

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "SMC", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 368/JP/2019
निर्धारण वर्ष / Assessment Year :2014-15

Shri Manish Dhankar, RDM Hospital, Pilani Road, Chirawa, Jhunjhunu.	बनाम Vs.	ITO, Ward-2 Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AIJPD 4701 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Vishal Gupta (CA)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (ACIT)

सुनवाई की तारीख / Date of Hearing : 23/11/2020
उदघोषणा की तारीख / Date of Pronouncement : 07/12/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-IV, Jaipur dated 29/01/2019 for the A.Y. 2014-15, wherein the assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case, the Id. CIT(A) has grossly erred in law and facts by confirming the addition made by Ld. A.O. of Rs. 3618070.00 on account of difference between face value and DLC value ignoring the actual facts and evidences of the case.*
- 2. On the facts and circumstances of the case, the Id. CIT(A) has erred in law and facts by confirming the additions made by the Id. AO applying the provisions of Section 56(2)(vii)(b)(ii) and ignoring the fact that the assessee has purchased the same as stock in trade and not as capital asset.*

3. *On the facts and circumstances of the case, the Appellate Authority erred in law and facts in dismissing the appeal of the assessee on account of delay filing ignoring the fact that the paper appeal was filed well within the time limit and also the e-appeal was filed immediately on receipt of intimation by the office of Id. CIT(A). The fact that the system of e-filing of appeal was news and thus in initial phases, ignorance of relevant change is reasonable cause especially when substantial compliance have been made by means of manual filing of appeal. Thus, the action of Id. Appellate Authority was unjust and against principles of natural justice.*
4. *The appellant hereby craves leave to add, alter, amend or substitute one or more grounds of appeal 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. Brief facts of the case are that the assessee is a doctor by profession. Return of income declaring total income of Rs. 7,04,240/- was filed by the assessee on 30/03/2015. The case of the assessee was selected for scrutiny. Thereafter, assessment for the year under consideration was completed by the A.O. U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) on 16/11/2016 assessing total income of Rs. 43,22,307/-.

4. Being aggrieved by the order of the A.O., the assessee preferred appeal before the Id. CIT(A), who dismissed the appeal by holding that there is delay of 16 months in filing the appeal electronically. Against the

said order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

5. In this appeal the assessee has raised many grounds but firstly we take ground No. 3 of the appeal for adjudication wherein the Id AR of the assessee has specifically challenging the order of the Id. CIT(A) in dismissing the appeal of the assessee on the ground that there was delay of about 16 months in filing the e-appeal. At the outset, the Id AR has submitted that the system of e-filing of appeal was new and thus in initial phases, ignorance of relevant change is reasonable cause especially when substantial compliance has been made by means of manual filing of appeal. Thus, the action of the Id. CIT(A) was unjust and against the principles of natural justice.

6. On the other hand, the Id. DR has relied on the order of the Id. CIT(A).

7. We have heard the rival contentions and perused the material on record. From perusal of the record, we noticed that the assessee had filed manual appeal within time prescribed under the Act. However, e-appeal was filed by the assessee beyond the period of limitations and there was delay of about 16 months in filing the e-appeal and the Id. CIT(A) had dismissed the appeal of the assessee by holding that the manual appeal

has no sanctity in the eyes of law after 01/03/2016 and since the e-appeal was late by about 16 months and the reasons offered by the assessee are not sufficient for condoning the delay, therefore, the appeal of the assessee was summarily dismissed.

After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of '**State of Punjab Vs. Shyamalal Murari and others reported in AIR 1976 (SC) 1177**' has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice.

The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation.

The Hon'ble Supreme Court in its judgement reported as AIR 2005 (SC) 3304 in the case of '**Rani Kusum Vrs. Kanchan Devi,**' reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of Justice. Any

interpretation, which eludes or frustrates the recipient of Justice, is not to be followed.

From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgement of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that **if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negated by such technical considerations.**

Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in appeal ITA No. 6595/Del/16 in case titled **Gurinder Singh Dhillon Vrs. ITO** had restored the matter to the file of Ld. CIT(a) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

Since in the present case, we find that appeal in the paper form was already with Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate

Commissioner. Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of Ld. CIT(A) and restore the matter back to the file of the Id. CIT(A) for deciding the issue afresh on merit after giving reasonable opportunity of hearing to the assessee.

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

Order pronounced in the open court on 07th December, 2020.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/12/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Manish Dhankar, Jhunjhunu.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-2, Jhunjhunu.
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. 368/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar