

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT
MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER MEMBER

ITA Nos. 406/Ind/2024
Assessment Year: 2013-14

Satish Kumar Radheshyam Choudhari, 237-B Apollo Tower, 2 M.G. Road, Indore (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	Income Tax Officer, Indore (Revenue/Respondent)
PAN: ABMPC4980E		
Assessee by	S/Shri Pankaj Shah & Soumya Bumb, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.04.2025	
Date of Pronouncement	07.04. 2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee before this Tribunal in terms of Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for sake of brevity). The assessee is aggrieved by the order bearing Number: ITBA/NFAC/S/250/2024-25/1064243581(1) dated 21.04.2024 of Ld. CIT(A) passed u/s 250 of the Act, which is hereinafter

referred to as the “**impugned order**”. The relevant Assessment Year is 2013-14 and the corresponding previous year period is from 01.04.2012 to 31.03.2013.

2. **FACTUAL MATRIX**

2.1 That by way of an assessment order bearing Number ITBA/AST/S/147/2021-22/1041123873(1) dated 21.03.2022 income of the assessee was computed at **Rs.18,79,754/-** in terms of Section **144/147 r.w.s. 144B** of the Act which is hereinafter referred to as the “**impugned assessment order**”.

2.2 That the assessee being aggrieved by the “impugned order” preferred an first appeal in terms of Section 246A of the Act before Ld. CIT(A) and who by impugned order at para 3.4 has observed and avered as under:-

“3.4 During the course of appellate proceedings, it is seen that while the impugned order sought to be challenged in this appeal was passed on 21.03.2022 and the appeal has been filed only on 08.01.2024 i.e. after 658days from the date of passing of order u/s 147 r.w.s. 144of the Act. Therefore, there has been a delay of 628 days in filing the appeal. The appellant in Form No. 35 has attributed delay in filing appeal due to delay at the end of the tax consultant. The relevant extract of the appellant with respect to condonation of delay is reproduced as under:-

“The appellant was in process of fling the appeal within 30 days of the date of passing of order and he has paid the

challan in bonafide and was in process of filing of appeal. He has paid the challan and provided it to the consultant who was filing his appeal. But due to certain issues in portal at that time he was not able to file the appeal within the stipulated time and the appellant was in impression that his appeal was filed by his consultant. Later on when he approached to the counsel to know the update of appeal. They encountered that the appeal was not filed at that time. It clearly shows that there was no mensrea from appellants end. Therefore, it is prayed to condone the delay and accept the said appeal."

2.3 That in para 3.5 of the impugned order the Ld. CIT(A) has observed and avered as under:-

"3.5 I have carefully gone through the reasons advanced by the appellant for filing the appeal belatedly. There is a delay of 628 days in filing the appeal. As per section 249(2) of the I.T. Act, the assessee shall present its appeal within 30 days of service of notice of demand relating to the assessment. The section 249(3) of the IT Act, empowers the first appellate authority to admit the appeal after the expiry of limitation of time for filing the appeal if appellant had good and sufficient reasons for the not presenting the appeal within the time period prescribed u/s 249(2) of the Act."

2.4 That in para 4 of the impugned order the Ld. CIT(A) has observed and avered as follows:-

"4. According to the appellant, there is reasonable cause for filing the appeal belatedly. The delay was not willful but due to the circumstances beyond the control of the assessee. The reason stated by the appellant issue to delay at the end of the tax consultant".

2.5 That the Ld. CIT(A) in the impugned order from para 4.1 to 7 examined the cause of delay and law on condonation of delay and finally in para 7.1, 7.2 & 7.3 has held as under:-

"7.1. The appellant, in the present situation, appears to be guilty of laches or negligence and does not take appropriate steps to peruse the remedy till about 628 days and thus does not take appropriate action in filing the appeal within the prescribed time. In the light of the above discussion and considering the facts and position of the law on this issue, I find that there is no sufficient cause for condoning the delay in the institution of appeal by the appellant and thus the application of the appellant for condonation of delay is hereby rejected.

7.2 Since the appeal is being dismissed on account of being filed beyond the period prescribed under the Act, therefore, I am not expressing any opinion on merit of the case.

7.3 The appeal of the appellant is dismissed for statistical purpose."

2.6 That the assessee being aggrieved by the "impugned order" has preferred this second appeal u/s 253 of the Act before this Tribunal and has raised following grounds of appeal against the impugned order in Form No.36 which are as under:-

1. Ground On the facts and circumstances of the case and in law the CIT(A) has erred in dismissing the appeal for statistical purpose and not condoning the delay in filing the appeal due to factors beyond the control of appellant. The Appellant prays that the impugned order rejecting the appeal being unjustified, unwarranted and uncalled for be directed to be quashed and appeal being remanded back to CIT(A) for hearing on merits.

2 On the facts and circumstances of the case and in law the National Faceless Assessment Centre erred in passing reassessment order under Section 147 of the Income Tax Act. The Appellant prays that the impugned order being unjustified, unwarranted and uncalled for be directed to be quashed.

3 On the facts and circumstances of the case and in law the NFAC erred in making addition of Rs.3,97,600 under Section 68 of the Act on the alleged ground of unexplained cash credit to

the income of the Appellant. The Appellant prays that the said addition be directed to be deleted.

4 On the facts and circumstances of the case and in law the NFAC erred in making addition under Section 68 of the Act without appreciating that the loan has been received from close relative of the Appellant whose identity and creditworthiness of the creditors is known, and the genuineness of the transaction is not doubtful. Accordingly, the Appellant prays that the said addition be directed to be deleted.

5 On the facts and circumstances of the case and in law the NFAC erred in passing an order without giving proper opportunity of being heard to the Appellant as the notices being issued to the Appellant were not received by him. The Appellant prays that the impugned order being illegal, unjustified, and in gross violation of principles of natural justice be directed to be quashed.

6 Appellant Craves to add delete or modify any grounds of appeal."

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 07.04.2025 when the Ld. AR for and on the behalf of the assessee interalia contended before us that the **"impugned order"** is bad in law, illegal and not proper. The impugned order is in violation of the principle of natural justice in much before rejecting and/or dismissing the appeal and that too when the assessee first appeal under the Act; at least Ld. CIT(A) should have given an opportunity of hearing to the assessee which was not given. Under these circumstances basic elementary principle of natural

justice stands violated by a statutory functionary who is mandated by law to follow basic tenets of the principles of natural justice which stands not followed. Per contra Ld. DR has inter alia contended that the submissions of Ld. AR no doubt has credence but he would prefer to go by the "Impugned order". The Ld. DR however has left the issue finally to this Tribunal to take appropriate call according to law. In rejoinder Ld. AR submitted that it is required to be appreciated that appeal is rejected as dismissed solely on ground of delay and it is clearly recorded in para 7.2 of impugned order (supra) that appeal is not disposed off on merits of the case and that he is not expressing any opinion on merit of the case.

4. **Observations, findings & conclusions.**

4.1 We now have to examine the legality, the validity and so also the propriety of the "Impugned Order" basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused records of the case and have examined the same records of the case. The detailed reasons for condonation of delay of 628 in preferring first appeal is not furnished to us. Be that as it may it is up to first appellate

authority i.e. Ld. CIT(A) to appreciate this fact and that too after granting an opportunity of hearing to the assessee which in the instant case has not happened despite settled law.

4.3 In the premises drawn up by us, we set aside the impugned order and remand the case back to the file of CIT(A) on *denovo basis*. We direct the Ld. CIT(A) to give to the assessee an opportunity of hearing and after hearing and considering his case on issue of delay he is at full and complete liberty to pass appropriate order on delay aspect involved in the case. We are not making any observation whatsoever on aspect of delay which is core issue of this appeal. We sincerely hope and trust that in opportunity so provided by Ld. CIT(A) the assessee would cooperate with the Department and shall not seek any unnecessary adjournment and fully explain in bonafide manner the causes of delay in preferring first appeal.

5. **Order**

5.1 In result, impugned order is set aside and matter is remanded to CIT(A) on *denovo basis*.

5.2 Appeal allowed for statistical purpose.

Order pronounced in open court on 07.04.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 07/04/2025

Dev/Sr. PS

- Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore