

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

Shree Ganesh Buildcon, 5-A, First Floor, Guru Kripa Plaza, 48-A, Zone-I, M.P. Nagar, Bhopal	Vs.	ITO 1(2), Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ABWFS0018D		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	Shri Ram Kumar, CIT-DR	
Date of Hearing	07.10.2024	
Date of Pronouncement	09.10.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 29.01.2024 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:

"01. The Appellant Firm could not get proper and meaningful opportunity to defend his case before Id. A.O. and/or Id. CIT-Appeals because in view of Non-cooperation of the Previous Counsel, the Notices issued by the Id. A.O. during the course of the Assessment Proceedings and subsequently by the Id. CIT-Appeals could not reach up-to the Appellant and as such right from beginning, it was absolutely unaware of the Ongoing Assessment/Appellate Proceeding. It was more so because the Working partner looking after Taxation Matter, is suffering from Cancer and continuously under Medical Supervision of the Doctors, who require him to attend Hospital every now and then. Therefore, the Orders passed by Id. A.O. and Id. CIT-Appeals are against the principals of natural justice, which may kindly be Set-aside to meet the ends of justice.

02. That on the facts and in the circumstances of the case, the Id. C.I.T. (Appeals) has Grossly erred in sustaining following Additions which were made in a baseless and Unlawful manner by the Id. A.O. in his Assessment Order dated 26.12.2019:

<i>a) Bank Deposit</i>	<i>Rs. 21,20,900/-</i>
<i>b) Advances Extended</i>	<i>Rs. 3,64,78,663/-</i>
<i>c) Penal Charges</i>	<i>Rs. 4283/-</i>
<i>d) Adhoc Disallowance of Expenses in order to prevent leakage of Revenue</i>	<i>Rs. 21,51,903/-</i>

Therefore, above arbitrary and unlawful additions may kindly be deleted."

3. At the time of hearing the Ld. AR of the assessee submitted that CIT(A) has disposed off the appeal of the assessee ex-parte as the assessee could not file any submissions before CIT(A). He has referred to the observation of the CIT(A) in para 5.5 of the impugned order and submitted that the addition was confirmed by the CIT(A) for want of explanation as well as supporting evidences including

books of accounts. Ld. AR has submitted that the A.O has made addition without going through the submission filed by the assessee and books of accounts produced through e-mail. The assessee has also explained the reasons for not producing the documents as the assessee was suffering from cancer and undergoing the treatment and therefore, assessee was out of station. The Ld. AR has further submitted that when finally the assessee wanted to produce the entire relevant record the A.O told the assessee that he is not having time and cannot read the submissions.

3.1 Thus, Ld. AR has submitted that due to paucity of time with the A.O he did not allow the entire record to be produced before him. Therefore additions made by the A.O and confirmed by the CIT(A) are not justified. He has pleaded that the matter may be remanded to the record of jurisdictional A.O for fresh adjudication after considering the relevant record including books of accounts.

4. On the other hand Ld. Departmental Representative has submitted that the assessee was given more than sufficient opportunities however, the assessee could not produce the relevant

records before the A.O as well as CIT(A). He has relied upon the orders of the lower authorities.

5. We have heard rival submissions as well as relevant material on record. The A.O has made additions as per the total income computed in para 9 as under:

"9. Total income of the assessee is computed as under :-

<i>Income as per return filed on 31.03.2017</i>	<i>Rs. Nil</i>
<i>Add 1. addition as per para 4 above</i>	<i>Rs.21,20,900/-</i>
<i>2. Addition as per para 5 above</i>	<i>Rs. 52,504/-</i>
<i>3. Addition as per para 6 above</i>	<i>Rs.3,64,78,663/-</i>
<i>4. Addition as per para 7 above</i>	<i>Rs. 4,283/-</i>
<i>5. Addition as per para 8 above</i>	<i>Rs. 21,51,903/-</i>
<i>Total assessed income</i>	<i>Rs. 4,08,08,253/-</i>
<i>Rounded off</i>	<i>Rs. 4,08,08,250/-</i>

Assessed u/s 143(3) of the Income Tax Act, 1961. Penalty proceedings u/s 270 272A (1)(d) and 271AAC are also initiated separately. Charge interest u/s 234A, 234B and 234C as per rule. Give credit for pre-paid taxes as per proof on record. Issue Demand Notice & Challan."

6. All these additions were made by the A.O because the assessee failed to furnish the requisite details and supporting evidence in response to the notice issued by the A.O. It is pertinent to note that the A.O issued the notice through ITBA and therefore not through physical or separate notice was issued to the assessee

either through e-mail or registered post. The CIT(A) has recorded the explanation of the assessee in para 2.2 of the impugned order as under:

2.2 Along with the grounds of appeal, the appellant has submitted a brief statement of facts which gives an overview of the circumstances of the case. This is as under:

The addition made by assessing officer without going through submission filled online and books of account produced on mail soft copy also details PF advances and required documents produced was not in Bhopal due to illness and cancer operation of myself and at last the assessing officer told that I am not having time so I cannot able to read all your submission I make the addition and you can go in appeal. This is not the justice."

6.1 Thus, the assessee explained the reasons for delay in filing the appeal and production of the documents as the assessee was suffering from cancer and undergoing treatment. Despite recording this explanation the CIT(A) has proceeded with the appeal without even asking the assessee to furnish the relevant details and documents. Accordingly, in the facts and circumstances of the case we are of the considered opinion that the matter requires reconsideration at the level of the A.O after giving one more opportunity to the assessee to produce the relevant details, supporting evidences as well as books of accounts. Hence, the

impugned order of the CIT(A) is set aside and the matter is remanded to the record of the A.O for fresh adjudication.

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

Order pronounced in the open court on 09.10.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _09.10.2024

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*