

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

Shri Girjendra Saxena, A14 New Jain Road, Elixier Garden, Karond Badbai, Bhopal	Vs.	Income Tax Officer, Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: CYYPS5900D		
Assessee by	Shri Mayank Sharma, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	10.10.2024	
Date of Pronouncement	11.10.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 12.03.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi for A.Y.2017-18.

2. Assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law the learned CIT(A) erred in serving notices of hearing. As on notice has been served on the registered email address of appellant i.e. girijendra15@gmail.com as stated in Form 35 for furnishing evidence regarding his health issues. The appellant prays that the order of CIT(A) passed without proper serving the notices on correct email id be directed to be quashed and set aside.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in rejecting the appeal of the appellant 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.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Rs.81,83,100 under Section 68 of the Act which is prayed to be deleted.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in not considering the submission made by the appellant on the merits. The appellant prays that the said order be set aside to the CIT(A) for hearing on merits.

5. The appellant craves leave to add to, alter and/or amend all or any of the foregoing grounds of appeal"

3. At the time of hearing the Ld. AR of the assessee submitted that the CIT(A) has dismissed the appeal of the assessee as not maintainable and declined to condone the delay of 39 days in filing the appeal. He has referred to the reasons explained by the assessee for delay in filing the reply before CIT(A) as reproduced at page 2 of the impugned order. Ld. AR of the assessee explained the

cause of the delay as the assessee was suffering from some health issues and further the order was not delivered to the assessee's address as it was sent through the e-mail ID of the Tax consultant of the assessee. The assessee has also explained that due to the Covid pandemic there was a lock down and therefore, the assessee could not file the appeal within the period of limitation. The Ld. AR has referred to the affidavit as well as the medical record of the assessee and submitted that when the assessee has explained the cause of delay as he was suffering from the health problem and undergoing treatment from the hospital during the month of February and March, 2020 the delay in filing the appeal ought to have been condoned by the CIT(A). He has thus pleaded that the delay of 39 days in filing the appeal before CIT(A) may be condoned. On the other hand Ld. Departmental Representative has not raised any objection if the delay is concerned in view of the fact that the assessee has filed the medical report of the assessee and also filed the affidavit to explain the cause of delay.

4. We have considered the cause of delay explained by the assessee which has also been reproduced by the CIT(A) in the

impugned order. The CIT(A) has declined to condone the delay on the ground that the assessee has not furnished the evidence regarding his health issues which prevented him to file the appeal within the prescribed time of limitation. Now the assessee has filed the affidavit explaining the cause of delay which reads as under:

I do hereby declare that, I have been suffering with the enteric fever with hyperbilirubinemia disease from January 2020 to April 2020 and have visited to the doctors for proper health care and treatment.

I have been undergone the treatment at Arogya Nidhi hospital situated at Plot no.192, Arwaliya, Itkhedi, Bairasia road, Bhopal, Madhya Pradesh from the period 25.02.2020 to 05.03.2020. The doctors have advised me to take bed rest for period of 01 month (06.03.2020 to 05.04.2020) due to my critical illness.

The covid-19 has badly impacted my health and due to this illness and Covid-19 nationwide lock down which has significantly affected my ability to engaged in regular work activities, including managing my financial matters effectively. As a result, I was unable to take satisfactory course of action to file appeal before Ld. CIT(A) in timely manner.

I am hereby attaching all my medical certificates in this regard. I am committed to complying with all necessary requirements and ensuring timely compliance of all relevant requirements.

4.1 The assessee has also filed the medical certificate and hospital record in support of the reasons explained for delay. Further the order of the A.O was passed on 16.12.2019 and was served on the assessee on 31.01.2020 and therefore, the assessee was required to file the appeal within one month from serving of the assessment order. However, the appeal was filed by the assessee before CIT(A)

on 08.04.2020 after a delay of 39 days. The assessee has now produced the medical record as well as affidavit in support of the reasons for delay as health problem as the assessee was undergoing treatment of the health issues. It is also a matter of fact that in the meantime there was a lock down due to covid pandemic which has also attributed to the delay in filing the appeal. Accordingly in the facts and circumstances of the case and in the interest of justice the delay of 39 days in filing the appeal before CIT(A) is condoned.

5. The Ld. AR has submitted that CIT(A) has not decided the appeal of the assessee on merits and the A.O has also passed ex-parte order due to the reason that the assessee did not respond to the notices issued by the A.O. Thus, the Ld. AR has submitted that now the assessee has filed all the relevant records which are required to be verified and considered and therefore he has pleaded that the matter may be remanded to the record of A.O for fresh adjudication after giving one more opportunity to produce the relevant details and records to explain the deposit of cash in the bank account.

6. On the other hand Ld. DR has not raised any serious objection if the matter is remanded to the record of the A.O for fresh adjudication.

7. Having considered the rival submissions as well as in view of the fact that the assessment order was passed ex-parte u/s 144 of the Act and CIT(A) has not decided the appeal of the assessee on merits, we are of the considered view that the matter requires proper verification and examination of the record to be filed by the assessee to explain the source of deposit in the bank account at the level of the A.O. Accordingly the impugned order of CIT(A) is set aside and the matter is remanded to the record of A.O for fresh adjudication after verification and examination of relevant record and evidence to be filed by the assessee.

8. The appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11.10.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 11.10.2024

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