

आयकर अपीलीय 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. 315/JP/2017
निर्धारण वर्ष/Assessment Years : 2007-08

Smt. Manju Rajawat 107, Dwarkapuri Ramnagariya, Jagatpura, Jaipur.	बनाम Vs.	The ITO, Ward-6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGAPR 7117 F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rohan Sogani (C.A.)
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: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 30.03.2016 for the Assessment Year 2007-08 wherein the assessee has taken the following grounds of appeal:

"1. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. AO in reopening the assessment U/s 147 of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and

against the facts of the case, Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.

2. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. AO in making assessment u/s 144 of Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.

3. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. AO by adding to the extent of Rs. 4,00,000/- out of total addition of Rs. 14,80,000/- as unexplained expenditure U/s 69 of the Income Tax Act, 1961. The action of the CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 4,00,000/-"

2. Firstly, it is noted that there is a delay in filing the appeal by the assessee. In this regard, the assessee has filed an application supported by an affidavit stating that she was not fully aware of legal procedure under the Income Tax Act and was dependent on her Chartered Accountant for the necessary support with regard to the proceedings under the Income Tax Act. It was submitted that the said Chartered Accountant was not regularly appearing before the Income Tax authorities and as a result, in the matter for the year under consideration and also for the subsequent year, the case was decided ex-parte and no compliance was made by the CA who was entrusted with such responsibility. It was further submitted that the assessee was not aware of order passed by the Id. CIT(A) for the impugned assessment year, however, the same came to her notice when she was

approached by the Department for receiving the order of the subsequent year and for the purpose of levy of penalty U/s 271(1)(c) of the Act. It was further submitted that she has since changed her CA and appointed an Advocate to take care of her tax matters. It was accordingly submitted that Income tax being a complex subject and lack of its knowledge constitutes a reasonable cause for the delay in filing the appeal and delay so occurred in filing the appeal may be condoned. In support, reliance was placed on the decision of Hon'ble Madras High Court in case of M/s Hosanna Ministries vs. ITO(E) in ITA No. T.C.A. No. 3 of 2017 dated 07.03.2017 and the decision of the Hon'ble Supreme Court in case of Collector, Land Acquisition vs. Mst. Katiji 167 ITR 471.

3. The Id. DR is heard who has objected to the application filed by the assessee for seeking condonation of delay. It was submitted that no reasonable cause has been submitted by the assessee for the delay in filing the appeal and accordingly, condonation of application should not be accepted.

4. We have heard the rival contentions and perused the material available on record. We find that the assessee had engaged a chartered accountant and due to laxity on part of the chartered accountant as so claimed, the assessment order was passed *ex-parte* qua the assessee. Further, during the appellate proceedings, it is noted that shri Ashok Kumar Kanodia CA has appeared before the Id CIT(A) and has filed written submissions and the matter was also discussed with him. Therefore, the plea of the assessee can be accepted to the extent of assessment proceedings and not before the Id CIT(A) as she was duly

represented before the Id CIT(A) through her Chartered Accountant. Further, the assessee has contended that she became aware of the order of the Id CIT(A) only when the department decided to proceed against her in terms of penalty proceedings. That is, she was not aware of the order of the Id CIT(A) till then. It is observed that the address for communication as given in Form 35 and the assessee's address are the same which is 107, Dwarkapuri Ramnagariya, Jagatpura. It is therefore not the case of the assessee that the same is not her address or she has shifted to another residence. Further, if we look at the affidavit, the contention so taken is not supported by the affidavit. In her affidavit, she has admitted that the order of the Id CIT(A) was served on her on 30.03.2016. Therefore, non-receipt of the order of the Id CIT(A) is not in dispute and thus, the same cannot be a ground for condonation of delay which was filed with a delay of 334 days. The other reason stated in her affidavit that due to lack of knowledge of tax laws, it has resulted in delay in filing the appeal again cannot be accepted. Firstly, ignorance of tax laws cannot be accepted as an excuse for non-filing of an appeal. Secondly, by assessee's own admission, she has changed her chartered accountant and has sought the services of an advocate to help her with the tax matters. Therefore, when she is assisted by an advocate, again taking a plea of ignorance of tax laws cannot be accepted. Besides the aforesaid contentions, there is nothing further explanation which has been submitted in support of demonstrating reasonable cause on part of the assessee to explain the inordinate delay of 334 days of filing the subject appeal from date of receipt of the order of the Id CIT(A).

5. Here, we refer to the decision of the Hon'ble Supreme Court in the case of Vedabai alias Vaijayanatabai Baburao Patil vs Shantaram Baburao Patil & Ors (2002) 253 ITR 798 where it was held that while exercising discretion, distinction should be made between a case where the delay is inordinate and a case where the delay is of a few days, which may deserve a liberal approach. The exercise of discretion, their Lordships observed, would depend on the facts of each case and no hard or fast rule can be laid down in this regard. In the said case, the application for condonation of delay in filing the appeal was 7 days. In the case of Ganga Sahai Ram Swarup vs ITAT (2004) 271 ITR 512 (All), the delay was of 12 days in filing the appeal and it was held therein that a liberal view ought to be taken, as there was a delay of only a very short period. Even in the decision on the issue of condonation in case of Collector, Land Acquisition vs MST Katiji 1987 AIR 1353, 1987 SCR (2) 387 where the Hon'ble Supreme Court laid down that Courts should take a liberal and practical approach in exercising its discretionary powers of condonation of delay, the delay was of 4 days only.

6. The assessee in her averments has not made out any case that there was a reasonable cause which being beyond the control of the assessee, prevented her from filing the appeal in time before the Tribunal. The delay cannot be condoned merely because the assessee's case calls for sympathy or merely out of benevolence. For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence on her part. Sufficient cause as contemplated in the limitation provisions must be a cause which is beyond the control of the

assessee. In the factual matrix of the present case, in our view, it is clearly established that the delay was due to the negligence and inaction on the part of the assessee, which could have been avoided by the assessee if she had exercised due care and attention. Therefore in our opinion, in the factual matrix of this case, there exists no sufficient and reasonable cause for the inordinate delay of 334 days in filing the subject appeal. In coming to this finding, we draw support from the decisions of the Hon'ble Supreme Court in the case of MST Katiji (supra), Vedabai alias Vijayanatabai Baburao Patil (supra), and of the Hon'ble Allahabad High Court in the case of Ganga Sahai Ram Swaroop (supra). The decision in case of M/s Hosanna Ministries cited by the assessee has been duly considered and we find that the factual matrix different therein and it was a case where the assessee sought the advice of a professional and on whose advice the assessee came to know that the order of rejection made by the Id CIT under section 12AA was appellable. In the present case, the assessee was duly supported by a chartered accountant during the appellate proceedings before the Id CIT(A) and then by an advocate before us and she was fully aware of the filing requirements of the present appeal. In this view of the matter, we are of the view that, in the case in hand, the cause of substantial justice would not be served by condoning the inordinate delay of 334 days in filing the appeal for which no cogent reasons have been given. We accordingly reject the petition for condonation of delay. Consequently, the assessee appeal is not admitted for adjudication on merits and is dismissed in limine.

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

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/09/2018.

***Santosh**

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

1. अपीलार्थी / The Appellant- Smt. Manju Rajawat, 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. 315/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar