

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ ITA No. 326/JP/2019
निर्धारण वर्ष / Assessment Year :2011-12

Shri Umesh Singh, Dholi Mandi, C/o- Rohit Auto Garage, Renwal Road, Chomu, Jaipur-303702.	बनाम Vs.	I.T.O., Ward- 7(3), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AMEPS 3364 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/09/2020
उदघोषणा की तारीख / Date of Pronouncement : 17/09/2020

आदेश / ORDER

PER: N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jodhpur dated 16/10/2018 for the A.Y. 2011-12. The assessee has raised following grounds of appeal:

- "1. In the facts and circumstances of the case, the Id. CIT(A) has erred in sustained the disallowance @ 7.5% for Rs. 5,95,808/- against total addition of Rs. 11,91,616/- made by the Id. AO out of expenses claimed in P&L A/c of New Tech Engineering and Fabricators.*
- 2. In the facts and circumstances of the case, the Id. CIT(A) has erred in sustained the disallowance @ 7.5% for Rs. 1,00,081 against total addition of Rs. 2,00,162/- made by the Id A.O out of expenses claimed in P&L A/c of New Tech Earth Movers.*
- 3. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. The Registry of the office has informed that the appeal is time barred by 66 days. The assessee has moved an application for condonation of delay stating therein as under:

“The appellant assessee is an individual. The appellate order passed by the Learned CIT(A) on 16.10.2018 was served at the residence of the appellant on 05.11.2018. The order was misplaced by the appellant and he forgot to filing of appeal against the appellate order. When recovery proceedings were taken up by the department then the assessee came to know about decision of appeal and thereafter he started to search the appeal order. After the hard efforts the assessee has found the order on 05.03.2019 thereafter he has contacted to the counsel. In these circumstances there is delay of 66 days in filing of appeal. Therefore you are requested to condone the delay in filing of appeal before the Hon'ble ITAT. Copy of affidavit of the assessee is enclosed herewith.

It is settled position of law that where the delay was bonafide and there is sufficient cause for delay in filing appeal the delay must be condone by the appellate authority. Under the similar facts and circumstances the Hon'ble ITAT Delhi 'E' Bench has held in the case of Oracle India Pvt Ltd vs. Deputy Commissioner of Income Tax (2008) 13 DTR 371 that "condonation of delay —reasonable cause — delay of 1297 days in filing appeal being on account of lapse on the part of consultant and not being malafide, there was valid reason warranting condonation of delay and admission of appeal.

It is the prayer of the assessee as well as of the counsel that the Hon'ble Bench may kindly condone the delay if any and admit the appeal."

In support of the above contention, an affidavit has also been filed, which reads as under:

"I Shri Umesh Singh S/o Shri Laxman Singh, C/o Rohit Auto Garage, Dholi Mandi, Renwal Road, Chomu, Dist. Jaipur do hereby solemnly affirm and declare on oath as under-

- 1. That the assessment order passed by the Learned CIT(A) on 16.10.2018 and was received by me on 05.11.2018.*
- 2. That the order was misplaced and I forgot to filing of appeal against the assessment order.*
- 3. That when the recovery proceedings were taken up by the A.O. then I searched for order and appeal was filed on 11.03.2019.*
- 4. That the appeal could not filed the appeal in time.*
- 3. That there is delay of 66 days in filing of appeal and request for condonation of delay in filing of appeal.*

Deponent

Whatever has been undertaken and declared above is true and correct to the best of my personal knowledge and belief.

Deponent

Undertaken on this 16th day of May 2019 at Jaipur.

4. During the course of hearing, the Id. Counsel for the assessee has reiterated the contents of the aforesaid application and the affidavit. He requested to condone the delay.

5. In her rival submissions, the Id Sr.DR has opposed the condonation of delay.

6. After considering the submissions of both the parties, it appears that the assessee could not file the appeal in time since the order from the department was not received in time. The assessee misplaced the order and appeal could not be filed in time so there was a delay of 66 days. In our opinion, the delay was not malafide and there is sufficient cause of delay in filing the appeal as narrated by the assessee in the affidavit and application for condonation of delay. We, therefore, condone the delay and the appeal is admitted.

7. From the grounds raised by the assessee, it is gathered that only grievance of the assessee relates to sustenance of addition of Rs. 6,95,889/- (Rs. 5,95,808 + Rs. 1,00,081) out of various expenses on estimate basis. Facts of the case in brief are that the assessee filed return of income on 21/02/2012 declaring total income of Rs. 7,00,330/-. Later on, case was selected for scrutiny. During the course of assessment proceedings, the A.O. noticed that the assessee had incurred expenses of Rs 79,44,105/- under the various heads i.e. salary & labour charges, repair and maintenance expenses, consumable expenses, site expenses, tour and travelling expenses, diesel and petrol expenses etc. in the firm M/s New Tech Engineers and Fabricators. The A.O. made ad hoc disallowance of

15% of the expenses i.e. Rs. 11,91,616/- by observing that the assessee has not furnished full details with supportive vouchers and evidences. Similarly, expenses of Rs. 13,34,410/- were incurred in another proprietorship firm M/s New Tech Earth Movers, the A.O. disallowed 15% of the said expenses and disallowance of Rs. 2,00,162/- was made. In this manner, total disallowance of Rs. 13,91,778/- (Rs. 11,91,616 + Rs. 2,00,162) was made.

8. Being aggrieved by the order of the A.O., the assessee carried the matter to the Id. CIT(A), who sustained the disallowance @ 7.5% instead of 15% of the expenses made by the A.O.. Now the assessee is in appeal.

9. The Id. Counsel for the assessee has submitted that the books of assessee were maintained in regular course of business which were duly audited and that no specific defect has been pointed out by the A.O. in the books of account. It was further stated that all the expenses were incurred for the business purposes, therefore, the A.O. as well as the Id. CIT(A) were not justified in making/sustaining the ad hoc addition.

10. In her rival submissions, the Id. Sr.DR has strongly supported the orders of the authorities below and reiterated the observations made in their respective orders. She further submitted that the assessee has not produced the vouchers in respect of expenses incurred, therefore, there

was no alternative except to make the disallowances. She accordingly, supported the impugned order passed by the Id. CIT(A).

11. We have considered the rival submissions of both the parties and perused the material available on record. In the present case, it is noticed that the A.O. made disallowance on estimate basis and no specific defect in the books of account has been pointed out. It is also not the case of the A.O. that the expenses were not incurred for the business purposes. The Id. CIT(A) also sustained the disallowance on estimate basis. At the same time, in such type of cases, a personal use out of vehicles and telephones etc. by the proprietor and his family members cannot be ruled out. We, therefore, keeping in view the peculiar facts of the present case, are of the view that the disallowance made by the A.O. and sustained by the Id. CIT(A) is on higher side. Therefore, to meet the ends of justice and to cover the leakage of revenue, if any, we sustain the addition of Rs. 50,000/-.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 17th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur
दिनांक / Dated:- 17/09/2020

Sd/-
(एन.के.सैनी)
(N.K. SAINI)
उपाध्यक्ष / Vice President

***Ranjan**

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

1. अपीलार्थी / The Appellant- Shri Umesh Singh, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward- 7(3), Jaipur.
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. 326/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar