

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 286/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13

Shri Rajesh Jasotani, 52, Vidyut Abhiyanta Colony, Malviya Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward- 1(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABTPJ 9151 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख/ Date of Hearing : 31/01/2018
उद्घोषणा की तारीख/ Date of Pronouncement : 07/02/2018

आदेश/ ORDER

PER: VIJAY PAL RAO, JM

This Appeal by the Assessee is directed against the order dated 01.07.2016 of Ld. CIT(A)-I, Jaipur pertaining to the Assessment Year 2012-

13. The assessee has raised the following grounds of appeal:-

"1.1 The Ld. CIT(A) erred in law as well as on the facts of the case in holding the AO justified on restricting the deduction u/s 54 of the Act to the extent of Rs.6,02,210/- only as against the deduction of Rs.19,24,230/- claimed by the appellant thus, thereby confirming the denial of deduction by the AO to the extent of Rs.13,22,020/-. The denial of the deduction by the AO to that extent and confirmation by the Ld. CIT(A) being contrary to the provisions of law and facts, the appellant kindly be held entitled for the entire amount of deduction of Rs.19,24,230/- as claimed u/s 54 of the Act.

1.2 The Ld. CIT(A) erred in law as well as on the facts of the case in confirming the denial of the AO of the deduction of the claimed by the appellant u/s 54 of the Act up to Rs.13,22,020/-. The

denial by the AO and confirmation by the Ld. CIT(A) being contrary to the provisions of law and facts, the disallowance so made kindly be deleted and the deduction as claimed kindly be allowed in full.

2. **Rs.13,22,020/-:** The Ld. CIT(A) erred in law as well as on the facts of the case in confirming the addition u/s 54 of the Act up to Rs.13,22,020/- under the head capital gain. The addition so made by the AO and confirmation by the Ld. CIT(A) being contrary to the provisions of law and facts, the same kindly be deleted in full.
3. The Ld. AO further erred in law as well as on the facts of the case in charging interest u/s 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.
4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

2. There is a delay of 191 days in filing the present appeal. The assessee has filed an application for Condonation of Delay which is supported by the affidavit of the assessee as well as the affidavit of one Shri Sonu Motvani stated to have been working with the assessee.

3. The Ld. AR of the assessee has submitted that the impugned order dated 01/07/2016 of Ld. CIT(A) was received by the assessee on 05.08.2016 and the same was handed over to Shri Sonu Motvani an employee of the assessee, to be handed over to his Counsel Shri Harish Sharma (Advocate). Unfortunately, Shri Sonu Motvani misplaced the impugned order and also forgotten to report back that he could not complete the task given to him.

Only in the month of March, 2017 when the assessee met his Counsel Shri Harish Sharma (Adv.) to discuss the tax related matters, it came to the notice of the Ld. Counsel that such order has already been passed but was not given to him. The Ld. AR has submitted that immediately, thereafter, the assessee asked his employee Shri Sonu Motvani and efforts were made to search out the papers. It took few days to locate the papers which were then handed over to the Ld. Counsel of the assessee, who prepared the appeal and it was finally filed on 13.04.2017. The Ld. AR has further contended that the assessee is not an educated person and is very poor being an under-graduate. He is not aware of the complexities of tax laws, more particularly, when this was first occasion when, the additions were made and he was required to file an appeal. Therefore, he was not very serious when he got the first appellate order. However, as usual he handed over the same to his employee Shri Sonu Motvani to handover the paper to his regular tax consultant. The assessee was unaware of the fact that the said order was not handed over to the Counsel. More unfortunately, Shri Sonu Motvani even thereafter completely lost sight of this fact. Only in the month of March, 2017 the assessee realized that the impugned order was not handed over to the Counsel for filing an appeal. Thus, the Ld. AR has submitted that due to bonafide mistake committed by the employee and the assessee being under bonafide belief that the employee must have handed over the papers to his Counsel, the appeal could not be filed within the period of limitation. He has

pleaded the delay in filing the appeal may be condoned and decide the appeal of the assessee on merits. He has relied upon the decision of the Hon'ble Supreme Court in the case of **Collector, Land & Acquisition vs. Mst. Katiji & Others 167 ITR 471**, and submitted that the Hon'ble Supreme Court has held that a liberal approach has to be taken by the Courts while considering the case for condonation of delay. The provisions of condonation of delay allow the Courts to do substantial justice to the parties by disposing the matters on merits. The expression sufficient cause employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice.

3.1 He is also relied upon the decision of Hon'ble Madras High Court in the case of **Hosanna Ministries vs. ITO 152 DTR 0008** and submitted that the Hon'ble High Court has condoned the delay of 1902 days in filing the appeal against the order passed U/s 12AA by Ld. CIT. The Hon'ble High Court has observed that the Court must take a pragmatic view in appreciating the reasons attributable to the delay caused to the party to approach the Court of law. He has relied upon the following decisions rendered in the case as under:-

1. Yatish Trading Co. (P) vs. ACIT (2011) 50 DTR 0158 (Mum. Trib.)
2. Mehboob Ali vs. DCIT 37 Taxworld 135 (JP)
3. Cavikare (P) Ltd. vs. ACIT (2008) 16 DTR 0322 (Chennai Trib.)

Thus, the Ld. AR has submitted that filing the appeal belatedly, the assessee has achieved no purpose and therefore it was not a device to cover an ulterior purpose or an attempt to save limitation.

4. On the other hand, the Ld. DR has submitted that the explanation of the assessee is vague and contrary to the record. She has pointed out that the assessee in his application for condonation of delay as well as in the affidavit has stated that the assessee came to know only in the Month of March, 2017, that the impugned order was not handed over by his employee to his Counsel, whereas the Memo of appeal in Form No. 36 and verification thereof has been signed by the assessee on 19.12.2016. The Ld. D/R has also pointed out that even as per the Form No. 36 and grounds attached thereto, it is clear that the same were prepared on 19.12.2016 as the file was created in the computer system on the same date as appearing at the bottom of the page. Thus, the Ld. D/R has submitted that the cause of delay explained by the assessee is not supported by the facts as emerged from the record and therefore, the assessee has not explained the real reasons of delay in filing the present appeal. The assessee has suppressed the true facts and presents an artificial story which is vague and cannot be accepted as a sufficient cause for delay in filing the appeal.

In rejoinder the Ld. AR of the assessee submitted that the date mentioned in the Memo of Appeal in Form No. 36 is a typographical mistake and therefore, the same is not significant for the purpose of deciding the

condonation of delay, when the assessee has explained the reasons for delay in the application which is supported by the affidavits of the assessee as well as the employee Shri Sonu Motvani.

5. We have considered the rival submissions as well as relevant material on record. The assessee has stated to have received the impugned order on 05.08.2016 however, the appeal has been filed on 13.04.2017, and therefore, there is a delay of 191 days in filing the present appeal. There is no quarrel that while considering the condonation of delay the Court should take a lenient view. However it is always a question whether the explanation and reason for delay was bonafide or it is merely a devise to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in under headway. It is also a settled principle that the expression sufficient caused be interpreted in a manner which sub-serves the ends of justice. However, at the same time, the requirement of sufficient cause of delay cannot be ignored and in case the delay is not an ordinary delay but it is an inordinary and abnormal then it becomes more relevant that the sufficient cause must be explained to the satisfaction of the Court. Whenever substantial justice and technical consideration are opposed to each other cause of substantial justice has to be preferred. However, this does not mean the litigation has a free license to approach the Courts on this will.

5.1 The assessee has explained the cause of delay that after receiving the impugned order on 05/08/2016 the assessee handed over the same to his

employee Shri Sonu Motvani for handed over to its Counsel Shri Harish Sharma (Adv.). However till March, 2017 the assessee did not realize that the said order was not handed over to its Counsel and accordingly the assessee took steps to file an appeal once the assessee realized that the impugned order was not handed over to its Counsel. In ordinary case, we would have no reasons to disbelieve such an explanation but in the case of the assessee we find that the Memo of appeal has been signed and verified on 19.12.2016. Though, the Ld. AR has submitted that this is a typographical mistake however, we find that the file in the name of the assessee itself was created on 19.12.2016 and therefore the date of creation of file by the computer cannot be considered as a typographical mistake. For ready reference, we placed a scanned copy of Form No. 36 and grounds of appeal as under:-

2.

(ANNEXED TO THE ITAT APPEAL IN THE CASE OF SHRI RAJESH JASOTANI, 52, VIDYUT ABHIYANTA COLONY, MALVIYA NAGAR, JAIPUR AGAINST THE ORDER DATED 01.07.2016 OF THE CIT (A)-I, JAIPUR U/S 143(3) OF THE ACT FOR A.Y.2012-13)

GROUNDS OF APPEAL

1.1 The Id. CIT(A) erred in law as well as on the facts of the case in holding the AO justified on restricting the deduction u/s 54 of the Act to the extent of Rs.6,02,210/- only as against the deduction of Rs.19,24,230/- claimed by the appellant thus, thereby confirming the denial of deduction by the AO to the extent of Rs.13,22,020/-. The denial of the deduction by the AO to that extent and confirmation by the Id. CIT(A) being contrary to the provisions of law and facts, the appellant kindly be held entitled for the entire amount of deduction of Rs.19,24,230/- as claimed u/s 54 of the Act.

1.2 The Id. CIT(A) erred in law as well as on the facts of the case in confirming the denial of the AO of the deduction of the claimed by the appellant u/s 54 of the Act up to Rs.13,22,020/-. The denial by the AO and confirmation by the Id. CIT(A) being contrary to the provisions of law and facts, the disallowance so made kindly be deleted and the deduction as claimed kindly be allowed in full.

2. **Rs.13,22,020/-**: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition u/s 54 of the Act up to Rs.13,22,020/- under the head capital gain. The addition so made by the AO and confirmation by the Id. CIT(A) being contrary to the provisions of law and facts, the same kindly be deleted in full.

3. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.


AR/Appellant

Thus, if there is a typographical mistake in writing the date against the verification then it would not have matched with the date of creation of file and the explanation of the assessee would have been supported by the date of creation of file itself. Rather in the case of the assessee the date of verification as well as the date of creation of file is same and therefore, the mistake in typing the date is absolutely ruled out. Even if the explanation of the assessee can be accepted that the employee of the assessee misplaced or forgotten to handover the order to the Counsel and report to the assessee, the delay after 19.12.2016 remained unexplained. The vary basis and reasons as explained by the assessee lost its foundation when the Memo of appeal and grounds were prepared and signed on 19.12.2016 which falsify the explanation of the assessee that the assessee came to know about non-filing of the appeal only in the month of March, 2017.

5.2 Even otherwise merely handing over the impugned order to the Counsel is not considered as the required steps have been taken by the assessee until and unless the assessee sign the appeal memo and also pay the appeal fee. Therefore, the assessee cannot take a plea that because the order was not handed over to the Counsel by the employee of the assessee the appeal could not be filed within a period of limitation. This can be an explanation only for a limited period of delay and not for the delay of more than six months. The assessee cannot plead his laches, and negligence as a bonafide mistake on the part of the employee. Mere handing over the order to the Counsel of the

assessee would not discharge the assessee from the requisite steps to be taken but the assessee was also supposed to signed the appeal paper and therefore taking no steps or making no attempts thereafter, till the filing of the appeal or till the alleged date in month of March, 2017 itself shows the conduct of the assessee is casual or non serious towards the matters. When the explanation of the assessee is factually contrary to the facts on record then it cannot be considered as a sufficient or cogent explanation for delay.

5.3 As per section 253(5) of the Act, the Tribunal may admit an appeal after the expiry of period of limitation, if it is satisfied that there was sufficient cause for not presenting it within that period. Thus, this provision permits filing the appeal after the period of limitation subject to the satisfaction of the Tribunal and the party seeking condonation of delay cannot claim it as a matter of right. The provision of limitation has to be given effect with all its vigour. Nevertheless, may harshly affect the particular party. The Hon'ble Supreme Court in the case of **Lachhman Das Arora V Ganeshi Lal (1999)** **8 SCC 532** has observed as under:-

"There is no gain saying that the law of limitation may harshly effect a particular party but it has to be applied with all its vigour when the statute so prescribed. The courts cannot extent the period of limitation on equitable grounds."

5.4 The averments of the application of condonation of delay as well as affidavits of the assessee do not make out a case of sufficient cause for delay

of 191 days in filing the present appeal. The explanation furnished by the assessee do not inspire confidence and satisfaction as it is found to be contradictory to the facts on records and the assessee has not explained the reasons to our satisfaction about the contradiction between the explanation and other facts on records. Accordingly, in view of the above facts and circumstances of the case, we are of the considered opinion that the assessee has failed to explain the reasonable cause much less a sufficient cause for not filing the appeal within the period of limitation. Hence, we decline to Condon the delay of 191 days in filing the appeal. The appeal of the assessee is deserve dismissal being barred by limitation. Since the appeal of the assessee is dismissed being barred by limitation therefore, we do not propose to go into the grounds raised by assessee in the present appeal.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 07/02/2018.

Sd/-

(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 07/02/2018.

Pooja/-

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Rajesh Jasotani, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.

6. गार्ड फाईल / Guard File [ITA No. 286/JP/2017]

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar