

आयकर अपीलीय 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. 396/JP/2018
निर्धारण वर्ष / Assessment Year : 2007-08

Smt. Anuradha Sharma H-179,180, Malviya Industrial Area, Jaipur.	बनाम Vs.	The ITO, Ward-6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANPPS 6151A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Sharma (Adv.)
राजस्व की ओर से / Revenue by : Smt. Punam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 11/07/2018
उदघोषणा की तारीख / Date of Pronouncement: 13/07/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 22.01.2018 of CIT (A), for the assessment year 2007-08. The assessee has raised various grounds in this appeal however, ground No. 2 of the assessee is relevant for adjudication of this appeal which reads as under:-

"That on the facts and in the circumstances of the case as well as in law, the learned CIT(A), Ajmer has grossly erred in dismissing the appeal of the assessee on account of stated delay in filing of appeal."

2. The appeal of the assessee was dismissed by the Id. CIT(A) on the ground of barred by limitation as there was delay of 37 day in filing the appeal. The Id. AR of the assessee has submitted that the delay in filing the appeal was duly explained as per affidavits of the Id. AR of the assessee which has been reproduced by the Id. CIT(A) in para 3.1 of the impugned order. However, the Id. CIT(A) declined to condone the delay in filing the appeal and dismissed the appeal in limine without deciding the matter on merits. Thus, the Id. AR has pleaded that the delay of 37 days in filing the appeal before the Id. CIT(A) may be condoned.

3. On the other hand, the Id. DR vehemently objected to the condonation of delay and submitted that the Id. CIT(A) found the explanation is not sufficient for delay in filing the appeal. The Id. DR has also objected to the other grounds raised by the assessee and particularly ground No. 1 of the assessee's appeal challenging the validity of reopening and submitted that the assessee did not raise this

ground before authorities below. She has relied upon the order of the Id. CIT(A).

4. We have considered the rival submissions as well as relevant materials on record. The assessee filed the appeal before the Id. CIT(A) belatedly and also filed an application for condonation of delay as well as affidavit of Shri Arvind Sharma (Advocate) the authorized representative of the assessee. The Id. CIT(A) has reproduced the contents of the application and affidavits in paras 3 and 3.1 as under:-

"3.0 It is seen from Form No. 35 that the appeal has been filed on 09.06.2014. The date of service of demand notice as mentioned in form is 03.04.2014. Thus, it is clear that the appeal has not been presented within 30 days from the date of service of notice of demand. The appellant has filed an application dated 09.06.2014 for condonation of delay in filing the appeal stating as under:

"With reference to above we may submit that the assessee has received the captioned assessment order dated 25.03.2014 passed u/s 144 read with section 148 on 03.04.2014 alongwith the notice of demand raising demand of Rs.1863720/-. We may submit that the assessee handed over the order to her counsel Shri Arvind Sharma, Advocate, for further consultation and further action to be taken. However, due to his preoccupation, he could not give time for the same. An affidavit .9f the advocate in this respect is enclosed herewith. Now, the advocate has referred the matter to us in the first week of June, 2014. However, the prescribed time limit of 30 days had already expired by then.

For this reason, there has been a delay of 37 days in filing the appeal which may kindly be condoned."

3.1 Along with the application the appellant has also filed an affidavit of Shri Arvind Sharma affirming as under:

"I, Arvind Sharma S/o Sh. Narayan Dutt Sharma aged 53 R/o of 8/195, Malviya Nagar, Jaipur having office at G-1, Suffal Apartment, Jai Singh Highway, Banipark, Jaipur specially in the core area of Indirect Taxation.

1. I being close relative of the assessee, was appointed as authorized representative lawful attorney to represent and submit before the Income Tax Department the appeal against the assessment order u/s 147 of the Income Tax of Smt. Anuradha Sharma (PAN: ANPPS6151A) for the assessment year 2007-08.

2. Due to the preoccupation in the indirect Taxation matter I had to make frequent outside visits outside Rajasthan and could not file the appeal before the Commissioner of Appeal in time and I have also explained the matter to Smt. Anuradha Sharma to appoint another counsel to deal the matter in appellate proceedings."

Thus, it is clear that the assessee explained the cause of delay that due to the pre occasion of the authorized representative, the appeal could not be filed within the period of limitation and therefore, there was a delay of 37 days in filing the appeal. This explanation of cause of delay was duly supported by the affidavit Shri Arvind Sharma (Adv.) the Id. AR of the assessee who has affirmed that due pre occupancy in the indirect

taxation matter and frequent outstation visits he could not file the appeal before the Id. CIT(A) within the period of limitation. He has also stated in the affidavit that he rather advised the assessee to appoint another counsel to deal with the matter in the appellate proceedings though the assessee did not chose to change the counsel. Accordingly, we find that the delay in filing the appeal before the Id. CIT(A) of 37 days was duly explained as attributable to the preoccupancy of the Id. AR of the assessee in the other matters as he was busy in attending indirect tax matters outside Rajasthan and could not find time to file the appeal also before the Id. CIT(A) within the period of limitation. The Id. CIT(A) rejected this application only on the ground that once the authorized representative advised the assessee to engage some other counsel then the delay in filing the appeal cannot be attributed to the authorized representative. We do not concur with the view of the Id. CIT(A) and find that the assessee has explained a sufficient cause for not presenting the appeal within the period of limitation. Accordingly, we condone the delay of 37 days in filing the appeal before the Id. CIT(A).

5. Since, the Id. CIT(A) has not decided the matter on merits accordingly, we set aside the matter to the record of the Id. CIT(A) for

adjudication of the same on merits after giving an appropriate opportunity of hearing to the assessee. Needless to say the assessee is at liberty to raise the grounds against the reopening of the assessment if she wishes so.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13/07/2018.

Sd/-

(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 13/07/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- Smt. Anuradha Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(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. 396/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar