

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 497/Jodh/2017  
निर्धारण वर्ष / Assessment Year :2014-15

Ramarpan Education Society, 16-17, Heera Panna Market, Pur Road, Gandhi Nagar, Bhilwara.	बनाम Vs.	Income Tax Officer (Exemptions), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATP 5709 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 862/JP/2018  
निर्धारण वर्ष / Assessment Year :2014-15

Ramarpan Education Society, 16-17, Heera Panna Market, Pur Road, Gandhi Nagar, Bhilwara.	बनाम Vs.	Income Tax Officer (Exemptions), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATP 5709 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rahul Parmanandani (CA)  
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/09/2018  
उदघोषणा की तारीख / Date of Pronouncement : 25/09/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against the two separate orders of Id. CIT(A), Ajmer dated 06/09/2017 & 10/05/2018 arising from the order passed U/s 143(3) and Section 154 of the Income Tax Act, 1961 (in short the Act) respectively for the A.Y. 2014-15. The

assessee has raised common grounds in both these appeals and the grounds raised in the ITA No. 862/JP/2018 arising from the assessment order passed U/s 143(3) of the Act are reproduced as under:

- “1. That the Id. CIT(A) has grossly erred in confirming disallowance of funds of Rs. 84,20,050/- i.e. capital receipts which is quite arbitrary, unjustified, illegal and not based on facts.*
- 2. That on the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in confirming disallowance of claim of depreciation of Rs. 35,69,684/- which is quite arbitrary, unjustified, illegal and not based on facts.*
- 3. That on the facts and in the circumstances of the case, the Id. CIT(A) has confirmed disallowances of claim of investment made in the fixed assets of Rs. 58,67,947/- which is quite arbitrary, unjustified, illegal and not based on facts.*
- 4. That on the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in confirming rejection of claim of accumulate excess application of Rs. 59,97,636/- of earlier years which is quite arbitrary, unjustified, illegal and not based on facts.*
- 5. That the appellate craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated herein above, either before or at the time of hearing of this appeal.”*

2. The assessee is a society and providing education. The assessee was granted registration U/s 12A of the Act. the assessee filed its return of income on 20/09/2014 declaring at NIL income after claiming benefit of Section 11 and 12 of the Act. During the scrutiny assessment passed U/s 143(3) of the Act, the Assessing Officer made disallowances on account of donations/capital receipt, depreciation on fixed assets, application of income acquiring the fixed assets and claim of excess application of

income. The assessee instead of filing an appeal before the Id. CIT(A), preferred rectification petition U/s 154 of the Act, which was dismissed by the Assessing Officer vide order dated 20/01/2017. Thereafter the assessee filed an appeal before the Id. CIT(A) against the order passed U/s 154 of the Act, which was also dismissed by the Id. CIT(A) vide order dated 06/09/2017 on the ground that the issue raised by the assessee in the petition U/s 154 of the Act are beyond the purview of the provisions of rectification of mistakes U/s 154 of the Act. Thereafter the assessee filed second appeal before the Id. CIT(A) on 27/09/2017 alongwith an application for condonation of delay. The Id. CIT(A) dismissed the said appeal of the assessee in limini being barred by limitation vide impugned order dated 10/05/2018. Thus, the assessee has filed these two appeals against the impugned orders of the Id. CIT(A).

3. We have heard the Id. AR as well as the Id DR and considered the relevant material on record. As regards the ITA No. 497/Jodh/2017 arising against the order passed U/s 154 of the Act, we find that the assessee raised two issues in the petition filed U/s 154 of the Act regarding the acquisition of capital asset and depreciation. The Id. CIT(A) while deciding the appeal has held in para 4.2 as under:

“4.2 I have gone through the order, statement of facts, grounds of appeal and written submission carefully. This appeal has been filed against the

order dated 20.01.2017 passed u/s 154. In the application dated 12.01.2016 filed by the appellant before the AO, the appellant had requested for deleting the following disallowances made by the AO while making the assessment u/s 143(3) vide order dated 16.11.2016:

- “1. Disallowance of both claim of purchase of capital assets and depreciation.*
- 2. Disallowance of acquisition of capital assets.*
- 3. Disallowed depreciation on block of fixed assets.*
- 4. Depreciation of acquisition should be allowed.”*

The AO rejected the application of the appellant observing that *“the issues raised by the assessee do not come under the purview of the provisions of Section 154. Moreover the issue raised in the application u/s 154 are debatable. Further, there is no prima facie mistake apparent from the record which can be rectified”*. I fully agree with the observation of the AO that the issue raised by the appellant in the application filed u/s 154 are debatable in nature. Hence, beyond the purview of the Provisions of Section 154. Therefore, the rejection of application by the AO of the application filed u/s 154 by the appellant is held to be justified and in accordance with the provisions of law. Hence, all the grounds of appeal are dismissed. However, it is clarified that the dismissal of the appeal against the order dated 20.01.2017 passed u/s 154 will not affect the outcome of the appeal, if any, filed by the appellant against the original assessment order dated 16.11.2016.”

Thus, the appeal of the assessee was dismissed by the Id. CIT(A) on the ground that the issue raised by the assessee in the petition filed U/s 154 of the Act are beyond the scope of Section 154 as there is no prima facie mistake apparent from the record when the Assessing Officer has decided these issues and disallowed the claim of the assessee. Accordingly, we do not find any reason to interfere with the said order dated 06/9/2017 of

the Id. CIT(A) when the issues regarding disallowances of various claims are subject matter of the assessment passed U/s 143(3) of the Act and a separate appeal has been filed against the assessment order. Hence, the appeal filed by the assessee arising from the order passed U/s 154 of the Act is dismissed.

4. As regard the appeal in ITA No. 862/JP/2018, we find that the Id. CIT(A) has not decided the appeal of the assessee on merits but has dismissed the same by observing in para 3 and 4 as under:

“3.0 The appellant has filed an application dated 10.05.2018 for condonation of delay in filing the appeal stating as under:

*“Most respectfully, we submit as under:-*

- 1. That the appellant seeks condonation of delay in filing of appeal. The reason for the delay is that the appellant has filed rectification request under section 154 of the Income Tax Act, 1961 against the order passed under section 143(3) of the Act, therefore the delay is caused in filing of appeal.*
- 2. That your goodself is empowered u/s 249(3) of the Act to condone the delay in filing appeal.*

*It is, therefore, most respectfully prayed that the delay in filing the appeal may very kindly be condoned and appeal be kindly admitted.”*

4.0 It is seen from Form No. 35 that date of service of the order appealed : Against is 25.11.2016. The appeal has been filed on 27.09.2017. Thus, it is clear that the appeal has not been filed within the period specified u/s 249(2). As per Section 249(2), the appeal has to be presented within 30 days of date of service of notice of demand. The appellant has not filed

the appeal within the period specified u/s 249(2). There is an inordinate delay in filing the appeal. I have gone through the application filed by the appellant carefully. I am satisfied that the appellant did not have sufficient cause for not presenting the appeal within the period specified u/s 249(2). Therefore, the appeal is dismissed as not admitted.”

Thus, the Id. CIT(A) declined to condone the delay albeit the assessee has pointed out that the delay was due to the reason that the assessee in the mean time filed rectification petition U/s 154 of the Act and also filed an appeal against the order passed by the Assessing Officer U/s 154 of the Act. We further note that after the appeal of the assessee against the order passed by the Assessing Officer U/s 154 of the Act was dismissed by the Id. CIT(A) vide order dated 06/9/2017 the assessee filed an appeal against the assessment U/s 143(3) of the Act on 27/09/2017 and thereafter there was no unreasonable delay in filing the appeal after the dismissal of the first appeal filed by the assessee. Though, there was a delay in filing the appeal before the Id. CIT(A), however, when the assessee has explained cause of delay being the time consumed in the proceedings U/s 154 of the Act and thereafter the appeal filed before the Id. CIT(A), which was finally dismissed vide order dated 06/09/2017 then in our considered opinion, the assessee had made out a good case of explaining the delay in filing the appeal. When the assessee has raised the same issue in the appeal filed against the order U/s 154 of the Act,

which was dismissed by the Id. CIT(A) on technical reason that the issue raised by the assessee in the petition U/s 154 were beyond the scope of the provisions of Section 154 then the appeal filed by the assessee against the order passed U/s 143(3) of the Act ought to have been decided on merits as all the facts were already on record and in the knowledge of the Id. CIT(A). We find that the reasons for delay in filing the appeal are manifest from the record of the Id. CIT(A) itself as the assessee has spent this time in pursuing the alternative remedy U/s 154 of the Act, which was denied by the Id. CIT(A). Therefore, in the facts and circumstances of the case, the appeal of the assessee filed before the Id. CIT(A) ought to have been decided on merits instead of dismissing the appeal on technical ground of delay when the assessee has explained the reasonable cause of delay. Hence, we satisfy with the cause of delay explained by the assessee being the time consumed in the proceedings U/s 154 of the Act. Accordingly, we condone the delay in filing the appeal before the Id. CIT(A). Since the Id. CIT(A) has not adjudicated the grounds raised by the assessee on merits, therefore, we set aside the matter to the record of the Id. CIT(A) for adjudication of the appeal of the assessee on merits needless to say that the assessee be given an opportunity of hearing before passing fresh order.

5. In the result, appeal ITA No. 497/Jodh/2017 is dismissed and appeal ITA No. 862/JP/2018 is allowed for statistical purposes only.

Order pronounced in the open court on 25/09/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 25<sup>th</sup> September, 2018

\*Ranjan

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

1. अपीलार्थी / The Appellant- Ramarpan Education Society, Bhilwara.
2. प्रत्यर्थी / The Respondent- The ITO(E), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 497/JU/2017 & 862/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar