

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'A' 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. 1132/JP/2018
निर्धारण वर्ष/Assessment Year :2010-11

Raghuveer Singh Khangarot S/o Shri Phool Singh Khangarot, 129, Jatan Ki Dhani, Sanjharia, Tehsil Sanganer, Jaipur	बनाम Vs.	DCIT, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AVZPK0320M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri K. L. Moolchandani (Adv.)
राजस्व की ओर से / Revenue by : Smt Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 06/03/2019
उदघोषणा की तारीख / Date of Pronouncement: 25/03/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 09.08.2018 for AY 2010-11 wherein the assessee has raised the following grounds of appeal.

"On the facts and in the circumstances of the case the learned CIT(A) has factually and legally erred in dismissing the appeal at 'admission stage' without appreciating the facts and circumstances of the case in right perspective which caused delay in filing the appeal. Thus dismissing the appeal in this manner is contrary to the principles of 'equity' and 'natural justice' and the same deserve to be quashed summarily.

2.1 On the facts and in the circumstances of the case the learned CIT(A) has factually and legally erred in dismissing the appeal at

admission stage without addressing the issue of an addition of Rs. 39,59,443/- made by the Id. AO on account of the credit entries appearing in his Bank account and without appreciating the fact that these deposits were made out of the sale proceeds of the agricultural land as explained in the preceding year duly accepted by the Revenue and also ignoring the 'Peak Theory' of the Bank Deposits. Thus the appeal order so passed is not a well-reasoned and logical order and the same deserves to be quashed.

3. On the facts and in the circumstances of the case, Id. CIT(A) has erred in upholding the order of the Id. AO while dismissing the appeal in summary manner. Thus the addition of Rs. 39,59,443/- made by the Id. AO has been confirmed, which is factually and legally incorrect and the same deserves to be deleted."

2. Briefly stated, the facts of the case are that the assessment in this case was completed u/s 144 vide order dated 21.03.2013 wherein the Assessing Officer brought to tax an amount of Rs. 39,59,443/- as unexplained deposits in the bank account of the assessee. On appeal, the Id. CIT(A) observed that assessee filed manual appeal which is delayed by 1165 days and reason/explanation given by the assessee for delay in filing the appeal is not beyond the control of the assessee. Therefore, it was held that the assessee did not file appeal intentionally in time without considering the provisions of law. Hence, he rejected the condonation petition filed by the assessee and the appeal was dismissed at admission stage itself. Aggrieved with the said order, the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the appellant is an illiterate person with a village background having no knowledge about the

Income Tax matters etc. In the financial year 2007-08 i.e. on 10.7.2007, he had sold a piece of his agricultural land measuring 7.02 Hectare for Rs.11.50 crores. Except agricultural holdings and income therefrom, the appellant had no other source of income. Due to his ignorance about the Income Tax matters, he did nothing except depositing the sale proceeds in the Bank A/c opened for this purpose only. On getting information about such bank deposits, the case of the appellant was opened by the Income Tax Department and Income tax proceedings were initiated u/s 148 of the Act for the A.Y. 2008-09. As the appellant was totally ignorant about such taxation obligations, so on the advice of his friends and well-wishers, he had handed over such notice to a Chartered Accountant stationed at Jaipur and felt 'end' of the matter. **Because of his casual approach in the matter, the Authorized Representatives had also become careless and did not attend the proceedings properly and regularly, resulting in *ex-parte* order u/s 144 of the Act.** Due to lack of representation in the case, the penalty u/s 271(1)(c) was also imposed. In the appeal proceedings before the Id. CIT (A) and Hon'ble ITAT also, the case could not be taken up in right earnest, resulting in *ex-parte* orders passed by the Appellate Authorities to confirm the addition made on account of such sale proceeds of the 'agricultural land' without going into the merits of the case. Due to lack of representation, the ITAT, Jaipur Bench was also pleased to dismiss the appeal of the appellant in limine without going into the merits of the facts. The appellant had been ignorant throughout these proceedings and the fate of appeal orders etc. As a result of such *ex-parte* appeal order passed by the ITAT, Jaipur Bench, Jaipur, coercive measures of recovery were initiated and the agricultural holdings of the appellant were attached to recover such disputed demand. At this stage only, the appellant had come to know the gravity of the Income tax matters and 'lack of representation' by his ARs before the Appellate Authorities including before the ITAT, Jaipur Bench, Jaipur. In the circumstances, a misc. application was filed before the Bench with a request to

recall their ex-parte order. Having considered the bonafide ignorance of the appellant and the facts and circumstances which prevented the appellant from making proper representation before them, the ITAT, Jaipur Bench, Jaipur was pleased to recall the ex-parte order passed by them and directed the Lower Authorities to decide the matter afresh on the basis of documentary details and documents which could not be considered due to communication gap between the appellant and his ARs. Thereafter, the appellant had become very careful and meticulous in getting the set-aside and other pending proceedings completed religiously. In the 'set-aside' proceedings of the Asstt. Yr. 2008-09, the claim of the appellant was accepted. Like-wise, the assessment proceedings for the Asstt. Year. 2009-10 were also got completed by furnishing all the required details and documents. Copy of these assessment orders are placed in the PB at pages No. 6 to 10. From these assessment/appeal orders, it is seen that now the appellant had become very careful in discharging his legal, taxation and other statutory obligations.

4. It was further submitted by the Id AR that at this stage, the appellant had come to know the fate of the assessment proceedings for the impugned assessment year, i.e, A.Yr. 2010-11 also, which were completed ex-parte u/s 144 of the Act due to non-representation by his AR and also non-filing of appeal against the said ex-parte order. The facts and circumstances of this assessment year were identical. The case for this year was taken up for scrutiny on the basis of information regarding cash deposits in his Bank A/c. In absence of proper representation by the ARs., the assessment was completed ex-parte u/s 144 of the Act on 21.3.2013 at Rs. 39,59,443/- (treating all the credit entries as un-explained) against which no appeal was filed by them. The appellant was totally ignorant about the ex-parte order so passed and non-filing of the appeal by his ARs. till the set-aside proceedings in the assessment year of 2008-09 were taken up for re-assessment. An affidavit to this effect is

submitted herewith for your kind perusal and record at page No. 11 & 12. Thus the appellant was prevented by bona-fide and honest reasons from non-filing the appeal in time as stated above. Accordingly, the appellant had immediately changed his ARs and had authorized the AR to take appropriate remedial actions for filing appeal etc.

5. While explaining the above facts and circumstances, the present AR had filed the appeal before the Id. CIT(A) along with a condonation request letter dated 27.06.2016 as per copy of the request letter and the written submissions made before the Id. CIT(A). In the appeal, the Id. CIT (A) did not appreciate the above facts and circumstances and had turned down the same 'summarily' without going into the merits of the case. It was submitted that from reading of the observations of the Id. CIT (A), it is noted that he had dismissed the appeal at 'admission' stage on the plea that the appellant had not filed the appeal in time 'intentionally'. Obviously, such findings are not factually and legally maintainable for the following reasons:

(i) The Id. CIT (A) had failed to appreciate the facts and circumstances as explained in the Asstt. Yr. 2008-09. Here it would be pertinent to note that on the basis of the same facts and circumstances, the ITAT, Jaipur Bench was pleased to recall their appeal order in the interest of equity and natural justice. The facts and circumstances continued to be same in this year also. The Id. CIT(A) has however, ignored the past facts and circumstances of the case and has rejected the condonation application summarily, ignoring the Rule of Consistency.

(ii) The Id. CIT (A) has alleged that the appellant had not filed the appeal in time 'intentionally'. While making such observations, the Id. CIT (A) has failed to spell out the 'purpose' and 'motives' to file the appeal late. Obviously, filing

of appeal late would not serve any purpose of the appellant. Thus such findings appear to be 'illogical' and un-reasonable'. Obviously, there appears no reason for the appellant not to file the appeal in time. Thus such findings are not maintainable and deserve to be set- aside.

6. On merits, the Id AR submitted that the addition made by the Id AO is not maintainable factually and legally. On going through the assessment order, it can be noted that the addition had been made by him on the basis of his personal 'whims' only. As mentioned in the body of the assessment order itself, the addition has been made in respect of the entire credit entries of Rs.39,59,443/- appearing in the Bank A/c, treating the entire deposits as 'un-explained', without examining the nature of such entries and the rotation of the funds withdrawn from the same bank account itself. In the assessment proceedings, it was informed by the A.R. that the cash deposits were made out of the sale proceeds of the agricultural land sold in the A.Yr. 2008-09 as per 'Cash Flow Statement' plus the funds rotated out of the bank withdrawals as evident from the Bank Statement. The Id. AO had however rejected such explanation on the plea that the appellant had been non-co-operative throughout the assessment proceedings, and the reply was filed at the 'fag end of the year' to cover up the source of the cash deposits superficially, no Power of Authority was filed by the AR, so the reply furnished by 'him' was not considered, the demand for the Asstt. Yr. 2008-09 had not been paid so far, this fact shows non-co-operative attitude of the appellant and during this year also, the appellant had been trying to 'some-how' cover up his 'mischief'. It was submitted by the Id AR that the above observations of the Id. AO are irrelevant, immaterial and devoid of merits; based on his personal whims. In the process, the Id. AO had failed to spell out as to how the explanation filed by the AR was superfluous. Thus these findings are not maintainable. On the face of the 'Cash Flow Statement' and 'Bank Statement' being the documentary evidences, the

contentions of the appellant could not be negated summarily; particularly when these contentions of the appellant were accepted by Department in the Asstt. Yr. 2008-09 and 2009-10 (Copy of Cash Flow Statement and Bank Statement are placed on record). In the process, the Id. AO had failed to spell out as to how the explanation filed by the AR was superfluous. Accordingly, the addition so made is factually and legally incorrect and the same deserves to be deleted.

7. The Id DR is heard who has opposed the contentions so advanced by the Id AR. The Id DR submitted that the appeal has been filed with a considerable delay of 1165 days and the assessee has failed to explain the cause of such delay and how the same was beyond his control. It was accordingly submitted that the Id CIT(A) has rightly rejected the appeal at the admission stage itself and the said order of the Id CIT(A) may kindly be confirmed.

8. We have heard the rival contentions and perused the material available on record. The Id AR has explained the cause of delay in filing the appeal on ignorance of the assessee about the taxation matters and blind reliance on the authorized representative who has been authorized to take care of his tax matters. It has been stated by the Id AR that only when the Income tax Department attached the assessee's agricultural land holdings, he came to know about the negligence on part of his authorized representative and has thereafter taken corrective steps in terms of regularizing his tax and related appeal matters and has since changed his authorized representative and in support of the said contentions, an affidavit has been filed which is placed on record. We find that right from AY 2008-09 onwards, there has been consistence non-compliance on part of the assessee and/or his authorized representatives as the assessment orders have been passed u/s 144 and there are delays in filing the appeals and the appeals are dismissed in limine including for the impugned assessment year. For AY 2008-09, there was non-

appearance before the Coordinate Bench as well and the matter was dismissed in limine. Subsequently, the matter was recalled by the Coordinate Bench and set-aside to the file of the AO. In the present case, the assessee has appointed his authorized representative to look after his taxation matters and from the perusal of the assessment order, we find that two persons appeared on behalf of the assessee before the Assessing officer. The one person was not carrying a valid authorization and by the time the second person was appointed, it was towards the fag end of the assessment proceedings. We therefore find that the assessee has been casual in his approach towards handling his taxation matters atleast at the assessment stage. Ignorance of law cannot be an excuse for non-compliance. Once the notice has been issued by the Department, it is incumbent on part of the assessee to respond either by himself or appoint an authorized representative in a timely manner. Further, once an authorized representative is appointed, he is guided by the terms of his appointment and the professional ethics in terms of timely attending to the proceedings and advising the client from time to time. Similarly, once the assessment order has been issued by the Assessing officer assessing certain income in hands of the assessee and the assessee is aggrieved with such order, the law has given an opportunity whereby the assessee can file an appeal before the Id CIT(A) and make the necessary representation. In the present case, we find that once the assessment order was received by the assessee, there has been considerable delay in filing the appeal before the Id CIT(A). The assessee has attributed the delay on his authorized representative stating that as in the past years, the assessee has handed over the assessment order to his authorized representative and has authorized the latter to take the next steps including filing the appeal on behalf of the assessee, however, the latter has failed in discharging his professional duties towards him as reflected from delay in filing the appeal. To our mind, these are serious allegations and we are not an authority to comment on this. All we can say is that once a professional is

appointed to handle a client's matter and for any reason, the professional is not in a position to handle the client's matter, he should reach out to the client and inform the latter. This will help the client in taking corrective steps in regard to his matters. However, when the client is kept in dark and not even informed about the non-filing of appeal or attending to the appeal proceedings, it is professionally not correct on part of the authorized representative. In the instant case, we therefore find that though the authorized representative has been appointed by the assessee to help him in attending to his tax matters, however, there has been delay in filing the present appeal. It is a settled legal proposition that an assessee should not be penalized for delay and laches on part of the authorized representative. Further, where substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Here, useful reference can be drawn to the decision of the Hon'ble Supreme Court in case of Collector Land Acquisition Anantnag & Anothers vs MST. Katji & Ors. 1987 AIR 1353 where the Hon'ble Supreme Court was pleased to held as under:

"The legislature has conferred the power to condone delay by enacting [Section 51](#) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of 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--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a

private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

9. In light of above discussions, we hereby condone the delay in filing the appeal before the Id CIT(A) and the matter is set-aside to the file of the Id CIT(A) to decide the same on merits.

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

Pronounced in the Open Court on 25/03/2019.

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:- 25/03/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Raghuveer Singh Khangarot, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-07, 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. 1132/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

