

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
(Through Virtual Mode)
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.135/JAB/2024
A.Y. 2018-19

Surya Kumar Gupta, Prop. Gupta Jewellers, Sarafa Bazar Itarsi, Madhya Pradesh	vs.	Income Tax Officer, Ward-1, Itarsi
PAN:ABQPG0706N		
(Appellant)		(Respondent)

Assessee by:	Sh. Sapan Usrethe, Advocate
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	21.05.2025
Date of pronouncement:	30.05.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.

This is an appeal filed by the assessee against the order of the Id. CIT(A), NFAC dated 12.06.2024 under section 250 of the Income Tax Act, 1961 dismissing the appeal of the assessee against the order of the ITO, NEAC dated 21.04.2021. The grounds of appeal are as under:-

- "1. The learned Commissioner of Income tax (Appeal) NFAC was not justified in passing exparte order without appreciating that appellant was prevented with reasonable cause in not filing the response as he was not aware of fixation of case.*
- 2. The learned Commissioner of Income Tax (Appeal) NFAC was not Justified in upholding the Assessment order passed by AO without appreciating that the that appellant have surrender the income as business stock under the head income from business and profession and hence provision of section 69 on the excess stock is not applicable.*
- 3. The learned Commissioner of Income Tax (Appeal) NFAC was not justified in appreciating the facts that income surrendered on account of investment in excess stock during the course of survey cannot be brought to tax under the deeming provisions and the same has to be assessed to tax under the head "business income".*

4. That the Ld. Commissioner of Income Tax (Appeal) NFAC has failed to appreciate Hon'ble ITAT in series of cases, has held that amount offered during survey under similar circumstances have been taxed at the normal rate of tax and not under section 115BBE of the IT Act.

5. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal."

2. The facts of the case are that the assessee is proprietor of M/s Gupta Jewellers, Sarafa Bazar, Itarsi and a survey under section 133A of the Income Tax Act was carried out at the business premises of the assessee on 15.03.2018. During the course of survey, inventory of stocks amounting to Gold of Rs.1,35,685/- and Silver of Rs.13,80,784/- was found in excess, as compared to the books of accounts. The assessee offered an additional income of Rs. 15,16,430/- on this account. Notices under section 142(1) were issued where the assessee was asked to explain the source of this excess stock worth Rs.15,16,430/- and why the same should not be brought to tax under the provisions of section 69 of the Income Tax Act. The assessee failed to submit a response to the ld. AO, therefore, the ld. AO, by relying upon the case of the ld. CIT vs. Khushi Ram & Sons Foods (P) Limited in ITA No.126/2015 of the Punjab & Haryana High Court added this amount back under section 69 and brought to tax under section 115BBE.

3. Aggrieved with these additions, the ld. AO went before the ld. CIT(A). The ld. CIT(A) observed that there was the delay in the filing of the appeal by 145 days. The assessee submitted before the ld. CIT(A) that the delay was occasioned by the fact that the assessee was not aware of the re-assessment proceedings. Further, the ITD Portal was not working properly and the assessee came to know about the order very late because the earlier counsel of the assessee did not inform it either about the notices issued or about the *ex parte* order under section 144. Therefore, it was prayed that the delay may be condoned and the appeal may be admitted. The ld. CIT(A) was not satisfied with the reasons cited by the assessee. He held that the

assessee could not show any cogent reason for belatedly filing the appeal furnishing and updating correct contact details with the Department was the responsibility of the tax payer and the assessee could not sleep over the filing of the appeal within the statutory time limit. Since the assessee did not take any pains to file the appeal for more than 236 days after the order under section 144 was passed by the Id. AO, the Id. CIT(A) after quoting from various judgments held that the assessee was guilty of laches or negligence and therefore in the absence of sufficient cause, the appeal was dismissed in *limine*.

4. The assessee is aggrieved at this summary dismissal of his appeal and is accordingly before us. Sh. Sapan Kumar Usrethe, Advocate submitted that the assessee was not aware about the status of the assessment proceedings and also the fact that the order had been passed *ex parte* and it was only when he discovered the same that he went in appeal. It was submitted that the assessee did not stand to gain in any way by delaying the filing of the appeal and therefore, there was no reason to disbelieve the assessee when he said that he was unaware of the status of the re-assessment order. It was prayed that there were substantial legal issues involved in the matter relating to the fact that whether section 69 could be applied with regard to the income surrendered pertaining to current year when the same had been brought into the books of accounts and whether a bona fide surrender could therefore, be brought to tax under the provisions of section 115 BBE when the necessary entries had been made in the books of accounts. It was submitted that the Id. CIT(A) had not applied his mind to these facts and therefore, it was prayed that the matter may be sent back for *de novo* assessment.

5. On the other hand, Sh. Alok Bhura, Id. Sr. DR submitted that the assessee had not made compliance either before the Id. AO or the Id. CIT(A) and therefore, it should be assumed that he had no explanation to offer in this regard. Accordingly, he prayed that the appeal may kindly be dismissed.

6. We have duly considered the facts and circumstances of the case. We observe that there are substantial questions of law that were required to be addressed by the Id. CIT(A) and the same had not been addressed by him in the proceedings under section 250. We also observe that the delay of 145 days does not fall in the category of inordinate delay, when we consider the circumstances cited by the assessee. It is quite plausible that the assessee was not kept informed by his counsel about the status of proceedings and therefore, the Id. CIT(A) was not in our opinion justified in refusing to admit the appeal and hear the assessee on merits. We observe that the Hon'ble Supreme Court in the case of Collector of Land Acquisition vs. MST. Katiji (1987) 167 ITR 471 (SC) has pointed out that Courts must adopt a liberal approach in considering cases of delay, because ordinarily an assessee does not stand to benefit by delay, in fact he runs a serious risk of the appeal being dismissed. The Hon'ble Supreme Court also held that there is no presumption that a delay is caused by negligence or on account of mala fide intentions and finally that the worst that can happen, if a delay is condoned is that the case would be heard on its merits rather than being dismissed on technical grounds, where the cause of justice may be defeated. Accordingly, after considering the reasons cited by the assessee and the judgment of the Hon'ble Supreme Court in the case of Collector of Land Acquisition vs. MST. Katiji (supra), we restore this appeal back to the Id. CIT(A) to consider the appeal of the assessee on its merits. Accordingly, the appeal of the assessee is held to be allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 30.05.2025 in the open Court.

Sd/-
[KUL BHARAT]
VICE PRESIDENT
DATED: 30/05/2025

Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

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Surya Kumar Gupta*

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.