

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.492/Ind/2024
Assessment Year:2016-17

Bhav Singh Rajput 4, Leeladhar Narlashankari Bhopal	<u>बनाम/</u> Vs.	ITO -5(4) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ATGPS2541H		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.01.2025	
Date of Pronouncement	23.01.2025	

आदेश / O R D E R

Per UDAYAN DAS GUPTA, J.M.:

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-Tax (Appeals), National Facelss Appeal Centre (NFAC) Delhi u/s 250 of the Income Tax Act, 1961 dated 18.10.2023, which has emanated from the order of the Assessing Officer dated 20.12.2018 passed u/s 143(1), ITO 5(4), Bhopal.

2. It is pointed out by the registry that this appeal has been filed belated by 176 days. The assessee has filed an application requesting for condonation of delay along with an affidavit dated 08/06/2024, stating that no

communication has been received from the office of the first appellate authority neither in his mail nor by post , and he was totally unaware of any existing appeal order passed by the Ld CIT(A) NFAC , Delhi, dated 18/10/2023. He further submitted that in the return of income filed by the assessee , the email id was stated as kharepamecha@yahoo.co.in , which belongs to his authorised tax consultant and there are separate mail id stated in his income tax department portal which are rajputksk@gmail.com and tirupatihighrise0201@gmail.com , and he filed screen shot of all the three mail box , mentioned above for the period 16th October, to 30th October, 2023 , to submit that neither any notice nor order or any other communication , has been received from the office of Ld CIT(A) , in any of three mail id stated above . He further submitted that the order of the CIT(A) has been passed on 18/10/2023, and the appeal should have been filed within sixty days , latest by 17th December , 2023, but in the instant case the appeal has been filed on 10th June, 2024 , which is belated 176 days . Later on coming to learn from the department sometime in May, 2024, that the appeal has already been dismissed by the first appellate authority for non representation , the assessee contacted his lawyer immediately and took necessary steps to file the appeal , which has been belatedly filed on 10/06/2024 along with necessary ITAT fees , and he prays that since the delay was not intentional on the part of the assessee the same may please be condoned and the appeal may be admitted to be heard on merits.

2.1 The Ld DR , has also admitted the fact that no appellate order has been served through the e-filing portal of the assessee and as such he never objected to the grounds put forth by the assessee.

2.3 As such considering the explanation of the assessee , we find that the delay was not intentional or wilful on the part of the assessee and *sufficient reasons* has been shown , and as such we condone the delay and admit the appeal for hearing on merits.

3.The grounds of appeal taken by the assessee in Form 36 are as follows :

"1. That on the facts and in the circumstances of th case a fair, proper and meaningful opportunity has not been afforded to th assessee to put up defence on the issues disputed in the appeal and without ensuring proper service of th notice, Hon'ble CIT- Appeals NFAC, Delhi has dismissed the Appeal Ex-parte in an arbitrary and unlawful manner. Therefore, the order passed by CIT-Appeals deserves to be quashed.

2.On the facts and in the circumstances of the case, addition on account of following head is abritrary contrary to facts on record and therefore, unlawful:

Addition on acocunt of investment

Made for claiming exemption u/s 54B Rs.15,50,000/-

Therefore, above addition deserves to be deleted.

3.that the appellant craves leave to raise additional grounds and/or make amendment in the existing grounds on or before the date of hearing."

3. The brief facts of this case are that during the year under appeal the assessee has claimed deduction/ exemption u/s 54B of the Act 61, on account of capital gains arising out of transfer of lands used for agricultural purpose . The appellant claimed to have invested Rs.15,50,000/- on account of purchase of agricultural lands , but the he was not able to substantiate the said claim by production of proper documentary evidences to the satisfaction of the AO , and the evidences produced were not complete documents and as such was unacceptable , which resulted in addition of

Rs.15,50,000/- as LTCG .The matter carried in first appeal before the Ld CIT (A) NFAC, was dismissed because of non representation by the assessee in course of appellate proceedings.

4. In course of hearing before the tribunal the Ld AR of the assessee , referring to the appellate order (page 2 and 3) submitted that hearing notice has been issued on five different dates of hearing but all the notices presumably must have been uploaded in the department portal only, because no notice of hearing has been received by the assessee in the email id specifically stated in form 35 of the Act 61, and as a result the assessee could not furnish necessary submissions and documents in support of his case and no notice has been received in the email as mentioned in the income tax assessee profile either , so he prays that in absence of any proper hearing , a fair and proper opportunity may please be allowed to substantiate his claim .

5. The Ld DR relied on the order of the Ld CIT(A) , but could not produce any documentary evidence to prove service of notice vide email id of the assessee as stated in Form 35.

6. We have heard the rival submission and considered the materials on record and we also observe that, uploading of notice of hearing in the departmental portal is not exactly as per provisions of section 282 of the Act 61 (*rwr 127 of the IT Rules '62.*) , as opined by the Hon'ble *Punjab and Haryana High court in the case of cwp-21028-2023 (O&M) dated: 04.03.2024, Munjal BCU Centre of Innovation and Entrepreneurship , Petitioner V/s. CIT (Exemption) Chandigarh (Relevant portion reproduced)*

In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated herein above. The provisions do not mention of communication to be "presumed" by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a Company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the

submissions of forms etc.. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed. 9. Having noticed as above, this Court is of the firm view that the petitioner has not been given sufficient opportunity to put up his pleas with regard to the proceedings under Section 12A(1)(ac)(iii) of the Act of 1961 and as he was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

6.1 As such on the facts of the instant case we find that no proper notice of hearing has been issued and served on the *email id* of the appellant or through any mode as prescribed in *rule -127 of the IT Rules 62* , and for all practical purpose the assessee has not been offered a fair opportunity of hearing and respectfully following the law laid down by the Hon'ble court and in the interest of justice we remand the matter back to the Ld CIT (A) to decide the appeal afresh on the merits of the case as per the grounds contained in the memorandum of appeal after allowing reasonable opportunity to the assessee to represent his case and the assessee is also directed to file all necessary documentary evidences and submissions in support of his appeal and to fully cooperate in the appellate proceedings.

7. As a result the appeal is allowed for statistical purpose.

Order pronounced in the open court on 23.01.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 23/01/2025

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