

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. 186/Ind/2024
Assessment Year:2007-08

Bhuwneshwar Singh Maran, H.No.05, Neelbad Bhadbhada Road, Bhopal (Assessee/Appellant)	बनाम/ Vs.	Income-tax Officer, 1(1), Bhopal (Revenue/Respondent)
PAN: AHEPM8432B		
Assessee by	Shri Shreya Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	26.07.2024	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 30.01.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 26.02.2015 passed by learned ITO-1(1), Bhopal ["AO"] u/s 147 r.w.s. 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2007-08, the assessee has filed this appeal.

2. We have heard the learned Representatives of both sides and perused the case record including the orders of lower-authorities.

3. On perusal, we find that though the CIT(A) has decided assessee's first-appeal on merit in Para 1.3 but prior to that in Para No. 1.2, he has dismissed assessee's appeal as time-barred. So far time-barring issue is concerned, the CIT(A) has noted that the assessee filed first-appeal before him on 13.04.2018 against the assessment-order dated 26.02.2015 passed by AO which was not within statutory period of 30 days. The order passed by CIT(A) in this regard is re-produced below:

"1.2 Condonation : The present appeal arises from the order u/s 144 r.w.s. 147 ,of the Income-tax Act, 1961, for the assessment year 2007-08 dated 26.02.2015. As such, the appeal should have been filed within 30 days of receipt of the order. However, the appeal was filed only on `13.04.2018. The appellant claimed in appeal memo that the above order u/s 144 r.w.s. 147 of the Income-tax Act, 1961, was served on 15.03.2018 and has stated that there was no delay in filing of appeal in the Form -35 and has not filed any condonation. However, the appellant has not provided any proof/evidence for the receipt of order only on 15.03.2018. Based on the above facts, the appellant's case is liable to be dismissed as the appeal was barred by limitation."

4. Ld. AR appearing for assessee has filled a "Synopsis of Arguments" duly signed by assessee, which is scanned and reproduced below for an immediate reference:

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH: INDORE

IN THE MATTER OF BHUWNESHWAR SINGH MARAN,
H.NO.05, NEELBAD, BHADBHADA ROAD, BHOPAL

ITA No. 186/Ind/2024
ASSESSMENT YEAR 2007-08
PAN: AHEPM8432B

Synopsis of Arguments

MAY IT PLEASE YOUR HONOURS

With reference to the hearing of above referred appeal I have to submit that first of all I apologize for inconvenience caused to your Honour's since the notice sent by Hon'ble Tribunal on my given address in form No.36 is returned back. The notice might be returned for the reason that in Form 36 pin code is filled up as '462001' instead of correct pin code '462044'. The said mistake is occurred due to the reason that in the Form 35 I filled the pin code 462044 but the Ld. National Faceless Appeal Centre through oversight in the appellate order mentioned the pin code as 462001 and my Chartered Accountant who filed appeal before your Honour's filled up the same address as mentioned in the order of Ld. National Faceless Appeal Centre and I signed the appeal memo without verifying the same for which I again apologize and I am sure that your honour will forgive the mistake. In support of my this contention copies of first page of Form 35 and Ld. CIT(A)'s Order is enclosed herewith. I assure that in future I shall not repeat such type of silly mistake.

On merit I have to submit as under:

- 1) That as per the assessment order the Ld. AO has sent notice u/s 148, 142(1) and show cause notices on my address mentioned in the Assessment order. Since the full and correct address i.e. House No. and Pin Code is not mentioned in the notices and so also in the assessment order, therefore same is not received by me which is evident from the fact that Hon'ble Tribunal has mentioned correct address only the pin code is mismatched, consequent thereto the Postal Department returned back the notice sent by Hon'ble Bench. This fact proves that the notices and Assessment order sent by Ld. AO is not served upon me in

the want of full and correct address. In support of my this contention copies of front page of Assessment order and copies of notice u/s 148, 142(1) and show cause notice (which were received by me in response to application filed by me after attachment of my bank account for recovery of demand created by ex-parte assessment order) are enclosed herewith.

- 2) In respect of proof for the service of notice u/s 148, 142(1), show cause notice and assessment order, I filed an application u/s 6(1) of the RTI Act on 16.1.2024 to the Ld. AO requesting him to provide me proof of service of notice u/s 148, all the notices u/s 142(1), show cause notice and assessment order passed u/s 144. In response to my application under RTI the Ld. AO vide order dated 12.02.2024 informed me that the notices and assessment order are sent by Speed Post and served upon the given address. No proof for service have been provided.
- 3) Since the assessment order is received by me 15.3.2018 after filing of application for providing the copy of same and appeal was filed by me on 13.4.2018, thus the appeal is filed by me before the Ld. CIT(A) is within the statutory time limit. Thus the Ld. CIT(A) is not correct in dismissing the appeal on the ground of non-filing of appeal within the statutory time limit.
- 4) As regards the non-filing evidence regarding the agriculture income deposited in bank account it is submitted that I have filed before the Ld. AO proof regarding holding of agriculture land measuring 64.51 acre in the name of family members. It is sufficient proof in respect of cash deposited in bank account on sales of agriculture produce of Rs.6,85,150/-

In view of above facts it is prayed that ex-parte assessment order passed by the Ld. AO without service of notice u/s 148, 142(1) and show cause notice and order passed by the National Faceless Appeal Centre be set aside.

Thanking you,

Place: Bhopal

Date: 16.7.2024

Submitted by,



5. In Point No. 1 and 2 of above synopsis, the assessee has claimed that he was not served with the notices u/s 148/142(1) and the assessment-order. In Para No. 3, he has submitted that the assessment-order was ultimately received by him on 15.03.2018 after filing application to provide copy of the same and immediately thereafter first-appeal was filed on 13.04.2018, hence the first-appeal was filed in time and the CIT(A) was not correct in dismissing assessee's appeal on the ground of delayed filing. This submission made before us needs to be looked into by CIT(A) only as there was a substantial delay in filing first-appeal before him. Therefore, in the situation, we are restoring this matter back to CIT(A) for consideration of assessee's submission and thereafter pass an appropriate order in accordance with law.

6. Before parting, we may make it clear that if the CIT(A) condones the delay after being satisfied with assessee's submission and admits the appeal, he shall decide the merit of case without being influenced by his previous order. As pointed out by Ld. AR from Para 6 of CIT(A)'s order, the previous adjudication by CIT(A) on merit was ex-parte despite assessee seeking adjournments to file rejoinder to remand-report of AO.

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

Order pronounced in open court on 26.07.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore
दिनांक /Dated : 26.07.2024
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