

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

ITA No. 510/Ind/2023
Assessment Year: 2015-16

Shri Amit Vyas, 103, Raghukul Apartment, Kshpanak Marg, Ujjain (Assessee/Appellant)	<u>बनाम/</u> Vs.	Income-tax Officer, 2(1), Ujjain (Revenue/Respondent)
PAN: AEFPV4664L		
Assessee by	Shri Milind Wadhvani, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	04.09.2024	
Date of Pronouncement	09.09.2024	

अदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 25.10.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 22.12.2017 passed by learned ITO-2(1), Ujjain ["AO"] u/s u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee-individual filed return of income of AY 2015-16 on 22.07.2016 declaring a total income of Rs. 6,12,360/-. The case of assessee was initially processed u/s 143(1) but later converted into scrutiny-assessment by issuing notices u/s 143(2)/142(1). Finally, the AO completed assessment vide order dated 22.12.2017 u/s 143(3) after making an addition of Rs. 40,00,000/- on account of unexplained cash deposit in bank a/c on 16.01.2015 and thereby determining total income at Rs. 46,12,360/-.

2.1 Aggrieved by AO's order, the assessee filed first appeal to CIT(A) on 30.12.2019 with a huge delay of 669 days as calculated by CIT(A). The CIT(A) was not satisfied with the reasoning advanced by assessee for delayed filing, therefore he treated assessee's appeal as invalid and dismissed on this technical ground. Simultaneously, the CIT(A) also decided merit of addition and dismissed appeal on merit as well. Thus, the assessee did not get any success in first-appeal.

2.2 Now, the assessee has come before us by way of next appeal.

3. At first, we extract the relevant paras in which the CIT(A) has rejected assessee's first-appeal on technical ground of delayed filing:

"2. As per declaration in Form No. 35, the date of service of the impugned order and the demand notice is 30.01.2018. There was delay of 669 days in filing this appeal. Grounds for condonation of delay given by appellant :-

"That due to some unavoidable circumstances appeal could not be filed on time. Hence, it is requested that the appeal of the appellant may

please be accepted and for this act of kindness appellant would be grateful to our Honour."

6.1 *In view of the above, the grounds of appeal, statement of facts, submissions of the appellant and records available have duly been considered. It is seen that there was delay of 669 days in filing this appeal. As per section 249(2) of the Act, any appeal before the Ld. CIT(A) is required to be filed in electronic mode within 30 days of receipt of the order and demand notice by the appellant. Further, section 249(3) provides that the Ld. CIT(A) may admit an appeal filed after the prescribed due date if he is satisfied that the appellant had sufficient cause for not filing the appeal within the prescribed time limit. As mentioned above, there was a delay of 669 days in filing this appeal. Therefore, the issue as to whether this delay in filing the appeal can be condoned needs to be examined first before going into the merits of the appeal.*

6.2 *For condoning the delay, it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The appellant submitted the reasons for the delay in filing the appeal as "unavoidable circumstances", however not discussed anything else such as circumstances and the documentary evidence towards the same. The assessment u/s 143(3) was completed on 22.12.2017 and same along with demand notice was served to the appellant on 30.01.2018 as per information provided in Form 35. Thus, the appellant was very much aware about the assessment order since 30.01.2018. The appellant is supposed to explain a valid reason for delay so that this office could have considered condoning the delay. However, the reason provided by the appellant is not sufficient to condone the delay of 669 days. The Hon'ble Supreme Court in the case of Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361 has held that*

"the cause for the delay in filing the appeal which by due care and attention – could have been avoided cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor

inaction, or want of bona fides can be imputed to the assessee a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands. At this point it is pertinent to mention that the provisions of Section 5 of the Limitation Act, 1961 are pari materia to the provisions of section 249 of the Act as both the provisions stipulate that after expiry of stipulated period of limitation as per provisions of the relevant Act, if the court satisfied that there was a "sufficient cause" for non-representing the appeal within prescribed period, then the appeal may be admitted for hearing on merits by condoning the delay."

6.3 Further, the Hon'ble Supreme Court in the case of Chief Postmaster General and others vs. Living Media India Ltd in I.T.A. No. 3555/Del/2009 A.Y. 2002-03 and another (2012) 348 ITR 7 (SC) and in the case of Pundik Jalam Patil (dead) by LRS vs. Executive Engineer, Jalgaon Medium Project (2008) 17 S.C. 448 had held that

"when the conduct of the assessee and facts of the case clearly show the neglected of its own right in preferring appeals, then it is not expected from the judicial and quasi-judicial authorities to inquire into belated and state claims on the ground of equity."

6.4 Considering above, the delay is not condoned. Since the delay is not condoned, the appeal becomes invalid and liable to be dismissed on technical ground. However, notwithstanding the dismissal on technical grounds, the merits of the case are also discussed in detail.

10. In the result, this appeal is dismissed on technical ground as discussed in Para no. 6 as well as on merits of the case."

4. The Form No. 35 filed by assessee to CIT(A) is also scanned and re-produced below:

FORM NO. 35 [See rule 45]					CIT(A)		Acknowledgement Number		
Appeal to the Commissioner of Income-tax (Appeals)							282220961301219		
Personal Information	First Name		Middle Name		Last Name or Name of Entity		PAN		
	AMIT				VYAS		AEFPV4664L		
	Flat/ Door/ Block No.		Name of Premises / Building / Village			Road / Street / Post Office			
	234 BSANTRAM SINDHI COLONY								
	Area/ Locality		Town/ City/ District			State		Country	
	-		UJJAIN			MADHYA PRADESH		INDIA	
Order against which Appeal is filed	1 Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against order where assessment year is not relevant								
	Assessment Year		Financial Year		Block Period		Date Of Search		
	2015 - 16				From(AY) To(AY)				
	2 Details of the order appealed against/Appeal u/s 248								
	a Section and sub-section of the Income-tax Act,1961							143(3)	
	Order Number							0	
Pending Appeal	b Document Identification Number (DIN)							0	
	c Date of Order							22/12/2017	
	c Date of service of Order / Notice of Demand / Date of payment of tax in case of Appeal u/s 248							31/01/2018	
	3 Income-tax Authority passing the order appealed against ITO 2(1), UJJAIN								
	4 Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Commissioner (Appeals) No								
	4.1 If reply to 4 is Yes, then give following details.								
	Sl.No	Commissioner (Appeals), with whom the appeal is pending	Appeal No	Date of Filing of appeal	Assessment year/ financial year in connection with which the appeal has been preferred	Assessment year/ financial year	Income-tax Authority passing the order appealed against	Section and sub-section of the Income-tax Act,1961, under which the order appealed against has been passed	Date of such Order
	1								
Appeal Details	5 Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred							246A	
	6 If appeal relates to any assessment ?							Yes	
	a Amount of Income Assessed (in Rs.)							4612	
	b Total Addition to Income (in Rs.)							4000	
	c In case of Loss, total disallowance of Loss in assessment (in Rs.)								
	d Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.)							4000	
Details of Taxes paid	e Amount of Disputed Demand (in Rs.)-Enter Nil in case of Loss							1777	
	7 If appeal relates to penalty ?							No	
	a Amount of penalty as per order (in Rs.)								
	b Amount of penalty disputed in Appeal (in Rs.)								
	8 Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full							Yes	
	8.1 If reply to 8 is Yes, then enter details of return and taxes paid								
a Acknowledgement number							285318170220716		
b Date of filing							22/07/2016		
c Total tax paid							53-		
9 Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid							Not Applicable		
9.1 If reply to 9 is Yes, then enter details									
Tax Payments									

Details of tax deposited under section 195(1)					
Sl. No	BSR Code	Date of payment	Serial Number	Amount	
1					
Statement of Facts, Grounds of Appeal and additional evidence	11 Statement of Facts				
	Facts of the case in brief (not exceeding 1000 words)		01. That the appellant is an individual and is engaged in the Business of Civil Construction and Contractorship. 02. That the appellant submitted his Return of Income for the Assessment Year 2015-16 on 22.07.2016 declaring Income at Rs. 6,12,360/-. 03. That the appellant offered his business income from Construction and Contractorship at Rs. 8,52,000/- on Gross receipts of Rs. 92,50,000/- U/s 44AD of the Act which lays down the special provision for computing the profit and gain of business on presumptive basis. 04. That an Order U/s. 143(3) of the Act has been passed by the A.O. on 22.12.2017, wherein the Total Income of the appellant has been assessed at Rs. 46,12,360/- instead of Total Returned Income of Rs. 6,12,360/-, by making additions of Rs. 40,00,000/- on account of cash deposit in Bank treating it as unexplained cash credit in the bank account. 05. That the Ld. Assessing officer failed to consider that the appellant has filed his return of income U/s 44AD of the Act wherein there is no liability on the appellant to maintain the books of accounts. 06. That the deposits in the bank account were on account of business receipts and the appellant had duly shown the business income of Rs. 8,52,000/- U/s 44AD of the Act on Gross receipts of Rs. 92,50,000/-. 07. That the above addition has been made in summary and mechanical manner, without any basis and as such the same is invalid, incorrect, unjustified and bad in law.		
	List of documentary evidence relied upon		0		
	12 Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A		No		
	12.1 If reply to 12 is Yes, furnish the list of such documentary evidence				
	13 Grounds of Appeal (each ground not exceeding 100 words)				
	Relevant section (s) of IT/Act		Issue	Ground of Appeal	
	68		Addition of Rs. 40,00,000/-	(i) On the facts and circumstances of the case and in Law the Ld. A.O. erred in making addition of Rs. 40,00,000/- to the returned income on account of cash deposit in bank treating it as unexplained cash credit in bank ignoring the fact that the cash deposits were related to the business of appellant. (ii) The Ld. A.O. has erred in law in making addition being cash deposits in the bank accounts U/s 68 of the Act despite the fact that the appellant has offered his business income U/s 44AD of the Act which lays down the special provision for computing the profit and gain of business on presumptive basis and admittedly does not maintain books of account and, therefore, the said charging of section 68 cannot be pressed to service.	
	General		General	The Appellant craves leaves to add, to alter, amend or vary all or any of the above grounds of appeal either before or during the course of appellate proceedings.	
Appeal filing details	14 Whether there is delay in filing appeal ?		Yes		
	15 If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)		That due to some unavoidable circumstances appeal could not be filed on time. Hence, it is requested that the appeal of the appellant may please be accepted and for this act of kindness appellant would be grateful to Your Honour.		
	16 Details of Appeal Fees Paid				
	BSR Code	Date of payment	Serial Number	Amount	
0011352	19/12/2019	1243	1000		
17 Address to which notices may be sent to the appellant					
Flat/ Door/ Block No.		Name of Premises / Building / Village	Road / Street / Post Office		
234 BSANTRAM SINDHI COLONY					
Area/ Locality		Town/ City/ District	State	Country	
			Madhya Pradesh	India	

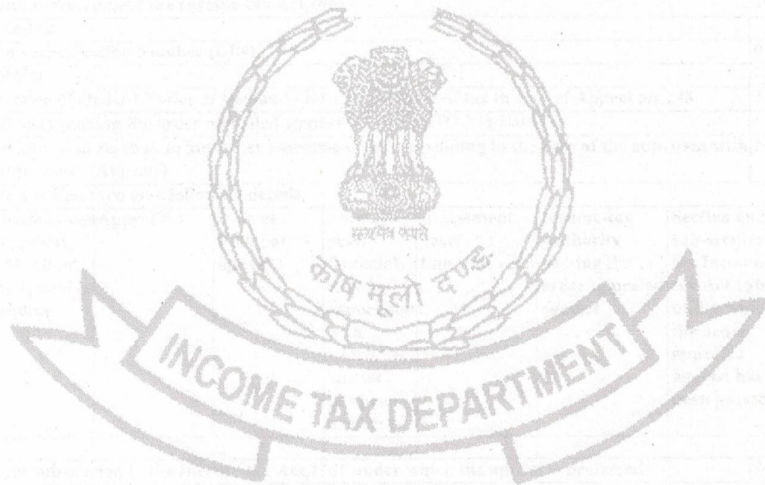
	UJJAIN	MADHYA PRADES H	INDIA
Pincode	Mobile No	Email Address	
456006	- 9826598850	aks.bha@gmail.com	

Form of Verification

I, **AMIT VYAS** the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place : **UJJAIN**
Date : **30/12/2019**

Amit Vyas



5. It can be seen that the assessee has provided following information in above Form No. 35 filed to CIT(A):

Column No.	Details required	Information provided by assessee
2(c)	Date of service of Order/Notice of demand	31/01/2018
14	Whether there is a delay in filing appeal?	Yes
15	If reply to 14 is Yes, enter the grounds for condonation of delay	That due to some unavoidable circumstances appeal could not be filed on time. Hence, it is requested that the appeal of the appellant may please be accepted and for this act of kindness appellant would be grateful to Your Honour.

6. Thus, the CIT(A) considered above information filed by assessee in statutory Form No. 35 under verification and thereafter dismissed assessee's appeal being not satisfied with the cause of delay.

7. However, during hearing before us, the assessee has filed following documents to explain the delay occurred in filing first-appeal:

Order-sheet of department:

Mr. Amit Vyas, Freeganj Ujjain 42

AY. 2015-16

10.7.17 Notice u/s 142(2) issued. fixed for 22/07/16
P.R.

28.7.17 Adv. Sandeep Jaisirhoni attended
submitted power. Submitted the
ack. of computation of income, 18th.
Notice u/s 142(1) case fixed for 08/8/17
P.R.

27/8/17 Notice u/s 142(2) issued. case fixed for
30.8.17. P.R.

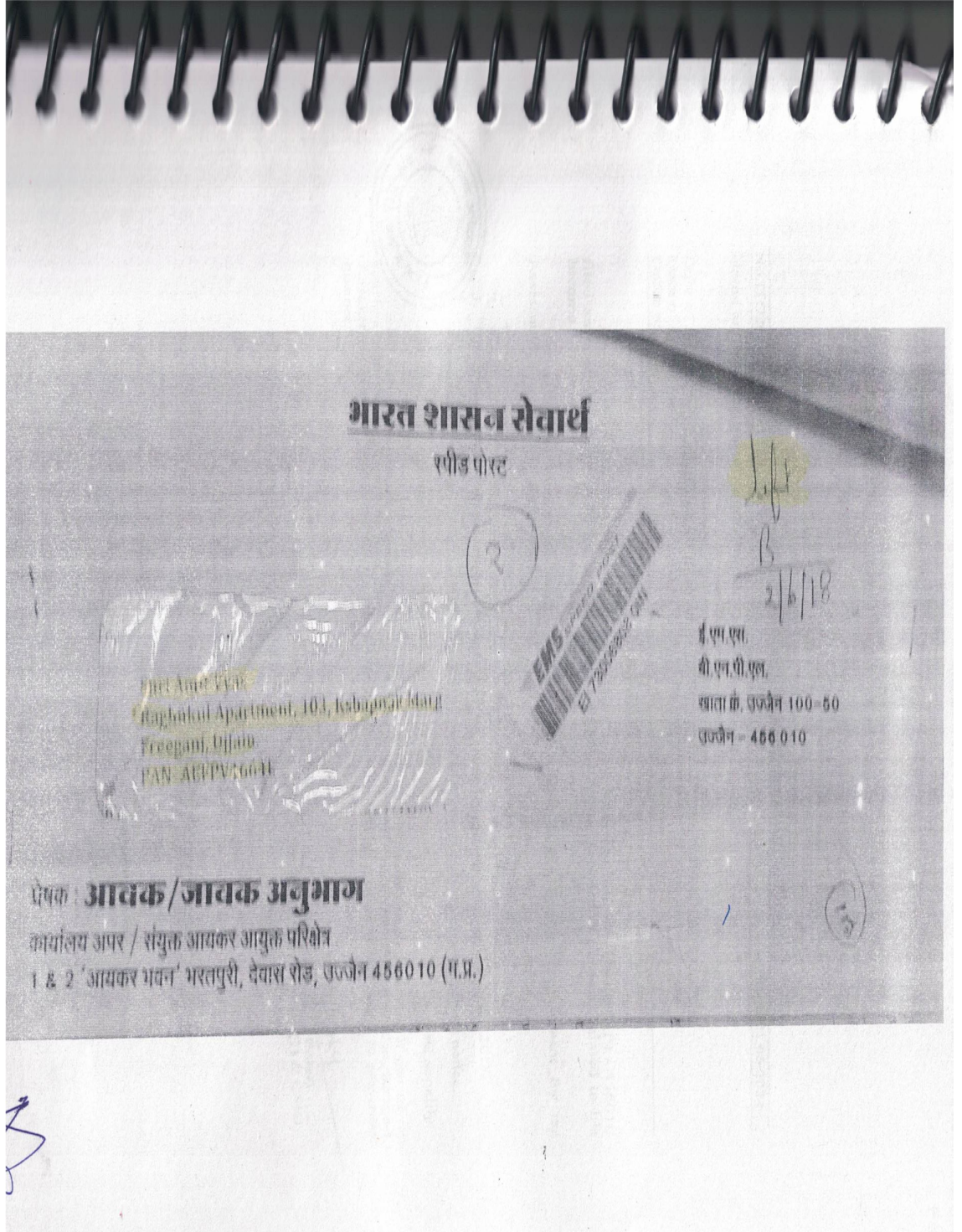
30.8.17 Mr. Amit Vyas attended. & stated
that his counsel. not available today.
& requested for next date. He has
stated that he has changed his
address. New address is as under

6.5, Man Sarawan Colony
near Shrisom Nagar.
Freeganj Ujjain

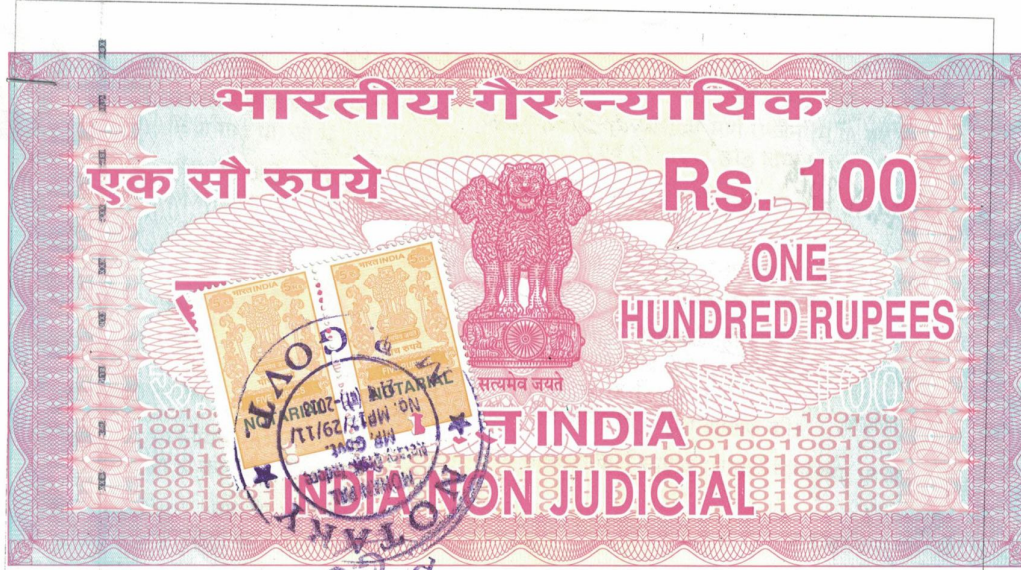
Admitted case & fix for 11.09.17.
P.R.

TRUE-COPY
Income Tax Officer- 2(1);
UJJAIN

Envelope of Speed-Post:

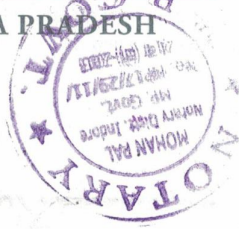


Affidavit of assessee:



मध्य प्रदेश MADHYA PRADESH

CK 842684



Serial No. 5775/2024
Date.....

11 MAY 2024

शपथ-पत्र

कर निर्धारण वर्ष (A.Y) 2015-16 के संबंध में माननीय आयकर अपीलीय अधिकरण इंदौर के समक्ष प्रस्तुत करने हेतु

मैं अमित व्यास, पिता श्री विरेन्द्र व्यास, पैन-AEFPV4664L, निवासी 65- मानसरोवर कॉलोनी, उज्जैन (म.प्र), शपथ पूर्वक कथन करता हूँ कि:

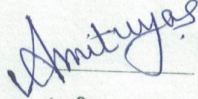
1. मेरा ठेकेदारी और कंस्ट्रक्शन का व्यवसाय है।
2. मैंने बारहवीं कक्षा तक शिक्षा प्राप्त की है, जिसके परिणाम स्वरूप मुझे कर-कानूनों की अधिक गहन नहीं है।
3. वर्ष 2017 में हुए A.Y 2015-16 के आयकर असेसमेंट के दौरान विभिन्न नोटिस ऑनलाइन-ईमेल के माध्यम से जारी किए गए थे, जिनका जवाब मैंने अपने अधिकृत प्रतिनिधि के माध्यम से आयकर अधिकारी 2(1), उज्जैन के समक्ष दाखिल किया था।
4. दिनांक 22.12.2017 का कर-निर्धारण आदेश मैन्युअल/ भौतिक रूप से जारी हुआ था, ऑनलाइन जारी नहीं हुआ था।

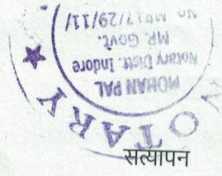
Amit Vyas

SWORN BEFORE ME

5. उपरोक्त आदेश मेरे पुराने पते 103, रघुकुल अपार्टमेंट, क्षणपक-मार्ग उज्जैन (म.प्र) पर जारी किया गया था, जो मैंने वर्ष 2015 में ही बेच दिया था एवं वहाँ रहना छोड़ दिया था।
6. चूंकि यह आदेश मेरे पुराने पते पर मैन्युअल/ भौतिक रूप से जारी हुआ था, मुझे इस आदेश की कोई जानकारी नहीं थी।
7. वर्ष 2015 से ही मैं 65- मानसरोवर कॉलोनी, उज्जैन (म.प्र) पर निवासरत हूँ। मैंने यह पता बाद के वर्षों, की आयकर विवरणी में भी दर्ज किया है। (ITR, आधार-कार्ड संलग्न)
8. दिसंबर 2019 में जब आयकर विभाग ने रिकवरी/वसूली की कार्यवाही शुरू की, तब ही मुझे प्रथम बार उपरोक्त आदेश के बारे में पता चला। जिसके बाद मैंने तुरंत अपने कर सलाहकार से संपर्क किया, जिन्होंने मुझे बताया कि इस आदेश के विरुद्ध कमिश्नर-अपीलस के समक्ष अपील दाखिल करनी होगी। बिना समय गवाए मैंने अविलम्ब अपील दाखिल की।
9. माननीय कमिश्नर-अपीलस द्वारा देरी के संबंध में मुझसे कोई स्पष्टीकरण नहीं मांगा गया था और ना ही कोई डेफिशियेंसी पत्र जारी किया गया था।
10. यह कि माननीय कमिश्नर-अपीलस के समक्ष अपील दाखिल में देरी जान-बूझकर या लापरवाही के कारण नहीं हुई है।
11. अतः माननीय आयकर अपीलीय अधिकरण इंदौर से विनम्रतापूर्वक अनुरोध है कि इस अपील को स्वीकार किया जाए एवं अपील का निर्णय गुण-दोष के आधार पर किया जाए।

शपथकर्ता- अमित व्यास

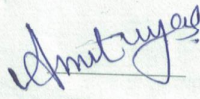

सही




मैं अमित व्यास, पिता श्री विरेन्द्र व्यास, पैन- AEFPV4664L, निवासी 65- मानसरोवर कॉलोनी, उज्जैन (म.प्र) सत्यापित करता हूँ कि, शपथपत्र की कंडिका क्रमांक 1 से 11 में लिखे मेरे कथन पूर्णतः मेरे स्वयं के ज्ञान से सत्य एवं सही है।

मैंने अपने हस्ताक्षर आज दिनांक _____ को स्थान _____ में किए

शपथकर्ता- अमित व्यास,


सही

SWORN BEFORE ME


MOHAN PAL
NOTARY, DIST. INDORE
M P GOVT

8. On the basis of above documents, it is being claimed by assessee/Ld. AR that there was a change in address of assessee from "103, Raghukul Apartment, Kshapnak Marg, Freeganj, Ujjain" to "65, Mansarover Colony, Near Shri Ram Nagar, Freeganj Ujjain" which was intimated to AO during the course of assessment-proceeding on 30.08.2017 and the new address was taken on record by AO as is evident from Order-Sheet re-produced above. However, the AO still served the assessment-order by speed-post at the old address and the speed-post was returned back with the remark "left-02.06.2018" by postal authorities which is evident from envelope of speed-post re-produced above. Therefore, as per affidavit of assessee, the assessment-order passed by AO did not reach to assessee. Ultimately, the assessee came to know of assessment-order in December, 2019 when the department initiated recovery proceeding and immediately thereafter, the assessee arranged to file appeal to CIT(A) on 30.12.2019.

9. The above submission made by assessee was not at all before first-appellate authority i.e. CIT(A) who was concerned with condonation of delay in filing first-appeal. Admittedly, there was a huge delay of 669 days in filing first-appeal as noted by CIT(A). Therefore, without making any comment on the merit of submission, we remand this matter back to the file of CIT(A) for consideration afresh. The CIT(A) shall consider assessee's submission and take an appropriate view firstly in the matter of invalidity/validity of first-appeal filed before him on the ground of delayed filing and thereafter on merit of the addition made by AO as considered necessary. The assessee

shall be at liberty to make all submissions before CIT(A). Needless to mention that the CIT(A) shall consider assessee's submissions judiciously without being influenced by his previous order.

10. Other pleadings made by both sides are not required to be adjudicated by us since we have remanded matter to CIT(A) for adjudication afresh.

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

Order pronounced in open court on 09.09.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 09.09.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore