

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

ITA No.441/Ind/2024
Assessment Year:2011-12

Mahesh Kumar Jain Prop. M/s Anu traders, Sagar Road, Banti Nagar Vidisha (Assessee/Appellant)	<u>बनाम/</u> Vs.	ITO, Vidisha (Revenue/Respondent)
PAN: ALVPJ8233A		
Assessee by	Shri Soumya Bumb, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	01.05.2025	
Date of Pronouncement	05.05.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first-appeal dated 06.04.2022 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 24.12.2018 passed by learned ITO, Vidisha ["AO"] u/s 143(3) r.w.s. 147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, 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 is filed on 10.05.2024 against the impugned order dated 06.04.2022 after a delay of 765 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 submits (i) that the assessee is a small person engaged in business of kirana items and the assessee is not technology-friendly and that is why mentioned "No" against "Whether notices/communication may be sent on mail?" in Form No. 35 filed to CIT(A). Despite this, the notices of hearing as well as order of first-appeal were sent by CIT(A) on the e-mail, (ii) that neither the notices nor the order of first-appeal have been served physically upon the assessee, and (iii) that the assessee logged income-tax portal on 1st May, 2024 for filing of return of AY 2024-25 and at that time only noticed about the impugned order having been passed *ex-parte* by CIT(A). Immediately, the assessee filed present appeal on 10.05.2024 without further delay. He also referred Para 4 of impugned order to show that all notices of hearing, even though email, were issued by CIT(A) during Covid-19 pandemic period. Ld. AR very humbly submits that there is no 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 submits that the sole reason of delay is as explained in the condonation-application. He submits that there is "sufficient cause" for delay and hence the delay should be condoned. Ld. DR for Revenue did not have any objection if the delay is condoned. Ld.

DR fairly expressed in the open court that it is a small case of kirana business carried on by assessee and the assessee is not tech-sevy. 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 submits that since the notices sent by CIT(A) did not reach to assessee, the assessee could not attend the hearings fixed by CIT(A), which has led to the passing of *ex-parte* order by CIT(A). He, however, asserts that the assessee is ready and willing to make representation before CIT(A) if an opportunity is given and prays that the present matter should be remanded to the file of CIT(A) for a proper adjudication of the grounds/issues raised by assessee in first-appeal.

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 CIT(A) 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 CIT(A) for adjudication afresh. The CIT(A) 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 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.

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

Order pronounced in open court on 05/05/2025
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Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 05/05/2025

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