

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.288/Ind/2024
Assessment Year: 2011-12

Shri Abhijit Upadhyay, D.K. Cottage, H.No.36, E8, Bawadiya Kalan, Bhopal	<u>बनाम/</u> Vs.	Income-tax Officer, 4(2), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ABNPU6818J		
Assessee by	Shri S.S.Deshpande, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.08.2024	
Date of Pronouncement	14.08.2024	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 30.01.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 19.12.2018 passed by learned ITO-4(2), Bhopal ["AO"] u/s 147 r.w.s. 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The registry has informed that the present appeal is delayed by 371 days and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed an affidavit duly solemnised. Referring to same, Ld. AR explained that (i) in Form No. 35 filed to CIT(A), the assessee mentioned his previous address 'E-7/80, Ashoka Housing Society, Arera Colony, Bhopal – 462016' although the assessee had shifted his residence to 'DK-36, D.K. Cottage, Bawaria Kalan, E-9, Bhopal – 462039', therefore the physical order sent by the office of CIT(A) could not be served upon assessee; and (ii) the assessee is not tech-savy and that is why mentioned "No" against "Whether notices/communication may be sent on mail?" in Form No. 35 filed to CIT(A). Therefore, neither the impugned order passed by CIT(A) nor the notices of hearing fixed by CIT(A) reached to assessee. Subsequently, the impugned order was physically served upon assessee and immediately thereafter the assessee filed present appeal on 05.04.2024 without any delay. Therefore, Ld. AR submitted, there is no delay in filing appeal after service of order upon assessee. Alternatively, he submitted that even if it is considered as a case of delay, the delay has happened only because the impugned order never reached to assessee and 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, hence the delay ought to be condoned. Ld. AR further drew our attention to assessment-order and submitted that the AO has made an addition of Rs. 66,00,000/- on account of alleged unexplained investment

u/s 69 in purchase of land vide registry dated 18.03.2011 as per information available in AIR whereas the assessee's case is opposite. The assessee in fact sold a property for Rs. 66,00,000/- which is very much evident from registry dated 18.03.2011, copy filed at Page 6-12 of Paper-Book, and there was no purchase as alleged by AO. Therefore, the case made out by AO is apparently wrong and requires re-adjudication on facts and in law. Ld. DR for Revenue left the matter to the wisdom of Bench without raising any objection.

3. After a careful consideration, we find that the assessee has advanced a sufficient explanation for filing of appeal after receipt of physical order and in absence of any rebuttal or contradiction by revenue, the assessee is found to have filed appeal in time. In any case, it is 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 and delay must condoned. On perusal of assessment-order and the copy of registry filed in Paper-Book, there appears a prima facie merit in Ld. AR's submission that the assessee has sold property and not purchased property, hence the case made out by AO appears bad on facts. Therefore, the assessee deserves a substantial justice. Looking into entire conspectus of case, we take a judicious view, condone the delay if at all there occurred in filing of appeal and restore this matter to the file of AO for adjudication

afresh. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

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

Order pronounced in open court on 14.08.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 14.08.2024
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