

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.501/Ind/2024 (AY: 2013-14)

Sandeep Kumar Yadav, PalsyaPalsya, Palsya, The. Bhainsdehi, Betul (PAN: AFNPY3295D)	बना म/ Vs.	NFAC, Delhi
(Appellant)		(Revenue)
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.04.2025	
Date of Pronouncement	29.04.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevisity**) before this Tribunal as and by way of Second appeal under the Act. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1064039268(1) dated 10.04.2024 passed by Ld. CIT(A) 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 the assessee had filed return of income u/s 139(4) of the Act for the year under consideration on 27.12.2014 declaring total income at Rs.1,99,000/-. That the case of the assessee was assessed u/s 143(3) on 10.03.2016 whereby the return of income was accepted by accepting the income at Rs.1,99,000/- by the Department of Income Tax.

2.2 That basis enquiry conducted by the Assistant Director of Income Tax (Inv)-III, Bhopal a letter bearing No.DDIT(Inv)-III/BPL/S10/2018-19/5137 dated 25.02.2019 was forwarded to the Ld. A.O who reopened the assessment after taking the necessary approval of the PCIT and a notice u/s 148 of the Act was issued on 31.03.2021 and that the same was duly served upon the assessee. That the reasons for reopening were as under:-

"The assessee Shri Sandeep Kumar Yadav S/o Shri Rama Yadav is engaged in the business of Fertilizers, Seeds and Pesticides. The assessee has furnished his original return of income for the A.Y. 2013-14 on 27.12.2014 vide acknowledgement no.452663780271214 declaring total income at Rs.1,99,900/-. The case of the assessee was assessed u/s 143(3) on 10.03.2016 at Rs. 1,99,900/-.

The case of the assessee pertaining to A.Y.2013-14 was selected for scrutiny through CASS. The scope of scrutiny was limited to the verification of reason was appeared as- "Cash deposit in saving bank account(s) is more than the turnover". The clarification furnished by the assessee was considered and the order was passed by accepting the returned income. As per AIR and CIB information available on record, the assessee has deposited cash amounting to Rs.51,34,500/- in the saving bank account no. 12571000039933 of HDFC Bank, Br. M.P. Nagar, Zone II, Bhopal.

Further a report on enquiry conducted by the Asstt. Director of Income Tax (Inv.)-III, Bhopal was forwarded vide letter F.No. DDIT(Inv.)-III/BPL/S-10/2018-19/5137 Dated 25.02.2019. It is also suggested in the report for reopening u/s 147/148 with the reason that the assessee was failed to explain the source of cash deposits amounting to Rs.51,33,000/- in the saving bank account no. 12571000039933 of HDFC Bank, Br. M.P. Nagar, Zone II, Bhopal during the F.Y.2012-13.

On perusal of bank statement, the cash credits and immediately withdrawals from such bank account did not have any genuine rationale. The assessee in his statement recorded on oath in pursuance to summon u/s 131 has also confessed that the submission furnished by him before the AO during the course of assessment proceedings were false. In the absence of true and fair documentary evidences the genuineness of the sources of cash deposited cannot be proved. The cash credits made in the saving bank account during the F.Y.2012-13 remains unverified".

2.3 That in response to notice u/s.148, the assessee was required to file return of income within 30 days. The assessee has failed to file return of income in response to notice u/s 148 of the Income Tax Act, 1961. Further, notice u/s.142(1) of the I. T. Act, was issued to the assessee on 24/11/2021, 15/12/2021 & 24/12/2021 and duly served upon the assessee. The assessee

failed to comply to the above said notices. Penalty u/s 271(1)(b) of the I. T. Act is initiated for non-compliance of statutory notices issued. The assessee failed to file return of income as per schedule time.

2.4 That Notice u/s.133(6) of the Income Tax Act, 1961 was issued to the HDFC Bank on 04.02.2022.

2.5 That Ld. A.O in the assessment order has observed as under:-

5. During the course of assessment proceedings, assessee has repeatedly failed to comply with the notice u/s.142(1) of the Income Tax Act. As the assessee has repeatedly failed to avail the opportunities of representing his case before the undersigned, I am constraint to presume that assessee has no objection over the proposed assessment proceedings u/s.148 of the I.T. Act and therefore, in absence of compliance of any sort on the part of assessee, the assessment proceedings initiated u/s.148 of the I.T. Act is hereby completed under the provisions of section 144 r.w.s. 147 of the I.T. Act.

6.It is a settled law that onus is on the assessee to establish the genuineness of the transactions, which in the instant case the assessee has not discharged. The assessee not only failed to comply with the notice u/s 148 but even after affording ample opportunities, the assessee failed to comply with the requirements of the notices issued u/s 142(1) from time to time. Further, there is prima facie evidence against the assessee of having made cash deposits transactions from undisclosed sources which has escaped assessment within the meaning of provision of section 147 of the I.T. Act. Thus, in the case of the assessee for the purpose of determination of total income, the provisions of section 144 of the I.T. Act needs to be invoked”.

2.6 That the Ld. A.O has also observed as under in the assessment order besides quoting the provision of Section 144 of the Act which observations are as under:-

"8. In case of tax evasion, sometimes compliance is more detrimental than non-compliance, because compliance can lead to more investigation or more points to be explained whereas non-compliance lead to mere penalty u/s 271(1)(b) and/or exparte decision on the basis of available material only. It also brightens the chance against levy of concealment penalty. Exparte assessment order has its own limitations as to its scope and extent. Hence the assessee should not be allowed to be enriched or benefited unjustly for act of his own wrong doings, i.e. non-compliance or non-attendance of hearing. A negligent assessee need not be given many opportunities just because the quantum of amount involved is high. In such cases, the necessary course of action is to draw adverse inference otherwise it would amount to giving premium to the assessee for his own negligence. When the assessee is non-cooperative, it can naturally be concluded that the assessee did not want to adduce evidence as it would expose falsity and non-genuineness.

9. Neither, the assessee has filed any submission on ITBA online portal nor sought any adjournment. Assessee did not comply with the requirement of various notices issued. Also the assessee failed to avail of the opportunities given to prove the genuineness & creditworthiness of the transactions within the meaning of section 68 of the I.T. Act. The assessee has not filed any documents to prove the genuineness & creditworthiness of the transactions made by him during the financial year 2012-13 relevant to A.Y.2013-14. Thus, I have no alternative but to complete the exparte assessment u/s. 144 r.w.s.147 of the Income Tax Act, 1961.

2.7 The Ld. A.O in the assessment order has observed and held as under:-

"10. Considering the above and The assessee in his statement recorded on oath in pursuance to summon u/s 131 has also

confessed that the submission furnished by him before the AO during the course of assessment proceedings were false total cash Rs. 51,34,500/- deposited in Bank is treated as unexplained cash credit u/s.68 of the Income Tax Act, 1961 and added to the total income of the assessee. Tax is calculated as per provisions u/s 115BBE. Penalty u/s.271(1)(c) of the Income Tax Act for concealment of income”

11. The assessee has failed to file submission in response to notice u/s.142(1) of the Act on various date. Penalty proceedings, u/s.271(1)(b) of the Income Tax Act, 1961 is initiated separately.”

2.8 That additionally the Ld. A.O has observed that “ A show-cause notice u/s 144 dated 24.03.2022 has been issued to the assessee fixing the date of compliance on 25.03.2022. However, the assessee has not filed any response to show-cause notice u/s 144. In view of natural justice and to afford ample opportunity to the assessee, again a show- cause notice dated 28.03.2022 has been issued to the assessee fixing the date of compliance on 29.03.2022. However, assessee has neither replied to show-cause notices nor filed any submissions in response to notices issued u/s 142(1) during the present assessment proceedings. The assessee choose to remain unresponsive, despite the ample opportunity being provided to the assessee. Considering the paucity of time, the undersigned has no option to pass the

assessment order expeditiously based on material available on record.

2.9 The Ld. A.O resultantly computed the assessee's income as under:-

Particulars	Rs.
Total Income as per ROI filed u/s 139(1)	1,99,000/-
Add:Unexplained cash credit u/s 68	51,34,500/-
Total income	53,33,500/-

2.10 That the aforesaid assessment order of Ld. AO bearing No. ITBA/AST/S/147/2021-22/1042015250(1) and that the same is dated 30.03.2022 which is hereinafter referred to as the **"impugned assessment order."**

2.11 That the assessee being aggrieved by the **"impugned assessment order"** prefers first appeal u/s 246A of the Act before Ld. CIT(A) who by the **"impugned order"** has dismissed the appeal of the assessee as time barred as there was delay of 201 days. The assessee has been held to be guilty of latches/negligence too in preferring 1st appeal.

2.12 That the assessee being aggrieved by the aforesaid **“Impugned order”** has filed the instant second appeal before this Tribunal and has raised following grounds of appeal against the **“Impugned order” in form No.36** which is form of appeal required to be filed before this Tribunal:-

“1. That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.

2. That the delay in filing of Appeal be kindly condoned.

3. That the order of the learned lower authorities passed are unlawful and illegal.

4. That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard.

5. That the various findings of the learned lower authorities are opposed to the facts hence the same may kindly be quashed.

6. That on the facts and circumstances of the case the learned CIT Appeals is not justified in rejecting the appeal not filed within the time limit.

7. That on the facts and circumstances of the case the learned assessing officer erred in making addition of Rs. 51,34.500/- on account of Unexplained Cash Credits and The learned CIT Appeals confirming the addition, without going in to the merits of the case.

8. That the above grounds are independent to each other”.

3. **Recording of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 21.04.2025 when none appeared for and on behalf of the assessee despite notice(s). The Ld. DR appeared for and on behalf of the Revenue and placed reliance on orders of the lower authorities and requested the Tribunal to pass appropriate as it thinks fit and proper according to law.

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

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

4.2 We have carefully perused the records of the case.

4.3 We basis records of the case and after hearing and upon examining the contentions of Ld. DR for revenue are of the considered opinion that "**impugned order**" has been passed by Ld. CIT(A) without giving any opportunity of hearing to the assessee and it is thus an exparte order rejecting the 1st appeal of the assessee on ground of delay in preferring the same by 171 days/201 days. The impugned assessment order was passed on

30.03.2022 and that 1st appeal was filed on 17.10.2022 i.e. after 201 days from date of passing of impugned assessment order. Consequently delay of 171 days in filing appeal. The Ld. CIT(A) in the impugned order has recorded that "the appellant in Form No. 35 has submitted reason for delay in filing appeal is reproduced as under":-

"The Appellant is a person with meagre resources and is not aware of the legal jargons. When the proceedings were originally initiated and closed, he was under the genuine belief that the proceedings have been over and was not aware of the reassessment proceedings initiated in his case. It was only when the notice of Penalty was received that he got to know about the closed assessment proceedings u/s 147 read with section 144 of the income tax act, 1961. The appeal is preferred along with the appeal for the penalty proceedings, and this shows that the appellant was unaware of the entire proceedings. The appellant also resides in rural area, wherein there is little and no awareness of the procedure of law and thus, the appellant deserves the kindness of your honors to present his case for a just and righteous disposal and much needed relief in the proceedings under the income tax act, 1961. In view of the same, it is most humbly pleaded to condone the delay. It is also submitted that the proceedings were not informed to the appellant by the persons who were entrusted with filing his return of income as well. Thus, it is most humbly pleaded to condone the unfortunate and unintended delay in filing the appeal within the stipulated time period."

The Ld. CIT(A) has further observed and held as under in the impugned order:-

"3.5 I have carefully gone through the reasons advanced by the appellant for filing the appeal belatedly. There is a delay of 171 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.)

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 is that "The Appellant is a person with meagre resources and is not aware of the legal jargons. When the proceedings were originally initiated and closed"

4.1. In the present case, the appellant could not show any cogent reason for belatedly filing the appeal. The reason submitted by the appellant is very vague. In my opinion, the appellant cannot sleep over the filing of the appeal within the statutory time limit. The appellant in this case did not take any pain to file the appeal for more than 201 days after the penalty order u/s 147 r.w.s 144 read with section 144B was passed by the AO.

6. Thus, it is trite in law that the appellant must show that he was diligent in taking proper steps and the delay was caused notwithstanding his due diligence. It is for the appellant to explain the reason for the delay and it is not the function of authorities to find the cause for delay. The Appellate authority has to examine whether the sufficient cause has been shown by the appellant for condoning the delay and whether such cause is acceptable or not. Even though substantial justice should not be defeated by technicalities but that does not mean that any plea without any possible or acceptable basis and even without hearing, semblance or rationality has to be accepted and delay has to be accepted and condoned which shall be against the very spirit of law. The time prescribed for filing the appeal will become meaningless in such an event. Merely because substantial justice is to be done law of limitation cannot be ignored and that also when there is no sufficient and reasonable cause for such inordinate delay.

6.1. 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 201 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.

6.2 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.

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

4.4 Basis above observations of Ld. CIT(A) in the "**impugned order**" we no doubt concur with his views but simultaneously on noticing Form 35 we observe that the assessee had not opted for service of notices/communication on e-mail. There is nothing on record of "**impugned order**" that hard copy of any notice(s) were sent to the assessee calling upon him to appear for personal hearing before CIT(A). There is thus breach of principles of natural justice as we are of the considered opinion that even if Revenue has good case but Ld. CIT(A) ought to have granted an opportunity of hearing to the assessee before rejecting the appeal on issue of time barred.

4.5 In the premises drawn up by us, we set aside the impugned order as and by way of remand back to the file of CIT(A) to pass a fresh order on issue of time barred and so also on merits. Assessee is directed to cooperate with department.

5. **Order**

5.1 Impugned order is set aside and and by way of remand on *denovo basis*.

5.2 Appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 29.04.2025.

Sd/-

(SMT. ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 29/04/2025

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