

**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. 406/Ind/2023  
Assessment Year: 2007-08

Shri Devgas Patidar, S/o Late Shree Bakshiram, 3560, Madan Market Road, Misrod, Bhopal	<b>बनाम/</b> Vs.	Income-tax Officer, 2(4), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: CRZPP6677E</b>		
Assessee by	Shri Ashish Goyal and Shri N. D. Patwa, ARs	
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, AM:**

Feeling aggrieved by appeal-order dated 30.01.2023 passed by learned CIT(A), NFAC, Delhi ["CIT(A)"] which in turn arises out of penalty-order dated 18.09.2015 passed by learned ITO-2(4), Bhopal ["AO"] u/s 271(1)(c) of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2007-08, the assessee has filed this appeal on the grounds mentioned in Form No. 36.

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

3. The registry has informed that the present appeal is delayed by 204 days and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed an application for condonation of delay supported by an affidavit on stamp. Referring to same, he submitted that the assessee met an accident in the year 2022 which fractured his leg and thereafter he had to undergo medical treatment and take rest as per medical advice continuously uptill the year 2023. The assessee has filed medical records in support. Hence, there occurred a delay of 204 days in filing the appeal. Ld. AR very humbly submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submitted that the sole reason of delay is the unfortunate situation of accident of assessee. He prayed to condone delay considering the circumstance. Ld. DR for Revenue was fair enough in considering the position of assessee and did not raise any objection. We have considered the explanation advanced by assessee and find that the assessee was having a sufficient cause for delay in filing present appeal. 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. Then, Ld. AR briefly submitted the background facts of the case. He submitted that the assessment of relevant AY 2007-08 under consideration was completed by AO vide assessment-order dated 30.03.2015 u/s 147/143(3) after making additions of Rs. 53,70,042/-. Thereafter, the AO passed penalty-order u/s 271(1)(c) on 18.09.2015 imposing a penalty of Rs. 13,99,500/- *qua* the additions made in assessment. Against assessment-order, the assessee went in appellate proceedings upto ITAT, Indore in **ITA No. 536/Ind/2018** and the ITAT has already decided assessee's appeal on 29.07.2022 and remanded quantum-matter to AO for a fresh adjudication. Ld. DR did not controvert these factual submissions made by Ld. AR.

5. In view of above factual matrix, we observe that the original assessment-order dated 30.03.2015 which was the very basis for imposition of penalty u/s 271(1)(c) has already become non-est. When it so, there is no locus for the penalty-order to stand. Being so, we set aside the impugned penalty-order passed by AO. The AO is, however, at liberty to initiate fresh proceeding of penalty in accordance with law, if required on the basis of outcome of newer assessment-order.

**6. Resultantly, this appeal is allowed.**

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