

**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.890/Ind/2024 (AY: 2017-18)**

Kaushalya Agarwal Trust, C/o Adv. Hitesh Chimnani, UG-37 Trade Centre, 18 South Tukoganj, Indore  <b>(PAN: AABTK8791P)</b>	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	Asst. Director of Income Tax, CPC, Bangalore
(Appellant)		(Respondent)
Assessee by	Shri Yash Kukreja, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.06.2025	
Date of Pronouncement	30.06.2025	

**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 **brevity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1068505392(1) dated 10.09.2024 passed by the Ld. CIT(A) which is hereinafter referred to as the “**Impugned order**”. The

relevant Assessment Year is 2017-18 and the corresponding previous year period is from 01.04.2016 to 31.03.2017.

2. **FACTUAL MATRIX**

2.1 That as and by way of an rectification order made **u/s. 154 r.w.s. 143(1) of the Act**, bearing No. CPC/1718/U5/2101202235 dated **18.10.2022** hereinafter referred to as the **"impugned rectification order"** an amount of Rs.1,61,550/- was quantified as net amount payable. The assessee was charged maximum marginal rate instead of normal rate.

2.2 That the assessee being aggrieved by the aforesaid **"impugned rectification order"** prefers first appeal **u/s 246A of the Act** before the Ld. CIT(A) who by the **"impugned order"** has dismissed the 1<sup>st</sup> appeal of the assessee on the grounds and reasons stated therein.

2.3 That the assessee being aggrieved by the **"impugned order"** has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 against the **"impugned order"** which are as under:-

***"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal filed as time barred without properly appreciating the facts of the case***

*and the submissions made. The Learned CIT-(A) failed to consider that the impugned order was actually served on the appellant on a later date, different from the date mentioned on the face of the order, as correctly disclosed in Form 35.*

*2. That on the facts and in the circumstances of the case and in law, the Ld. CIT-(A) erred in dismissing the appeal in limine and not adjudicating on the merits of the case*

*3. That on the facts and circumstances of the case and in law the CIT-(A) erred in not holding that the assessee trust is entitled to the benefit of Proviso to Section 164 of the Income Tax act, 1961.*

*4. That on the facts and circumstances of the case and in law the CIT-(A) erred in not holding that the income of the assessee trust is to be taxed as per normal rates of taxes and not the maximum marginal rate of tax as levied by the CPC.*

*5. The appellant craves leave to add, amend, modify, or withdraw any of the grounds of appeals at the time of hearing”.*

### **3. Record of Hearing**

**3.1** The hearing in the matter took place before this Tribunal on 25.06.2025 when the Ld. AR for and on behalf of the assessee appeared before us and interalia brought to our notice that there is a delay of **17 days** in preferring the instant appeal before this Tribunal. There is a condonation of delay application on record which is supported by an affidavit. It was contended that delay occurred is due to technical reasons as downloading of documents uploaded on ITAT e-filing portal was not taking place. As advised by registry the documents were **re-uploaded**. Hence

delay and that the same may please be condoned. Ld. DR appearing for revenue has no objection if this tribunal desires to condone the delay. Accordingly the delay is condoned as sufficient cause is shown and appeal is admitted. It is accordingly taken up for hearing.

**3.2** The Ld. AR then brought to our notice that in the **"impugned order"** the 1<sup>st</sup> appeal was dismissed only on ground of delay in the filing of the 1<sup>st</sup> appeal by **120 days**. It was contended that the Ld. CIT(A) has erred in law in dismissing the 1<sup>st</sup> appeal on ground of delay of 120 days as **in fact there was no delay**. It was stated that the Ld. CIT(A) has calculated time from 18.10.2022 whereas **"impugned rectification order" u/s 154 of the Act r.w.s. 143(1)** though is dated 18.10.2022 but in the Form No.35 in column No.2 the assessee has clearly stated that date of **"impugned rectification order" u/s 154** as 18.10.2022 but the **date of service is as 21.01.2023**. The date of filing of the first appeal is **06.02.2023** which was well within the time limit of **30 days**. The Ld. CIT(A) has erroneously taken the date of 18.10.2022 which was in fact the date of **"impugned rectification order" u/s 154** of the Act. The Ld. CIT(A) ought to

have taken into consideration the date of service which was 21.01.2023 **as per Form 35**. The Ld. CIT(A) therefore has erred in law as time is required to be reckoned from date of service and not from date of order. Hence **"impugned order"** should be set aside. Per contra Ld. DR has not opposed the submissions of Ld. AR. In fact Ld. DR concur with Ld. AR on delay aspect and has stated that there was in fact no delay.

**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 as presented to this Tribunal by both Ld. AR & Ld. DR to determine the legality, validity of the **"impugned order"** basis law and by following due process .

**4.3** We are of the considered opinion that the **"impugned order"** is indeed erroneous and bad in law in as much as time limit is reckoned from date of **"impugned rectification order"** i.e. 18.10.2022 and not from date of service of order which date was 21.01.2023. The time limit u/s 249(2)(c ) of the Act is to be

reckoned from date of service and not from date of order. We therefore hold that Ld. CIT(A) has erred in law by dismissing the 1<sup>st</sup> appeal U/s 246A as time barred. We therefore set aside the “**impugned order**”. Accordingly the matter is remand to Ld. CIT(A) on *denovo basis*.

5.

**Order**

5.1 In the premises set out herein above, the “**impugned order**” is set aside as and by way of remand back to the file of Ld. CIT(A) on *denovo basis*.

5.2 In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 30.06.2025.

Sd/-

Sd/-

**(B.M. BIYANI)**  
**ACCOUNTANT MEMBER**

**(PARESH M JOSHI)**  
**JUDICIAL MEMBER**

Indore  
दिनांक/ Dated : 30/06/2025  
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