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.322/Ind/2024
(Assessment Year: 2011-12)

Shri Hiramani Ajit Kumar Jain, 77, Tashakand Marg, Ratlam	Vs.	Income Tax Officer-1, Ratlam
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AGCPH3330A		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	16.10.2024	
Date of Pronouncement	16.10.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assesse is directed against the order dated 24.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Hyderabad for A.Y.201-12. There is a delay of 18 days in filing the present appeal. The assessee has failed an application for condonation of delay which is supported by the affidavit of the Counsel of the assessee.

2. We have heard Ld. AR as well as Ld. DR on condonation of delay. The Ld. AR has submitted that due to misplacement of documents comprising part of the appeal the Counsel of the assessee could not file the present appeal within the period of limitation. Therefore, due to inadvertence of misplacement of the documents there is a delay of 18 days in filing the present appeal.

3. On the other hand Ld. DR has not raised any objection if the delay of 18 days is condoned.

4. Having considered the rival and submissions and careful perusal of the reasons explained in the application for condonation of delay, we are satisfied that the assessee was having a reasonable cause for delay of 18 days in filing the present appeal. Accordingly in the interest of justice the delay of 18 days in filing the appeal is condoned.

5. The assessee has raised following grounds of appeal:

> *"1. That the order of the ADDL/JCIT(A) 2 Hyderabad is perverse, erroneous and is not tenable on facts and in law and also in breach of principle of natural justice.*
>
> *1.1 That the action of the ADDL/JCIT(A) 2 Hyderabad in dismissing the appeal of assessee is illegal as ADDL/JCIT(A) 2 Hyderabad by taking incorrect fact that Assessee has availed /opted for direct taxes Vivad se Viswas Scheme and filed the relevant Form without looking into the relevant form 3, 4 & 5 issued under Vivad se Viswas Scheme as same was related to penalty appeals against the penalty orders u/s 271(1) (b) & 271F.*

1.2 That the ADDL/JCIT(A) 2 Hyderabad has erred in passing order without application of mind.

1.3 That the ADDL/JCIT(A) 2 Hyderabad has wrongly drawn inference that Assessee has availed Vivad se Viswas Scheme against the demand raised through re-assessment order dated 30/11/2018.

2. That the ADDL/JCIT(A) 2 Hyderabad has erred in deciding the appeal without calling/ downloading the replies submitted by the appellant during assessment proceedings and thus ignoring the vital documents such as, cash book, bank statement and thus the order of ADDL/JCIT(A) 2 Hyderabad is against the principles of natural justice.

2.1 The ADDL/JCIT(A) 2 Hyderabad has erred in law and in facts in confirming the assessment order passed by the AO assessing the total income at Rs. 11,42,500/- as against returned income of Rs. 120,000/-

3. That the ADDL/JCIT(A) 2 Hyderabad erred in confirming the addition of Rs 1142500/- u/s 69A.

3.1 That the ADDL/JCIT(A) 2 Hyderabad has erred in confirming the addition of Rs. 1142500/- being cash deposited in bank accounts without appreciating that the said cash was part of the cash account.

3.2 That the ADDL/JCIT(A) 2 Hyderabad has erred in confirming the addition u/s 69A without appreciating that provision of Section 69A is not applicable in case of cash deposit duly recorded in the audited books of account and offered as income. that in the present case the assessee himself has declared the amount of cash deposited in the return of income after duly entering the same in the books of account. Thus the provision of section 69A is not applicable and has wrongly been invoked.

3.3 That both ADDL/JCIT(A) 2 Hyderabad & Ld. AO has neither disproved the genuineness of purchase/availability of stock corresponding to the sales nor the claim of the assesse that source of cash deposit was made out of the cash sale effected during the year under consideration, thus the impugned addition is illegal, unjust & untenable.

3.4 That the ADDL/JCIT(A) 2 Hyderabad failed to note that Sec. 69A of the Act is applied when the assesse is found to be owner of any money which is not recorded in the books of account. However, in the case of the assessee, it has maintained books of accounts duly audited in accordance with section 44AB of the Income Tax Act which was also furnished with the return of income filed by the assessee. The assesse

has demonstrated from the purchase books, sale books cash book supported with relevant invoices that source of cash deposited was out of the cash sales made during the A.Y. relevant to the assessment year under consideration.

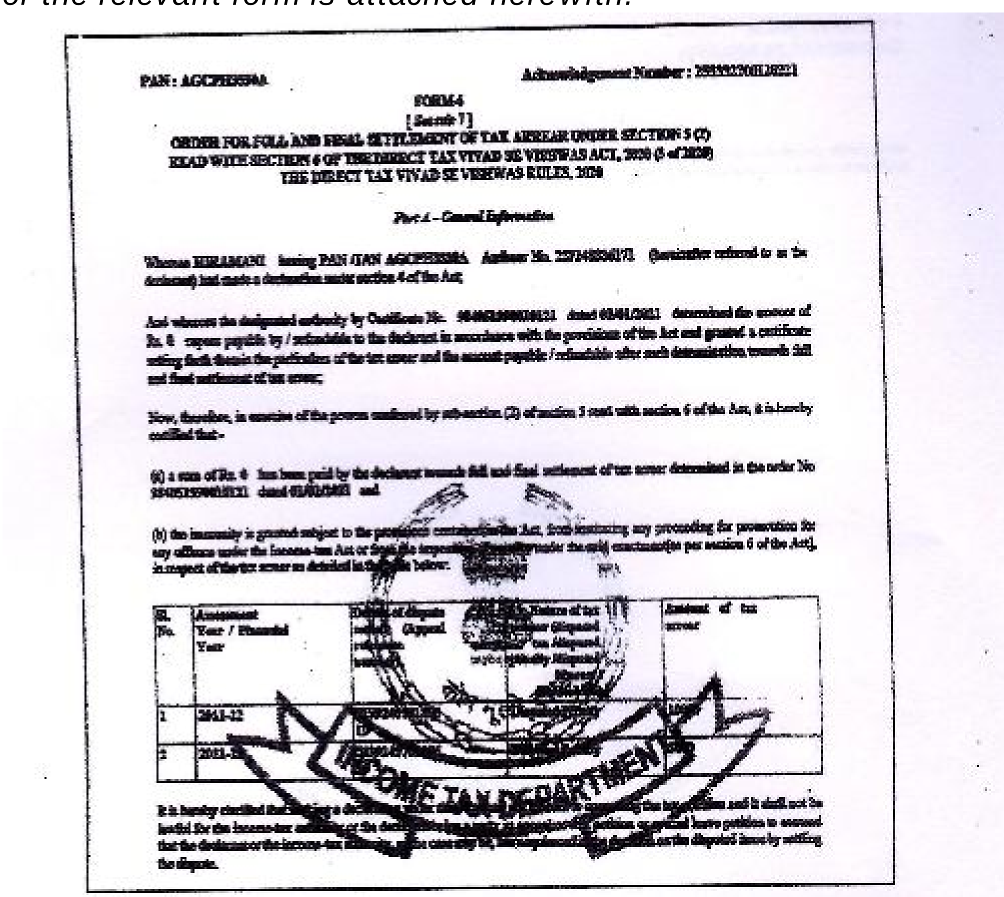
4. The appellant craves permission to raise additional grounds and to amend or alter the foregoing ground before the appeal is finally decided."

6. The Ld. AR of the assessee has submitted that CIT(A) has passed the impugned order ex-parte and dismissed the appeal of the assessee on the presumption that the assessee has already opted for Vivad se Viswas Scheme 2020 however, the assessee filed Form-5 issued by the designated authority dated 12.02.2021 regarding the settlement of dispute under Vivad se Viswas on account of penalty levied u/s 271(1)(b) and 271F of the Act. Therefore, the CIT(A) has dismissed the appeal by presuming the wrong facts. He has thus prayed that the impugned order of CIT(A) may be set aside and remanded to the record of CIT(A) for adjudication of the appeal on merits.

7. The Ld. DR has fairly submitted that the matter is required to be reconsidered at the level of CIT(A) as the impugned order was passed due to misunderstanding of facts regarding dispute settled under Vivad se Viswas.

8. Having considered the rival submissions and on careful perusal of the impugned order, we find that CIT(A) has dismissed the appeal of the assessee by recording the facts in para 2 and 3 as under:

> *2. The appellant had filed an appeal and consequently a hearing dated 29.11.2023 issued u/s. 250 of the Income tax Act. However, it is seen that there is no compliance for the hearing notice. But upon verification of the Income tax data base, it is seen that the appellant had opted for Direct taxes Vivad se viswas scheme and filed the relevant form. The screenshot of the relevant form is attached herewith.*



FORM-4

[See rule 7]

ORDER FOR FULL AND FINAL SETTLEMENT OF TAX ARREAR UNDER SECTION 5 (2) READ WITH SECTION 6 OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (3 of 2020) THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

Part A – General Information

[illegible]

INCOME TAX DEPARTMENT

> *3. In result, the appeal filed by the appellant M/s Hiramani against the Assessment order u/s 144 of the Income-tax Act, 1961 for the Assessment Year 2011-12 is considered as infructuous and thereby dismissed".*

8.1 Thus, CIT(A) has taken into consideration Form-5 issued by the designated authority as settlement of tax dispute relating to the present appeal of the assessee instead of the correct fact that the assessee has opted for Vivad se Viswas to settle the tax liability arising from the penalty order issued u/s 271F and 271(1)(b) of the Act. Accordingly in view of the fact that the appeal of the assessee has not been decided by the CIT(A) on merits and it was dismissed it in limne on presumption of wrong facts, the impugned order of the CIT(A) is set aside and the matter is remanded to the record of CI(A) for fresh adjudication of the appeal of the assessee on merits. Needless to say the assessee be given an appropriate opportunity of hearing before passing the fresh order.

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

Order is pronounced in the open court on 16.10.2024 on conclusion of hearing.

Sd/-	**Sd/-**
(B.M. BIYANI)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Indore, 16.10.2024

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