

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.95 & 96/Ind/2024
(Assessment Years: 2010-11 & 2012-13)

Amit Bearagi, 210 Pipalkheda, Vidisha (Appellant / Assessee)	Vs.	Income Tax Officer, Vidisha (Respondent/ Revenue)
PAN: ANZPB1519P		
Assessee by	s/Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	06.08.2024	
Date of Pronouncement	08.08.2024	

ORDER

These two appeals by the assessee are directed against the order even by dated 06.12.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi for A.Y 2010-11 & 2012-13 which are arising from the assessment orders u/s 147 r.w.s. 144 of the Act commonly dated 13.12.2017.

2. Assessee has raised following grounds of appeal:

ITA No.95/Ind/2024 A.Y. 2010-11

1. *The Ld. NO was not justified in passing the ex parte order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
2. *The Ld. CTT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled*
3. *The Id CTT(A) was not justified in ex-parte dismissing the appeal of the appellant, without deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellant to present his case.*
4. *The Id CITA) was not justified in not deciding the grounds of appeal before him.*
5. *The Id. CTT(A) was not justified in confirming the addition of Rs. 4041984 as income from undisclosed investment u/s. 69A.*
6. *The appellant carves leave to add, amend or modify any of the grounds of appeal.*

ITA No.96/Ind/2024 A.Y. 2012-13

1. *The Ld. NO was not justified in passing the ex parte order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
2. *The Ld. CTT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled*
3. *The Id CTT(A) was not justified in ex-parte dismissing the appeal of the appellant, without deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellant to present his case.*
4. *The Id CITA) was not justified in not deciding the grounds of appeal before him.*

5. *The Id. CTT(A) was not justified in confirming the addition of Rs. 29,78,900 against undisclosed investment us. 69A.*

6. *The appellant carves leave to add, amend or modify any of the grounds of appeal.*

3. At the outset Ld. Counsel for the assessee submitted that even though the assessee claimed that the appeal before Ld. CIT(A) is well within the prescribed time limit but Ld. CIT(A) has dismissed both the appeals in *limine* on account of being time barred by limitation. Ld. Counsel for the assessee submitted that the assessee received the assessment order on a later date and within the prescribed time limit he filed the appeal before Ld. CIT(A). However since Ld. CIT(A) has not dealt with the merit of the case and also since the assessment orders are ex-parte the issues raised on merits may please be restored to the file of Ld. A.O for necessary adjudication.

4. On the other hand Ld. Departmental Representative though supported the orders of lower authorities raised no objection if the issue on merits for both the years i.e. A.Y. 2010-11 and 2012-13

are restored to the file of jurisdictional A.O for necessary adjudication.

5. I have heard rival submissions and perused the records placed before me. I observe that Ld. CIT(A) has dismissed the assessee's appeal for A.Y. 2010-11 stating it to be time barred by 171 days and that for A.Y. 2012-13 time barred by 1518 days. Ld. CIT(A) has referred to the plethora of judgments and finally did not condone the delay and dismiss both the appeals of the assessee without making any discussions on the merits of the case. Before me Ld. Counsel for the assessee submitted that so far as assessment year 2010-11 is concerned the assessment order u/s 144 r.w.s. 147 of the Act was passed on 31.12.2017 but the same was served upon the assessee on 13.6.2018 and before the expiry of 30 days appeal was filed before Ld. CIT(A) on 3.7.2018. Similarly for Assessment Year 2012-13 the assessment order u/s 144 r.w.s. 247 of the Act was passed on 11.12.2018, however the assessee has claimed that the said order was received by him on 8.3.2023 and the appeal to Ld. CIT(A) was filed on 9.3.2023 i.e. within 30 days. I also note that there is no specific evidence on record which could prove the exact

date of service of assessment order on the assessee but it remains an admitted fact that Ld. CIT(A) had not made any discussion on merits of the case. I also observe that even assessment orders are *ex-parte*.

5.1 Considering the overall facts and circumstances of the case and also in the larger interest of justice and being fair to both the parties and also in order to arrive on the correct income of the assessee, I deem it fit to condone the delay (if any) in filing the appeals before Ld. CIT(A) and restore all the issue raised on merits of the case for A.Y. 2010-11 and A.Y. 2012-13 to the file of the Ld. jurisdictional A.O to adjudicate the same after giving reasonable opportunity of being heard to the assessee and decide in accordance with law. The assessee is also directed to remain vigilant and not to take unnecessary adjournment unless otherwise required for reasonable cause. Accordingly all the grounds of the appeal raised by the assessee are allowed for statistical purpose.

6. In the result both the appeals of the assessee for Assessment Year 2010-11 & 2012-13 are allowed for statistical purpose.

Order pronounced in the open court on 08.08.2024.

Sd/-

(MANISH BORAD)
Accountant Member

Indore, _ 08.08.2024

Dev/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