

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.153/Ind/2024**  
**(Assessment Year: 2011-12)**

Mansoor Mirza 110, Chhawani Jaora Jaora	Vs.	ITO Dewas
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: ANGPM9218H</b>		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	29.07.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by assessee is directed against the order dated 30.10.2023 of the Commissioner of Income Tax (Appeal), (National Faceless Appeal Centre (NFAC) Delhi for A.Y.2011-12.

2. There is a delay of 50 days in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the assessee. The ld. AR of the assessee has submitted that the impugned order of the CIT(A) was not received by the assessee because it was not sent on the e-mail

ID given in form 35 but the notices as well as the impugned order were sent on different e-mail ID. He has referred to the form 35 and submitted that the assessee has given e-mail ID for the purpose of notice/communication but the notices were issued to a different e-mail ID as per copy of the details taken from the portal of the department. Thus, the Ld. AR has submitted that the assessee was not having any knowledge of the impugned order which has caused the delay of 50 days in filing the present appeal. He has relied upon the judgment of Hon'ble Allahabad High court in case of *Daujee Abhushan Bhandar P. Ltd. vs. UOI 136 taxmann.com 246 (Allahabad)* and submitted that the Hon'ble High Court has held that mere uploading on portal does not amount to service and issue of an order. Thus, he has pleaded that the delay of 50 days in filing the present appeal may be condoned and the appeal of the assessee be admitted for adjudication on merits.

3. On the other hand, Ld. DR has raised no serious objection if the delay of 50 days in filing the appeal is condoned.

4. We have considered the submissions of both parties as well as relevant material on record. The assessee has given e-mail ID in form no.35 for the purpose of notice/communication as [fhbohra@gmail.com](mailto:fhbohra@gmail.com). Ld. AR has filed a copy of the details taken from portal of the department showing the notices issued by the CIT(A) at e-mail ID [kksainijra@gmail.com](mailto:kksainijra@gmail.com). Thus it is apparent from record that the CIT(A) has issued notices as well as the impugned order to e-mail ID which was not furnished by the assessee in form

35 for the purpose of notice/communication to be sent. Accordingly in the facts and circumstances of the case the delay of 50 days in filing the present appeal is condoned.

The assessee has raised following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the learned Commissioner of Income tax (Appeals) ("CIT(A)") erred in ex-parte dismissing the appeal of the Assessee and thereby confirming the addition made by the Assessing Officer. The Appellant prays that the said order be set aside to the CIT(A) for hearing on merits.*

*2. On the facts and circumstances of the case and in law, the learned Commissioner of Income tax (Appeals)("CIT(A)") erred in dismissing the appeal of the assessee without considering the facts and details available on record. The Appellant prays that the said order be set aside to the CIT(A).*

*3. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Rs. 10,16,130 under Section 69 A of the Act which is prayed to be deleted.*

*4. The Appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal.”*

5. As regards the grounds of appeal the Ld. AR of the assessee has submitted that the CIT(A) has not decided the appeal of the assessee on merits but the same was dismissed in limine due to non-prosecution. He has reiterated his contention that the notices were issued by the CIT(A) to the e-mail ID not given in form no.35 for the purpose of notice/communication therefore, the assessee was not aware about those notices issued by the CIT(A). Hence he has

prayed that the matter may be remanded to the record of the AO as the assessment order was also passed u/s 144 of the Act.

6. On the other hand, ld. DR has fairly submitted that the AO as well as the CIT(A) has passed the ex-parte order and therefore, the source of cash deposit in the bank account of the assessee to the tune of Rs.10,14,000/- is required to be verified and examined at the level of the AO.

7. Having considered rival submissions and careful perusal of the impugned order, at the outset, we note that the CIT(A) has dismissed the appeal of the assessee for non-prosecution in para no.6 as under:

*“6.In light of the above details of non-compliance and non-pursuance made to the following judicial ruling of the Hon'ble Apex Court. In CIT vs. B.N. of appeal, reference is Bhattacharya (1977) 118 ITR 461(SC), the Hon'ble Supreme Court while dealing with the issue of pursuing of appeal has stated that "preferring an appeal means more than formally filing it but effectively pursuing it". The Hon'ble ITAT, Delhi, in CIT vs. Multiplan India Pvt. Ltd., as reported in 38 ITD 320 (Delhi), when faced with a similar situation of non- pursuing of appeal dismissed the appeal of Revenue. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus jura subveniunt". In view of the above, it is clear that the appellant is not interested in pursuing this appeal. Therefore, the appeal filed by the appellant is dismissed.”*

8. The CIT(A) has further reproduced the finding of the AO and upheld the addition made by the AO on account of deposits made in the bank account due to non-production of any documentary

evidence by the assessee. As it is noted from the record that the notices were issued by the CIT(A) to e-mail ID not given in form 35 and therefore, the assessee has explained a sufficient reason for non-compliance of those notices issued by the CIT(A). Though the assessee explained the source of deposit in the grounds of appeal before the CIT(A) however, in absence of documentary evidence the addition was sustained by the CIT(A) apart from dismissing the appeal for non-prosecution. Accordingly in the facts and circumstances of the case as well as in the interest of justice we set aside the impugned order of the CIT(A) and remand the matter to the record of the jurisdictional AO for fresh adjudication after considering the details and evidence to be produced by the assessee to explain the source of deposit of Rs.10,14,000/- in the bank account of the assessee.

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

Order pronounced in the open court on 29 .07.2024.

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

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, \_ 29 .07.2024**

**Patel/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*