

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.517/Ind/2023
(Assessment Year: 2014-15)

Radha Maheshwari 4 Bahadurganj, Khidwdkar Marg Behind CIVI Hospital Ujjain (Appellant / Assessee)	Vs.	ITO Dewas (Respondent/ Revenue)
PAN: AZCPM1050B		
Assessee by	Ms. Sonam Khandelwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	29 .07.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 08.11.2023 of the Commissioner of Income Tax (Appeal), (National Faceless Appeal Centre (NFAC) Delhi for A.Y.2011-12. The assessee has raised following grounds of appeal:

“1. Hon CIT has dismissed the appeal due to delay in filling the appeal by the assessee and application for condonation of delay has not denied by the Hon CIT.

2. Ld AO has made an addition of Rs. 1268550 as an unexplained cash credit u/s 68 of the Income Tax Act, 1961 which is not justified and liable to set aside.”

2. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee as invalid being barred by limitation whereas the assessee filed the application for condonation of delay which was attached to the form 35 but due to change of portal it was not available with the CIT(A) as stated in the impugned order. Ld. AR has referred to para 3 of the CIT(A) and submitted that the form 35 was attached with application for condonation of delay but same was not found by the CIT(A) along with form 35 and consequently the appeal of the assessee was dismissed being barred by limitation. Thus, Ld. AR has submitted that due to technical glitch the application for condonation of delay was not available for consideration of CIT(A) to condone the delay of 30 days in filing the appeal. Hence, Ld. AR has pleaded that the assessee be given one more opportunity to explain the cause of delay of 30 days in filing the appeal before the CIT(A).

3. On the other hand, ld. DR has raised no objection if the matter is remanded to the record of the CIT(A) for reconsideration of condonation of delay after given one more opportunity of hearing to the assessee.

3. We have considered the submissions of the parties and careful perusing the impugned order of the CIT(A). In form 35 the assessee at colom no. 14 & 15 has mentioned that there is a delay

in filing the appeal and reply is as per letter attached. The CIT(A) has considered this fact in para 3 of the impugned order as under:

“The order under dispute and the notice of demand was served on the appellant on 12.12.2018, whereas the appellant has filed the rpresent appeal on 11.02.2019, wherein there is a delay of 30 days. The appellant in form no.35 has stated that:

14	<i>Whether there is delay in filing appeal</i>	<i>Yes</i>
15	<i>It reply to 14 is Yes, enter the grounds for condonation of delay(not exceeding 500 words)</i>	<i>As per letter attached</i>

It is pertinent to mention here that the appellant has not attached any such letter along with form no.35.

4. Thus the said attachment as per Colom no.15 of the form 35 was not found by the CIT(A) and consequently the appeal of the assessee was dismissed in para 4 as under:

“4.CIT’s Decision

In column no.14 of Form No.35, the appellant has admitted that there is a delay in filing of appeal. In column no. 15 of Form No.35 with respect to grounds for condonation of delay, the appellant has stated that As per letter attached". On perusal of the details available in ITBA, the appellant has not uploaded/furnished any application/ letter/reasons with regard to condonation of delay. in the absence of application for condonation of delay, the delay cannot be condoned. It is only when the appellant furnished any grounds for the condonation of delay, the CIT(A) can decide with respect to condonation of delay. In the case under consideration, the appellant has not furnished any grounds for condonation of delay and therefore it is stated that the CIT(A) cannot suo-moto condone the delay. Therefore, the delay in filing of appeal is not condoned and hence the appeal is held to be invalid.”

5. Thus, it is clear that before dismissing the appeal of the assessee as barred by limitation the CIT(A) has not issued any show

cause notice to the assessee to explain the reasons/cause of delay. It appears that the application for condonation of delay was attached with form 35 but the same was not available with the CIT(A). Therefore, in the facts and circumstances of the case and in the interest of justice when the appeal of the assessee was not decided on merits the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the CIT(A) for fresh adjudication after giving one more opportunity of hearing to the assessee. The assessee is directed to file an application for condonation of delay before the CIT(A).

6. 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