H		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	22.07.2024	
Date of Pronouncement	23.07.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 09.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Center, (NFAC) Delhi for A.Y.2009-10.

2. The assessee has raised following grounds of appeal:

- "1. That on the facts and the circumstances of the case of the assessee, the CIT(A) was not justified in holding that the assessee has failed to file form 35, grounds of appeal and statement of facts.*
- 2. That on the facts and the circumstances of the case of the assessee, the CIT(A) was not justified in holding that the assessee has not filed his submission during the appeal proceedings.*
- 3. That on the facts and the circumstances of the case of the assessee, the CIT(A) was not justified in passing the order ignoring the submission filed and the remand report claimed by the CIT(A)-2, Indore during personal hearing.*
- 4. That on the facts and the circumstances of the case of the assessee, the CIT(A) was not justified in passing the appeal order without considering the merits of the case.*
- 5. The assessee craves leave to add, alter amend or withdraw any ground of appeal on or before the time of hearing.*

3. At the time of hearing the Ld. AR has submitted that initially the appeal was heard by the CIT(A) in physical mode and the assessee filed its reply along with relevant record upon which the CIT(A) called for a remand report from the A.O which was also submitted by the A.O, a copy of which is placed at page 3 & 4 of the paper book. Thereafter the case was migrated to faceless mode of hearing and impugned order was passed for non-prosecution. Thus, Ld. AR has submitted that when the assessee has already filed the reply as well as the evidences which was forwarded to the

A.O for remand report during the physical hearing of the appeal and thereafter the remand report was also submitted then the non consideration of the reply, documentary evidences filed by the assessee as well as the remand report submitted by the A.O while passing the impugned order renders it as unsustainable. Thus, he has prayed that the impugned order may be set aside and the matter may be remanded to the CIT(A) for deciding the appeal of the assessee on merits after considering the submissions and documentary evidence submitted by the assessee along with the remand report of the A.O.

3.1 On the other hand Ld. DR has not objected to the request of the assessee for remanding the matter to the record of the CIT(A) for fresh adjudication in view of the facts brought on record by the assessee.

4. We have considered the rival submissions as well as the relevant material on record. The CIT(A) has dismissed the appeal of the assessee in *limine* in para 2.2 to 2.3 as under:

"2.2 It has been brought out in the preceding part of this order that 15 notices u/s 250 of the Act were issued by the First Appellate Authority which have remained un-complied.

3.0 There has been no attachment of Form 35/Grounds of Appeal/Statement of Facts.

3.1 Appellant has not responded to any notice and no reply or response is available.

3.2 In absence of the basic details like grounds of appeal/statement of facts the appeal is not maintainable and is dismissed in Limimne".

4.1 Ld. AR of the assessee has filed all the relevant documents and copies of the submission filed before CIT(A) during the physical hearing placed at Page 1 to 40 of the paper book. The A.O has submitted its remand report dated 08.02.2018 in response to the letter of the CIT(A) dated 15.12.2016. Therefore, it is clear that in the physical hearing of the appeal the CIT(A) called for a remand report in respect of the documentary evidence filed by the assessee. However, when the case was migrated to faceless proceedings CIT(A) has passed the impugned order ignoring all the documentary evidence as well as the remand report of the A.O. Accordingly, in the facts and circumstances of the case we set aside the impugned

order and remand the matter to the record of the CIT(A) for fresh adjudication on merits after considering the documentary evidence, remand report of the A.O as well as after giving an opportunity of hearing to the assessee.

5. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 23.07.2024

Dev/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*