

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.386/Ind/2024 (AY: 2012-13)

ITA No.387/Ind/2024 (AY: 2014-15)

Ashish Goyal HUF 43,14/3, Vikas Nagar Opp. Pukhratan Hospital, Neemuch	<u>बनाम/</u> Vs.	ITO, Neemuch
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAIHA0888A		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	09.01.2025	
Date of Pronouncement	31.01.2025	

आदेश / O R D E R

Per Bench:

The captioned two appeals are filed by assessee. The details of these appeals are as under:

- (i) *ITA No. 386/Ind/2024* is an appeal against the order of first-appeal dated 06.02.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 09.12.2019 passed by learned ITO, Neemuch ["AO"] u/s 143(3)/147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12.

(ii) *ITA No. 387/Ind/2024* is an appeal against the order of first-appeal dated 18.05.2023 passed by learned CIT(A) which in turn arises out of assessment-order dated 13.12.2019 passed by learned AO u/s 143(3)/147 of the Act for AY 2014-15.

2. The registry has informed that these appeals are delayed by 379 days and 277 days respectively and therefore time-barred. Ld. AR for assessee submitted that the assessee has filed condonation-applications and prays for condonation. So far as reason of delay in filing appeals is concerned, Ld. AR submitted that the assessee has given email id nagda.ashok1982@gmail.com in Form No. 35 for sending communications of first-appeal but the CIT(A) sent communications to vkjainmh@yahoo.com. Ld. AR has placed on record the copies of notices sent by CIT(A) to demonstrate this clinching fact. Therefore, the notices of hearing and impugned order did not reach to assessee. He further submitted that the CIT(A) has not served notices and order through physical mode. Hence, neither the assessee could avail opportunity of hearings before CIT(A) which led to passing of ex-parte orders by CIT(A) nor the assessee could file present appeals in time. It is subsequently when the counsel of assessee visited income-tax portal that the impugned orders came to his knowledge. Immediately, the assessee arranged to file present appeals 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 narrated. Ld. DR for Revenue left the matter to the wisdom of Bench without raising any objection. 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 appeals. 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 appeals and proceed with hearing.

3. Section 250(6) of the Income-tax Act, 1961 provides *"The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."*. We observe that in the present case, the Ld. CIT(A) has dismissed assessee's first-appeals and merely confirmed AO's orders, although due to non-prosecution by assessee on the dates of hearing but still without complying with the mandate of section 250(6). Therefore, the impugned first appeal-orders passed by Ld. CIT(A) deserve to be set aside and these matters are fit for restoring to him for a proper adjudication. Ld. AR for assessee

submits that the assessee is ready and willing to make representation before CIT(A) if an opportunity is given and hence prays that the present matters should be remanded to CIT(A) for an apt adjudication in terms of section 250(6). Ld. DR for revenue agrees with the prayer of Ld. AR but makes a request to direct the assessee to represent his cases before CIT(A) and do not seek unnecessary adjournments.

4. Considering above submissions and also having regard to the principle of natural justice and fair play, we deem it fit to remand these matters back to the file of CIT(A) for a fresh adjudication. The CIT(A) shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier orders. The assessee is also directed to ensure participation in the hearings as may be fixed by CIT(A) and do not seek unnecessary adjournments failing which the CIT(A) shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

5. Resultantly, these appeals are allowed for statistical purpose.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963 on 31/01/2025

Sd/-

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31.01.2025

Patel/Sr. PS

Ashish Goyal HUF, Neemuch
ITA No. 386 & 387/Ind/2024 - AY 2012-13 & 2014-15

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