

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.68/Ind/2024**  
**(Assessment Year: 2017-18)**

Sanjay Upadhayay 1/9/2004 MIG, Indra Nagar Near Saint Stephens School Ratlam (Appellant / Assessee)	Vs.	ITO-1 Ratlam (Respondent/ Revenue)
<b>PAN: AALPU0989K</b>		
Assessee by	Mrs. Nish Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.09.2024	
Date of Pronouncement	04.09.2024	

**O R D E R**

**Per Vijay Pal Rao, JM :**

This appeal by assessee is directed against the order dated 09.11.2023 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2017-18.

2. There is a delay of 17 days in filing the present appeal. The assessee has filed an affidavit to explain the cause of delay. Ld. AR of the assessee has submitted that due to ill-health of the mother of the assessee who was undergoing medical treatment from February

2022 to March 2023 the assessee could not take the steps in time to file the appeal against the impugned order. Thereafter when recovery proceedings were initiated by the department the assessee has filed the present appeal. Thus, the Ld. AR has submitted that the delay in filing the appeal is neither intentional nor willful but due to unavoidable circumstances of ill-health and subsequent death of the mother of the assessee. Thus, Ld. AR has pleaded that the delay of 17 days in filing the 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 objection to the condonation of delay.

4. We have considered the rival submission and carefully perused the contents of the affidavit filed by the assessee which reads as under:

*“1. That I am a salaried person earning salary and also engaged in carrying out the business.*

*2. That assessment proceedings in my case were completed on 08.12.2019 u/s 144 of the Income Tax Act, 1961 (the Act) by making an addition u/s 69A of Rs. 32,47,000. Demand of Rs. 35,48,294 was raised.*

*3. That I had preferred an appeal against this order before the Ld. CIT(A). The Ld. CIT(A) issued five notices on 28.01.2021, 04.11.2022, 29.09.2023, 16.10.2023 and 26.10.2023.*

*4. That these remained to be complied with by me. The reason for non-compliance of these notices was the ill health of my mother, Late Smt. Sheela Upadhyay.*

5. *That my mother under medical treatment and had to undergo various medical tests during the period starting from February 2022 to March 2023. She was hospitalized to undergo the same. That ultimately my mother succumbed to the medical issues and expired on 09.09.2023. That my father expired long back and being the eldest son have to take care of my mother for her entire medical issues.*

6. *Owing to the above mentioned medical reasons and the responsibility of my mother, the notices issued by Ld. CIT(A) remained to be complied with.*

7. *That I received a call from the income tax department for recovery of the impugned demand. It was only at this juncture that I came to know about the impugned order passed by Ld. CIT(A).*

8. *That on consultation with legal professional, it was advised that an appeal can be preferred before the Hon'ble ITAT Indore Bench within a time limit of 60 days from the date of receipt of the order of Ld. CIT(A). The time limit of 60 days expired on 09.01.2024. Accordingly, the appeal is being filed now before the Hon'ble ITAT Indore Bench.*

9. *It is most humbly prayed that I have every intention to pursue the matter with all seriousness. Therefore, in the interest of natural justice, good conscience and equity, the delay in filing appeal may please be condoned.”*

4.1 Accordingly the reason explained by the assessee in the affidavit, in our view is sufficient cause for delay of 17 days in filing the present appeal. Hence, the delay of 17 days in filing the appeal is condoned.

5. The assessee has raised following grounds of appeal:

*“1. On the facts and circumstances of the case and NA applicable law, Ld. CIT(A) erred in passing the assessment*

*order u/s 144 which is contrary to the material on record and provisions of the Act, unjust and bad in law.*

*2. On the facts and circumstances of the case and 19,48,20 applicable law, Ld. CIT(A) erred in sustaining the addition of Rs. 32,47,000 made u/s 69A rws 115BBE as unexplained money.*

*3. On the facts and circumstances of the case and 19,48,20 applicable law. both Ld. AO and Ld. CIT(A) erred in making the addition of Rs. 32,47,000 made u/s 69A rws 115BBE as unexplained money without considering the submissions made by the assessee in response to Cash Transactions 2016 which are already on record with the Department*

*4. On the facts and circumstances of the case and applicable law, both Ld. AO and Ld. CIT(A) erred in making the addition of Rs. 32,47,000 made u/s 69A rws 115BBE as unexplained money without giving reasonable opportunity of being heard.”*

6. At the time of hearing Ld. AR of the assessee has submitted that due to the undergoing medical treatment and hospitalization of the mother of the assessee the assessee could not participate in the proceedings before the authorities below and consequently both the AO as well as the CIT(A) has passed ex-parte order. Ld. AR has pleaded that the assessee may be given one more opportunity to present its case and therefore, the matter may be remanded to the record of the AO.

7. On the other hand, Ld. DR has raised no serious objection if the matter is remanded for fresh adjudication by jurisdictional AO.

8. Having considered rival submission and careful perusal of the impugned order it is noted that the CIT(A) has dismissed the appeal of the assessee in para 4 & 5 of the impugned order as under:

*“DISCUSSIONS, DECISIONS & REASONS*

*4. It is pertinent that in order to decide this appeal in a timely manner, a number of notices/communications/correspondences were made through ITBA portal to the appellant, viz., communications dated 28.01.2021, 04.11.2022, 29.09.2023, 16.10.2023 and 26.10.2023. However, there has been no compliances from the part of the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. Hence, in view of the aforesaid total non-compliance of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis of documentation available on record. The appellant has failed to avail the opportunity to file / furnish the submissions/documents in support of the grounds of appeal though the appellant was offered for sufficient opportunity to file / furnish the submissions during the course of appellate proceedings. Furthermore, it is pertinent that the appellant has not sought any adjournment during the appellate proceedings.*

*5. In the result, the appeal of the appellant is dismissed.*

8.1. Thus, due to non-compliance on the part of the assessee to the notices issued by the CIT(A) the appeal of the assessee was dismissed. We further note that the AO has also passed best judgment assessment u/s 144 of the Act when there was no compliance on the part of by the assessee to the show cause notice

issued by the AO. Now the assessee has explained the reasons for non-participation before the AO as well as the CIT(A) as ill-health of the mother who was undergoing treatment for long time and then expired on 9<sup>th</sup> September 2023. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order of CIT(A) is set aside and the matter is remanded to the record of the jurisdictional AO for fresh adjudication after giving one more opportunity of hearing to the assessee.

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

Order pronounced in the open court on 04 .09.2024.

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

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

**Indore, \_ 04.09.2024**  
**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*