

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.437/Ind/2024
Assessment Year:2017-18

Vandana Soni, Sadar Bazar, Manasa Manasa (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	ITO, Neemuch (Revenue/Respondent)
PAN: BIKPS3163H		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.06.2025	
Date of Pronouncement	17.06.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first-appeal dated 29.04.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 13.12.2019 passed by learned ITO, Neemuch ["AO"] u/s 144 r.w.s. 147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, 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 09.05.2024 against impugned order dated 29.04.2023 which is after statutory time period 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 explained that in Column No. 17 of Form No. 35 filed to CIT(A), the assessee provided e-mail id paras.soni20@gamil.com against the information required "Address to which notices may be sent to the appellant". However, the CIT(A) has sent notices of hearing to parassoliwal3@gmail.com existing in the database of department (according to Ld. AR, the same email id is also auto-populated in the beginning part of Form No. 35). Ld. AR filed a copy of notice of hearing dated 21.04.2023 to show that the CIT(A) has sent notice to email id parassoliwal3@gmail.com which was of previous consultant and not in active use. He submitted that the CIT(A) has delivered notices to this email id and so is the case of delivery of impugned order and there was no physical service. This has led to passing of impugned order ex-parte to assessee as well as non-filing of present appeal in time. It is only when the assessee logged in Income-tax Portal on 1st May, 2024 in the process of filing return for AY 2024-25 that the impugned order having been passed by CIT(A) came to the knowledge of assessee. Immediately, the assessee filed present appeal on 09.05.2024 without further delay. Ld. AR very humbly submitted 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 submitted that the sole reason of delay is as explained in the condonation-application. He submitted that there is "sufficient cause" for delay and hence the delay should be condoned. 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 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. Thereafter, Ld. Representatives of both sides agree that both of the orders passed by lower authorities viz. AO and CIT(A), are ex-parte due to non-prosecution and hence the present matter is fit for restoring to the file of AO for a proper adjudication. In view of agreement of both sides and having regard to the principle of natural justice and also bearing in mind that no prejudice would be caused to revenue if the present matter is

restored at the level of AO, we remand this matter to the file of AO for adjudication afresh, at the risk and responsibility of assessee. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to remain vigilant and ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

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

Order pronounced in open court on 17/06/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 17/06/2025

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