

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' 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. 1056/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

Shri Ravi Prakash Agarwal Jaipur	बनाम Vs.	ACIT, Circle-01, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATPA4935F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. R. Sharma (CA) &
Sh. Rajnikant Bhatra (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 26/06/2020
उदघोषणा की तारीख / Date of Pronouncement: 29/06/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-04, Jaipur dated 28.03.2019.

2. At the outset, it is noted with the present appeal is filed with the delay of 88 days. The assessee has moved an application for condonation of delay in filing the appeal. In its application, the assessee has submitted as under:-

"1. The appellant was earlier residing at his native place churu. But in the year he shifted alongwith his family to Delhi and he is presently residing in Delhi at E-4/20, Near Post Office, Rohini Sector 7, North West, Delhi Copy of legal documentary evidence i.e. Aadhar card in support of his residential address in Delhi is enclosed herewith.

2. The appellate order dated 28.03.2019 was dispatched by post on 28.03.2019 at his old native place residential address, Churu. Where no

family member or other responsible person is residing. The order was served on some unauthorized person and he dropped the sealed envelope in the closed house of the appellant.

3. The appellant visited his native place Churu on 20th July, 2019 and on that date he came to know about the appellate order. It is presumed that the postal authority took a time of about 4 days after its dispatch by the I.T. department on 28.03.2019 and accordingly the date of service of the order works out to 01.04.2019. Based on the said date of service the due date for filing the appeal was 30th May, 2019. Thus there is a delay of 88 days in filing the appeal.

4. The appellant humbly pray that the above said delay of 88 days in filing the appeal is not a conscious and/or deliberate one and the appellant was prevented by sufficient cause in filing the same within the statutory time limit provided in the I.T. Act, 1961.

5. An affidavit of the appellant in support of the above submitted facts is enclosed herewith."

3. Per contra, the Id. DR has objected in condoning the delay in filing the appeal. It was submitted that the order has been dispatched by the office of Id CIT(A) at the given address by the assessee and where there is change of address, it is incumbent on part of the assessee to inform the department about the same and in absence of the same, the assessee cannot plead delay in receipt of the order passed by the Id CIT(A).

4. Heard both the parties and perused the records. There is no dispute that the order passed by the Id CIT(A) has been received by the assessee. The plea of the assessee is that due to change of address, there is delay in receipt of the said order and consequent delay in filing the present appeal. Hence, considering the contents of the affidavit which is placed on record, the delay in filing the present appeal is condoned and the appeal is admitted for adjudication.

5. Briefly stated, the facts of the case are that the assessment in this case was completed and order passed u/s 143(3) read with 147 dated 18.03.2016. During the course of assessment proceedings, the AO observed that the assessee has claimed speculative loss of Rs. 46,73,054/- which cannot be adjusted or set off against business income. Hence, loss claimed by the assessee was disallowed. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A).

6. The Id. CIT(A) observed that assessee has filed manual appeal on 24.10.2016 and there was delay in filing the e-appeal by 14 months and given that the assessee has not been able to establish his bonafide for late filing of appeal by 14 months, the appeal of the assessee was dismissed ab-initio. Against the said findings, the assessee is in appeal before us.

7. During the course of hearing, our reference was drawn to the proceedings before the Id. CIT(A) and it was submitted by the Id AR that the matter was initially heard before Id. CIT(A)-III, Jaipur wherein the matter was partially heard and thereafter, during the course of hearing on 21.03.2018, the assessee was asked to e-file the appeal which was subsequently e-filed on 14.04.2018. It was further submitted that the assessee had duly filed the appeal within one month of the Hon'ble Rajasthan High Court decision wherein the Hon'ble Rajasthan High Court was pleased to dispose off the assessee's writ stating that since alternative remedy is available to the assessee, the assessee shall file appeal before the Id CIT(A) within one month of date of the order. It was accordingly submitted that the appeal has been duly filed manually on 24.10.2016 in compliance to the order of the Hon'ble Rajasthan High Court and thereafter, filed electronically on 14.04.2018 and the assessee has thus complied with the directions of the Id. CIT (A)-III, Jaipur as well. It was further submitted that delay in filing of appeal electronically at that point of time is due to technical error in the system and is only a procedural default and the same may be condoned and in the interest of justice, the assessee

may be provided an opportunity to represent his case on merits and the matter may be restored to the file of Id. CIT(A) to examine the same on merits.

8. Per contra, the Id. DR again drawn our reference to the findings of the Id. CIT(A) and submitted that the case of the assessee that e-filing of the appeal could not happen due to technical error in the system cannot be accepted as there is a time gap of 14 months between manual filing of appeal on 24.10.2016 and e-filing on 14.04.2018 given that technical error, even if accepted, cannot continue for such a long period. It was further submitted that the contention of the assessee that no defect memo was issued cannot be accepted as the CBDT has widely notified procedure of e-filing of appeal on or after 01.03.2016 and such notification was widely published and circulated and there was thus, no need to issue a separate defect notice in individual cases. It was accordingly submitted that there is no infirmity in the order of Id. CIT(A) and the same should be confirmed.

9. We have heard the rival submissions and perused the material available on record. It is not in dispute that the assessee has filed the appeal within a period of one month as per the order of the Hon'ble Rajasthan High Court disposing off the assessee's writ. Thus, the appeal of the assessee is in compliance with the order of the Hon'ble Rajasthan High Court and even the Id CIT(A) has returned a similar finding and the same is not being disputed before us.

10. Now, coming to e-filing of the appeal by the assessee. In this regard, we find that the jurisdiction over the assessee's matter was initially with the Id CIT(A)-III, Jaipur and thereafter, vide notification no. 4 dated 25.09.2018 issued by the Pr. CCIT, Rajasthan, the jurisdiction was transferred to Id CIT(A)-IV who has passed the impugned order. Further, it is noted that the matter was partially heard from time to time by the Id CIT(A)-III, Jaipur before being transferred and during the course of hearing scheduled on 21.03.2018 before

the Id CIT(A)-III, the assessee was instructed to e-file the appeal. Therefore, we find that the assessee's appeal though in compliance with the order of the Hon'ble Rajasthan High Court, the Id CIT(A)-III had noticed the defect in assessee's appeal due to lack of e-filing in compliance with CBDT's instructions. The assessee has thereafter removed the defect and filed the e-appeal on 14.04.2018. Given that the assessee has e-filed the appeal within a reasonable period of less than one month of being instructed by the Id CIT(A) and not a period of 14 months as contended by the Id DR, the delay so happened, being a technical breach, is hereby condoned and the matter is restored to the file of the Id CIT(A)-IV to examine the same on merits after providing reasonable opportunity to the assessee. The above directions would also be in consonance with the order of the Hon'ble Rajasthan High Court where the assessee has been instructed to avail the appellate remedy before the Id CIT(A). The assessee is also instructed to communicate his new address to the Id CIT(A) and attend to the proceedings before the Id CIT(A) as so instructed by the latter.

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

Order pronounced in the open Court on 29/06/2020.

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:- 29/06/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Ravi Prakash Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, Jhunjhunu
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. 1056/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar