

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

ITA No.549/Ind/2024
Assessment Year:2018-19

Vishal Rudrawal Chhatri Road, Bhanpura Mandsaur	<u>बनाम/</u> Vs.	ITO, Mandsaur
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AWKPR6115P		
Assessee by	Shri Santosh Deshmukh and Shri Parth Jhawar, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	01.01.2025	
Date of Pronouncement	27.01.2025	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first-appeal dated 25.05.2024 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 28.03.2023 passed by learned Assessment unit of Income-tax Department ["AO"] u/s 147 r.w.s. 144 of Income-tax Act, 1961 ["the Act"] for

Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee-individual did not file any return of AY 2018-19. The AO, based on information available with Income-tax Department regarding transactions of cash deposits in bank, payments made to creditors and interest income earned from bank, framed a belief that the income chargeable to tax has escaped assessment and accordingly issued notice dated 27.03.2022 u/s 148 to initiate proceedings of section 147. The AO also issued notices u/s 142(1). However, all notices issued by AO remained uncompiled by assessee. Ultimately, the AO passed ex-parte assessment-order u/s 144 assessing total income at Rs. 3,87,23,235/-. Aggrieved, the assessee carried matter in first-appeal before CIT(A) but there was a delay of 256 days in filing appeal before CIT(A). The assessee filed an application for condonation of delay before CIT(A) but the CIT(A) was not convinced. Therefore, the CIT(A) treated assessee's appeal as time-barred and dismissed. Now, the assessee has come in next appeal before us.

3. Ld. AR for assessee at first carried us to an affidavit filed by assessee to ITAT containing solemnized averments of assessee. Referring to same, Ld. AR submitted that the assessee very honestly mentioned a delay of 257 days in Form No. 35 filed to CIT(A) and also filed an application to CIT(A) stating the reason of delay and making a request to condone the delay; the assessee's application is re-produced by CIT(A) in Para No. 3.4 of impugned

order. Ld. AR submitted that the assessee was engaged in retail trade of liquor and the business was closed due to Corona Pandemic and because of severe financial disturbances, the assessee suffered from mental depression and insomnia. Therefore, the assessee was unable to take any decision. It is only after overcoming from illness that the assessee was able to perform regular work and then the assessee filed first-appeal to CIT(A). Ld. AR submitted that all these true facts were submitted to CIT(A) in condonation-application but, however, the CIT(A) rejected assessee's submission without asking any further explanation or intimating any deficiency in assessee's condonation-application. Ld. AR submitted that the assessee was in fact under treatment of Govt. Hospital, Bhanpura and Rogi Kalyan Samiti, Civil Hospital, Bhanpura during the period from December, 2022 to September, 2023 which is evident from medical certificate and medical prescriptions issued by treating hospital/doctor. Ld. AR submitted that although the assessee could not file these evidences to CIT(A) because the CIT(A) did not issue any deficiency letter qua the condonation-application filed by assessee but these documentary evidences are from Govt. hospital/doctor and acceptable without any doubt. Ld. AR accordingly submitted that the delay in filing first-appeal was only because of illness of assessee and there was no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee did not stand to derive any benefit because of delay. He prayed to condone the delay in such situation. Ld. DR for Revenue left the matter to the wisdom of Bench. We have

considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a "sufficient cause" for delay in filing first-appeal before CIT(A). It is a settled position by Hon'ble Supreme Court in ***Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387*** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the decision of Hon'ble Supreme Court, we take a judicious view, condone delay in filing first-appeal.

4. Ld. AR next submitted that the AO has passed impugned order *ex-parte* qua assessee for non-compliances of notices sent u/s 142(1) but the assessee did not receive those notices and therefore could not make compliances. The Ld. AR, however, submitted that the assessee is ready to file the information as may be required by AO and in the interest of justice one more opportunity should be given to assessee. Accordingly, Ld. AR prayed to re-store this matter at the level of AO for a fresh adjudication.

5. Ld. DR for revenue agrees with the prayer of Ld. AR but makes a request to direct the assessee to represent his case before AO and do not seek unnecessary adjournments.

6. Considering above submissions and also having regard to the principle of natural justice and fair play, we deem it fit to remand this

matter back to the file of AO for adjudication afresh after giving necessary opportunities to assessee. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963 on 27/01/2025

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 27/01/2025

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