

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 941/Ind/2016

निर्धारण वर्ष /Assessment Year: 2011-12

Shri Vishal Bajaj

Indore

PAN – AGLPB – 2912K

:: अपीलार्थी /Appellant

Vs

Income Tax Officer 5(1)

Indore

:: प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by	Shri Rajesh Mehta
राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
सुनवाई की तारीख Date of hearing	21.2.2017
उद्घोषणा की तारीख Date of pronouncement	28.2.2017

**आदेश /O R D E R**

**PER SHRI C.M. GARG, JM**

This appeal has been filed by the assessee against the order of the learned CIT(A)-II, Indore, dated 29.4.2016 in First Appeal No. IT-53/14-15/23 for the assessment year 2011-12.

APPLICATION FOR CONDONATION OF DELAY OF 55 DAYS

2. The learned assessee's representative (AR) drawing our attention to the affidavit sworn by the assessee on 12.9.2016 submitted that the learned CIT(A) passed the order stating that neither the case was represented personally or through counsel nor any written submissions were filed. The learned counsel for the assessee further submitted that factually the assessee filed the written submissions before the learned CIT(A) on 11.3.2016 and the appeal before the Tribunal was delayed because the assessee tried to get the first appellate order rectified by considering the written submissions of the assessee, but the rectification application of the assessee u/s 154 of the Income Tax Act, 1961 was not accepted by the learned CIT(A).

3. Replying to the above, the learned DR vehemently contended that when the assessee or his authorized representative did not appear before the learned CIT(A) and even no written submissions were filed during the proceedings then the cause stated by the

assessee in the affidavit cannot be taken as gospel truth and as such the condonation of delay cannot be allowed to the assessee.

4. Placing rejoinder to the above submissions of the learned DR, the learned AR contended that it is not in dispute that the assessee filed written submissions before the first appellate authority on 11.3.2016 which have not been considered in the order passed on 29.4.2016 and requesting for consideration of these written submissions by the learned CIT(A), the assessee filed rectification application u/s 154 of the Act which has not been decided till date and after waiting for a pretty long time, the assessee filed this appeal which is delayed by 55 days due to the reasons stated in the affidavit of the assessee which remained uncontroverted by the revenue.

5. After careful consideration of the above submissions, we are of the view that the facts stated in the affidavit of the assessee clearly show that his written submissions dated 11.3.2016 were not considered by the learned CIT(A) in the ex-parte order passed by him and even the rectification application of the assessee was not adjudicated upon by the first appellate authority. The facts stated

in the affidavit of the assessee deserve to be accepted as there is no rebuttal on behalf of the revenue. In view of the above, we are satisfied that the cause shown by the assessee for the delay of 55 days in filing of the appeal before the Tribunal is sustainable and acceptable and the case of the assessee cannot be dismissed at the threshold merely because the appeal has been filed belatedly due to the reasons beyond the control of the assessee. Hence, the delay of 55 days in filing the appeal is condoned and the application of the assessee for condonation of delay is allowed. Resultantly, the appeal of the assessee is admitted for hearing.

6. At the very outset, at the request of both the parties, we have heard the arguments on ground no. 1 of the assessee's appeal which reads as under :-

*“1. That the aggregate addition of Rs.4,20,390/- to the income has been done without affording any opportunity of hearing and without any basis, is illegal, wrong, bad in law, against the facts of the case and hence liable to be deleted.”*

7. The learned counsel for the assessee pointed out that the impugned addition has been made without affording any

opportunity of hearing to the assessee and without any basis, thus the same is illegal, wrong, bad in law and against the facts of the case, hence, liable to be deleted. The learned counsel for the assessee vehemently pointed out that the learned CIT(A) has passed the order by violating the principles of natural justice as he has not afforded due opportunity of hearing to the assessee and even the written submissions of the assessee dated 11.3.2016 placed on record of the learned CIT(A) have not been considered in the impugned order.

8. Replying to the above, the learned DR strenuously supported the first appellate order and submitted that when the assessee is not cooperating with the learned CIT(A) during the first appellate proceedings then he has no option but to decide the appeal on the basis of material available on record. However, the learned DR could not controvert this fact that the assessee has actually filed written submissions dated 11.3.2016 explaining his stand and challenging the additions made by the Assessing Officer which have not been considered in the impugned order. The learned DR also submitted that the department has no serious objection if the case is restored to the file of the learned CIT(A) to the stage of the first

appellate proceedings, if it is found necessary, just and proper in the interest of justice.

9. On careful consideration of rival submissions, we are of the view that since the assessee has not been allowed due opportunity of hearing and his written submissions (supra) have not been considered at the time of passing of the impugned order, therefore, the impugned order passed, violating the principles of natural justice, is set aside and the case is restored to the file of the learned CIT(A) for fresh adjudication after allowing due opportunity of hearing to the assessee. The learned CIT(A) shall decide the appeal afresh without being prejudiced from his earlier order.

10. In the result, ground no. 1 is allowed.

11. Since we have restored the entire appeal to the file of the learned CIT(A) for fresh adjudication, therefore, other grounds of the assessee on merit become academic in nature and we are not adjudicating them.

12. In the result, the appeal is allowed for statistical purposes.

The order has been pronounced in open Court on 28<sup>th</sup>  
February, 2017.

Sd/-

sd/-

लेखा सदस्य  
(O.P.Meena)  
Accountant Member

न्यायिक सदस्य  
(C.M. Garg)  
Judicial Member

**February 28<sup>th</sup> , 2017.**

Dn/