

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.491/Ind/2024
Assessment Year:2018-19

Balu Singh Kirar S/o Dariyav Singh Tapriyahedi Kharpa Zirapur Rajgarh (Assessee/Appellant)	<u>बनाम/</u> Vs.	NFAC Delhi (Revenue/Respondent)
PAN: GUKPS7110D		
Assessee by	Shri Chandresh Singhvi, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.01.2025	
Date of Pronouncement	31.01.2025	

आदेश / ORDER

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

Feeling aggrieved by order of first-appeal dated 25.10.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 24.02.2023 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 registry has informed that the present appeal has been filed after delay of 226 days and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed a condonation-application supported by an affidavit. Referring to same, Ld. AR explained that the assessee mentioned email id: taxmail1989@gmail.com in Form No. 35 filed to CIT(A) but the CIT(A) sent notices of hearing as well as impugned order to a different email id: ramsinghac123@gmail.com. Therefore, neither the notices of hearing nor the impugned order could reach to assessee. It is only when the assessee was in the process of filing of return that the impugned order having been passed ex-parte by CIT(A) came to the notice of assessee. Immediately, the assessee paid appeal fee and arranged to file present appeal with the help of counsel without further delay. Ld. AR very humbly submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submitted that the sole reason of delay is as explained in the condonation-application. 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 present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a sufficient cause for not presenting appeal within prescribed time. It is also 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 provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

3. Ld. AR next submitted that the CIT(A) has passed ex-parte order for non-prosecution of appeal by assessee without making adjudication in terms of mandate of section 250(6). Further, the AO's order is also ex-parte for non-compliances of notices. But the AO has made a hefty addition of Rs. 1,93,52,600/- by treating the cash withdrawals made by assessee from bank a/c as unexplained expenditure u/s 69C. Ld. AR submitted that the addition made by AO is grossly wrong in as much as the cash withdrawals from bank a/c, even if unexplained, cannot be termed as unexplained expenditure u/s 69C. Without prejudice, he submitted that the assessee is even ready to submit explanation regarding the impugned cash withdrawals to AO if an opportunity is given and the case is restored to AO. Accordingly, Ld. AR prays to remand this matter to the file of AO so that the AO can make proper assessment after hearing assessee.

4. 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.

5. 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 a fresh adjudication, at the risk and responsibility of assessee. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. 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.

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

Order pronounced in open court / as per Rule 34 of ITAT Rules, 1963 on 31/01/2025
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Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31/01/2025

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