

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.802/Ind/2014
Assessment Year:2017-18

Avdhesh Baggad, Sadalpur, Dhar	<u>बनाम/</u> <u>Vs.</u>	ITO Dhar
(Assessee/Appellant)		(Revenue/Respondent)
PAN: BOZPA9769J		
Assessee by	Shri Milind Wadhwani, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.06.2025	
Date of Pronouncement	23.06.2025	

आदेश / ORDER

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

Feeling aggrieved by order of first appeal dated 14.09.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 06.12.2019 passed by learned ITO, Dhar ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

"1. On the facts and in the circumstances of the case the Ld. C.I.T.(Appeals) (NFAC) erred in upholding the assessment order passed by Id. A.O. by making assessment u/s 144 of Act, without considering the fact that

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appellant has filed his return of income filed through operative PAN No. CDSPR2994D.

2. On the facts and in the circumstances of the case, the Ld. C.I.T.(Appeals) (NFAC) erred in upholding the assessment order passed by Id. A.O. by making addition of Rs. 12,56,000/- without considering his SCN dt. 16.09.2019 issued for Rs. 3,90,000/-.

3. On the facts and in the circumstances of the case, the Ld. C.I.T.(Appeals) (NFAC) erred in upholding the non-speaking order passed by Id. A.O. on the basis of information available on record about filing of return of income, nature and source of receipt of money and how income is taxable u/s 69A of the Income Tax Act, 1961."

2. The registry has informed that the present appeal has been filed on 11.11.2024 against impugned order dated 14.09.2023 of first-appeal passed by Ld. CIT(A), therefore it is delayed by about 1 year and hence time-barred. Ld. AR for assessee firstly submitted that the assessee has filed an application for condonation of delay supported by a notarized affidavit. The affidavit so filed is scanned and re-produced below:

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भारत सरकार न्यायिक

NOTARY SACHIN PAL
NOTARY DISTT INDORE
M.P. GOVT. (INDIA)
REG. No. MP-23/42/07/21 B-(2)
2023-2028
INDORE

NOTARY SACHIN PAL
NOTARY DISTT INDORE
M.P. GOVT. (INDIA)
REG. No. MP-23/42/07/21 B-(2)
2023-2028
INDORE

NOTARY SACHIN PAL
NOTARY DISTT INDORE
M.P. GOVT. (INDIA)
REG. No. MP-23/42/07/21 B-(2)
2023-2028
INDORE

Rs. 100
ONE HUNDRED RUPEES

मध्य प्रदेश MADHYA PRADESH

CY 561492

Serial No. 5127/2025
Date 18 JUN 2025

शपथ-पत्र

कर निर्धारण वर्ष 2017-18 हेतु अपील में हुई विलंब के संदर्भ में।

मैं, अवधेश राठौर, पुत्र श्री भेरूसिंह राठौर, निवासी ग्राम बगड, तहसील सादलपुर, जिला धार (म.प्र.) – 454666, यह शपथपूर्वक निवेदन करता हूँ कि:

- मैं इस शपथ-पत्र को प्रस्तुत करने हेतु पूर्णतः सक्षम हूँ और कर निर्धारण वर्ष 2017-18 से संबंधित मेरी अपील ITA 802/IND/2024 की समस्त परिस्थितियों एवं तथ्यों से भली-भांति अवगत हूँ।
- मेरी पृष्ठभूमि ग्रामीण है तथा मुझे कर कानूनों, कंप्यूटर प्रणाली एवं तकनीकी विषयों की अत्यंत सीमित जानकारी है।
- उक्त वर्ष की मेरी आयकर विवरणी मैंने पैन CDSPPR2994D से दाखिल की थी, किंतु निर्धारण आदेश पैन BOZPA9769J पर पारित हुआ, इस पैन से विवरणी दाखिल नहीं की गई थी। मेरे नाम पर अनजाने में दो पैन आवंटित हो गए थे, जिनमें से एक बैंक खाते से मैं उल्लेखित था, जिसकी मुझे जानकारी नहीं थी।
- मैंने आयकर अधिकारी धार के द्वारा आयकर की धारा 144 के अंतर्गत दिनांक 06.12.2019 को पारित आदेश के विरुद्ध दिनांक 10.01.2020 को फॉर्म 35 के माध्यम से माननीय National Faceless Appeals Centre (NFAC) के समक्ष अपील दायर की थी।
- यद्यपि फॉर्म- 35 में मैंने अनुरोध किया था कि संचार मेरी ईमेल awadheshrathore1994@gmail.com पर किया जाए, फिर भी NFAC द्वारा नोटिस निम्न ईमेल पर भेजे गए:

अविरत

ATTESTED
SACHIN PAL

Awadhesh

Avdesh

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(2)

दिनांक	ई-मेल एड्रेस जिस पर ई-मेल प्रेषित किये गए
11.01.2021	Mahendramittalandco@gmail.com
28.07.2023	Mahendramittalandco@gmail.com
10.08.2023	Mahendramittalandco@gmail.com
06.09.2023	awadheshrathore1994@gmail.com एवं Mahendramittalandco@gmail.com

6. दिनांक 11.01.2021, 28.07.2023, तथा 10.08.2023 को धारा 250 के अंतर्गत जारी हुए नोटिस मेरे पूर्ववर्ती कर सलाहकार की ईमेल आईडी mahendramittalandco@gmail.com पर प्रेषित किये गए थे, एवं फॉर्म 35 में अंकित ईमेल पर नहीं भेजे गए, जिससे मुझे उक्त कार्यवाही की जानकारी नहीं मिल सकी। (इनकम टैक्स फाइलिंग पोर्टल के स्क्रीनशॉट संलग्न)

7. उपर्युक्त सुनवाई नोटिस मेरे पूर्व कर सलाहकार की ईमेल आईडी Mahendramittalandco@gmail.com पर इलेक्ट्रॉनिक रूप से भेजे गए थे। ना तो उनकी भौतिक प्रतिलिपियाँ मुझे प्राप्त हुई और ना ही उक्त कर सलाहकार द्वारा मुझे इन नोटिस की कोई जानकारी दी गई।

8. दिनांक 06.09.2023 की नोटिस पहली बार मेरे ईमेल आईडी पर प्रेषित की गयी। उक्त तिथि बुधवार थी, जबकि नोटिस का जवाब 11.09.2023 तक देना था, जिसमें 09.09.2023 (शनिवार) एवं 10.09.2023 (रविवार) को अवकाश रहा।

9. मेरी तकनीकी अज्ञानता के कारण मैं नियमित रूप से ईमेल नहीं देखता, एवं नोटिस की कोई भौतिक तामीली मुझ पर नहीं हुई थी, इसलिए मैं समय रहते उत्तर देने में असमर्थ रहा।

10. गैर-हाजिरी के कारण NFAC द्वारा दिनांक 14.09.2023 के आदेश के द्वारा मेरी उक्त अपील खारिज कर दी गयी, जो मुझे उपरोक्त कारणों से तत्काल ज्ञात नहीं हुआ इस कारण मैं नियत समय में इस आदेश के विरुद्ध अपील दाखिल नहीं कर सका।

11. मुझे उपरोक्त अपील के खारिज किए जाने की जानकारी 25.09.2024 को जब आयकर निरीक्षक के माध्यम से मेरे निवास जब 24.09.2024 का पेनल्टी एवं रिकवरी नोटिस तामीली की गयी तब प्राप्त हुई। तत्क्षण मैंने अपने कर सलाहकार से संपर्क किया और उन्होंने मुझे इस आदेश के विरुद्ध माननीय आयकर अपीलीय अधिकरण -इंदौर (ITAT) के समक्ष अपील दाखिल करने की सलाह दी।

12. मैंने तत्पश्चात् से समस्त NFAC के आदेश के विरुद्ध माननीय ITAT- इंदौर के समक्ष दिनांक 11.11.24 को अपील दाखिल की।

13. दिनांक 25.09.2024 के पहले ना तो आदेश/नोटिस की भौतिक तामीली मुझ पर हुई थी, और इन आदेश/नोटिस के सम्बन्ध में मुझे मेरे पूर्व कर सलाहकार द्वारा अवगत कराया गया था।

14. अपीलें दायर करने में विलंब पूर्णतः अज्ञान, अज्ञानतावश एवं मेरे नियंत्रण से बाहर की परिस्थितियों के कारण हुआ। इसमें मेरी कोई लापरवाही अथवा दुर्भावना नहीं थी।

15. अतः, न्यायहित में यह अत्यंत विनम्र निवेदन है कि उपरोक्त अपीलों में हुई विलंब को क्षमा किया जाए तथा प्रकरणों को गुण-दोष के आधार पर सुनवाई हेतु स्वीकार किया जाए।

शपथकर्ता- अवधेश राठौर
(हस्ताक्षर)

सत्यापन
मैं, अवधेश राठौर, यह सत्यापित करता हूँ कि उपरोक्त शपथ-पत्र में अंकित समस्त कथन मेरे ज्ञान एवं विश्वास के अनुसार सत्य हैं।
इंदौर दिनांक: 18 JUN 2025

शपथकर्ता- अवधेश राठौर
(हस्ताक्षर)

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Referring to contents of affidavit, Ld. AR submitted that the assessee is having rural background and does not have sufficient knowledge of tax laws and technological systems (Para 2). That while conducting proceedings of first-appeal, Ld. CIT(A) served initial three notices of hearing dated 11.01.2021, 28.07.2023 and 10.08.2023 to the email id: mahendramittalandco@gmail.com which belonged to assessee's previous counsel who never informed to assessee (Para 5, 6, 7). That, although the Ld. CIT(A) served fourth and last notice of hearing dated 06.09.2023 to assessee's email id: awadeshrathore1994@gmail.com besides serving on previous counsel but this last notice required assessee to submit reply by 11.09.2023 and since the assessee does not check-up his email a/c regularly, the email could not be noticed and reply could not be filed to CIT(A) which has led the CIT(A) to pass ex-parte order on 14.09.2023 of first-appeal (Para 8, 9, 10). Ld. AR submitted that neither the notices of hearing nor the impugned order passed by CIT(A) was physically served upon assessee. He submitted that the impugned order came to the knowledge of assessee only on 25.09.2024 when the recovery steps were taken by department through inspector (Para 11). That prior to 25.09.2024, the assessee had no knowledge of impugned order having been passed by CIT(A) as ex-parte (Para 13). Immediately, the assessee paid fee on 11.11.2024 and filed present appeal on 11.11.2024. This has only resulted in delayed filing of appeal. He very humbly submitted that there is no lethargy, negligence, mala fide intention or ulterior motive of assessee in

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making delay and the assessee does not stand to derive any benefit because of delay. He submitted that the sole reason of delay is as explained by assessee in the affidavit and therefore the delay should be condoned having regard to the reason explained and in the interest of justice.

3. Ld. AR next submitted that that the AO has, in the assessment framed, made an addition of Rs. 12,56,000/- for unexplained deposit in “Narmada Jhabua Grameen Bank, Kukshi – A/c No. 601130110000019” but the said a/c belongs to some other person and not to assessee which is evident from following certificate issued by bank to assessee:

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mpgb **मध्य प्रदेश ग्रामीण बैंक**
 आपका अपना बैंक
 (भारत सरकार, म.प्र. शासन एवं बैंक ऑफ इंडिया का संयुक्त उपक्रम) मध्यप्रदेश ग्रामीण बैंक
 शाखा - घाटा बिल्लौद, जि. धार
 पटेल नगर, मेन रोड, घाटा बिल्लौद, जिला धार (म.प्र.) 454773
 फोन : 07292-277725 मो. : 9826713932 ई मेल : ghatabillod.njgb@mpgb-rrb.com


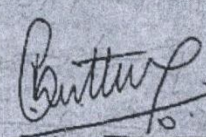
क्र. शाखा/घाटाबिल्लौद/2019-20/249 दिनांक 06/01/2021

प्रति,
 श्री अक्केश राठौर
 श्री श्रीराम सिंह राठौर
 निवासी - बरगाड़ तहसील जिला धार.

उपरोक्त विषयान्तर्गत आपके द्वारा प्रस्तुत आवेदन एवं संपर्क कार्यक्रम विभाग के स्वचालन में उत्प्रेषित होता हुआ उतांस 601130110000019 आपके नाम से नहीं है। यह किसी अन्य नाम से ही उत्प्रेषित होता न ही हमारी शाखा घाटाबिल्लौद में स्थित है।

उक्त पर आपके आवेदन के उस में जारी किया जा रहा है।

धन्यवाद।

 
 शाखा प्रबंधक

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He submitted that the addition made by AO is not sustainable since the impugned bank a/c picked by AO for making addition does not belong to assessee. Therefore, the case of assessee has a strong merit. He made a further request that since the assessment-order passed by AO is u/s 144 and the assessee is filed a new evidence in the form of bank certificate (as re-produced above), the present matter may be remanded to the file of AO for adjudication afresh.

4. Ld. DR for Revenue left the issue of condonation of delay for the wisdom of bench without raising any objection. He, however, agreed that the present case is suitable for remanding back to the file of AO since (i) the assessment-order is ex-parte u/s 144, (ii) the assessee has filed a new evidence by way of bank-certificate, and (iii) the assessee is admitting to possess two PANs.

5. We have considered the explanation advanced by assessee in the solemnized affidavit 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 as narrated above. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if

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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.

6. So far as merit of the case is concerned, we find that the assessee has admitted in Para 3 of affidavit that he is holding two PANs: CDSPR2994D and BOZPA9769J. The assessee has further admitted to have filed income-tax return of AY 2017-18 under consideration on 16.03.2018 in PAN: CDSPR2994D, the following document being acknowledgement of return is filed in Paper-Book according to which the assessee disclosed a total income of Rs. 3,04,290/- and paid tax liability of Rs. 470/- in PAN: CDSPR2994D:

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3

INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT						Assessment Year 2017-18	
[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 transmitted and verified electronically]							
PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION	Name Awadhesh Rathore				PAN CDSPR2994D		
	Flat/Door/Block No 1		Name Of Premises/Building/Village		Form No. which has been electronically transmitted ITR-1		
	Road/Street/Post Office patel nagar		Area/Locality Ghata Billod				
	Town/City/District Dhar		State MADHYA PRADESH		Pin/Zip Code 454773		Aadhaar Number/Enrollment ID XXXX XXXX 5721
	Designation of AO(Ward/Circle) ITO DHAR				Original or Revised ORIGINAL		
	E-filing Acknowledgement Number 454525650160318				Date(DD/MM/YYYY) 16-03-2018		
	1 Gross total income				1		343518
	2 Deductions under Chapter-VI-A				2		39228
	3 Total Income				3		304290
	3a Current Year loss, if any				3a		0
4 Net tax payable				4		442	
5 Interest payable				5		32	
6 Total tax and interest payable				6		474	
COMPUTATION OF INCOME AND TAX THEREON	7 Taxes Paid		a Advance Tax	7a	0		
			b TDS	7b	0		
			c TCS	7c	0		
			d Self Assessment Tax	7d	470		
			e Total Taxes Paid (7a+7b+7c +7d)		7e		470
	8 Tax Payable (6-7e)		8		0		
	9 Refund (7e-6)		9		0		
	10 Exempt Income		Agriculture	0	10	0	
			Others	0			

The return has been electronically uploaded on 16-03-2018 from IP address 182.70.242.49 and has been electronically verified by Awadhesh Rathore in the capacity of _____ having PAN CDSPR2994D on 16-03-2018 17:22:55 from IP address 182.70.242.49 at INDORE using Electronic Verification Code QIM7IXVXYI generated through Aadhaar OTP mode.

DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU

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At the same time, the assessee also admits that he was holding his bank accounts in another PAN: BOZPA9769J. We also take note that the impugned assessment-order has been passed by AO in PAN: BOZPA9769J and the AO has only assessed the deposit in bank a/c without being aware of other PAN: CDSPR2994D held by assessee. Thus, the impugned addition of Rs. 12,56,000/- has been assessed in PAN: BOZPA9769J and the income of Rs. 3,04,290/- belonging to very same person/assessee has been separately assessed in PAN: CDSPR2994D. Since the assessee-individual is one and same, there cannot be piecemeal assessments, the 'total income' of assessee has to be assessed under the provisions of Income-tax Act, 1961. Further, the assessee has also filed a new evidence of bank-certificate as discussed earlier. Therefore, looking to all these aspects, the present case is fit for remand to the file of AO for a vehement adjudication.

7. We, however, note that the assessee has not participated before both of the lower-authorities due to which the lower authorities had to pass ex-parte orders. Further, the assessee has filed return in one PAN and claiming to hold bank a/cs in other PAN. Because of these lapses which are attributable to assessee, the present case has to be remanded to the file of AO for a fresh adjudication. Further, as noted earlier, there is a delay of about 1 year in filing present appeal. Therefore, taking into account these

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aspects, we are inclined to condone the delay and remand this matter to the file of AO subject to payment of a cost of Rs. 7,000/- by assessee to “Prime Minister National Relief Fund” and submission of proof before AO. Needless to mention that the AO shall give necessary opportunity of hearing to assessee and pass an appropriate order. The assessee is also directed to 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.

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

Order pronounced in open court on 23/06/2025
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Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER
Indore

दिनांक /Dated : 23/06/2025

Patel/Sr. PS

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

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