

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' 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. 1280/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15

Jaipur City Transport Services Ltd., Old Working Women Hostel, Behind Nehru Palace, Lal Kothi, Jaipur.	बनाम Vs.	A.C.I.T. (TDS), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 9735 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Siddarth Ranka (Adv)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 22/01/2021
उदघोषणा की तारीख / Date of Pronouncement: 27/01/2021

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 09/07/2018 wherein the assessee has taken the following sole ground of appeal:-

"That on the facts and in circumstances of the case, the Id. Assessing Officer grossly erred in considering the assessee appellant as a defaulter for not deducting TDS under section 194I on lease charges expenses, audit fee expenses, internal audit fee expenses and in creating a illegal demand of Rs. 21,97,537/- under section 201(1) and 201(1A) of the Act which is illegal and bad in law."

2. During the course of hearing, the Id AR submitted that the assessee has filed the present appeal on 14/11/2019 against the order passed by the Id. CIT(A) relating to A.Y. 2014-15 alongwith an application seeking

condonation of delay. It was submitted that the assessee wishes to resolve this matter and has since moved an application under Vivad Se Vishwas Scheme, 2020 on 20/01/2021. The A.O. has enquired about the status of the condonation of delay application filed before the Tribunal in order for him to take appropriate action under Vivad Se Vishwas Scheme and it was therefore requested to consider the assessee's condonation application.

3. In its condonation application, the assessee company has submitted as under:

- "1. That the Id. CIT (Appeals) passed his order on 09.07.2018 which was served upon the assessee appellant applicant 15.07.2018.*
- 2. That the assessee appellant is a public sector undertaking owned by the Government of Rajasthan and manages public transport system of the State of Rajasthan.*
- 3. That the impugned order was served on the accounts staff of the department who thereafter referred the matter to the Chartered Accountant for further advise. However, the concerned staff subsequently got transferred/retired and he did not intimate his successor about the order passed by the Id. CIT(Appeals) and due to which the department failed to discuss the next step to be taken with his counsel. Furthermore the Chartered Accountant also was changed.*
- 4. That subsequent to the passage of the impugned order penalty proceedings were initiated under section 271(1)(c) (to be read as section 271C) of the Act and order was passed. The assessee appellant contacted Shri Siddharth Ranka, Advocate to handle further action against the penalty order. During the preparation of penalty proceeding the counsel of the assessee appellant Shri Siddharth Ranka*

noticed that no appeal was filed against the order passed on merits and on his opinion, without any further delay, at the first opportunity, the assessee with the help of his counsel has filed this appeal before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur on 14.11.2019 with delay of 427 days."

4. It was submitted by the Id AR that being a public sector undertaking, there was no malafide or deliberate delay in filing the present appeal and in the interest of substantial justice, the delay in filing the present appeal may be condoned and the appeal be admitted for adjudication. It was further submitted that there is no prejudice which will be caused to the department as the assessee has already moved an application for settlement of present dispute and payment of taxes. In support, reliance was placed on the Hon'ble Delhi High Court's decision in case of HL Malhotra & Company Pvt. Ltd. Vs DCIT, Circle-12, New Delhi (ITA No. 211/2020 & CM Appeals 32045-32047/2020 dated 22nd December, 2020) wherein delay of 498 days in filing was condoned by the Hon'ble Delhi High Court and it was held that in absence of anything male fide or deliberate delay as a dilatory tactic, the Court should normally condone the delay as the intent is always to promote substantial justice following the Hon'ble Supreme Court decisions in the case of Collector, Land Acquisition, Anantnag & Anr. Vs Mst. Katiji and others (1987) 2 SCC 107 and N. Balakrishnan Vs M. Krishnamurthy 1998 (7) SCC 123.

5. Per contra, the Id. DR submitted that there is a substantial delay of 427 days in filing the present appeal by the assessee company and the application and the affidavit so filed by the assessee company does not reflect any reasonable cause on the part of the assessee company for the

delay in filing the present appeal. He submitted that the fact that the assessee company is a public sector undertaking will not make any difference and the test of sufficient and reasonable cause need to be equally satisfied by it. He accordingly opposed condoning the delay in filing the present appeal.

6. We have heard the rival contentions and perused the material available on record. There is no dispute and is an admitted fact that there has been a delay in filing the present appeal by 427 days. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there exists a sufficient cause on the part of the assessee company for not presenting the appeal within the prescribed time. The explanation of the assessee company therefore becomes relevant to determine whether the same reflects sufficient and reasonable cause on its part in not presenting the present appeal within the prescribed time. In the instant case, it has been stated by the assessee company, in the affidavit so submitted through its Managing Director, that the concerned staff handling the tax matters got transferred/retired and he did not intimate his successor about the order passed by the Id. CIT(Appeals) and due to which the assessee failed to take necessary steps in terms of filing the present appeal. However, as soon as assessee company came to know of subsequent penalty order being passed against it, it consulted its Counsel and basis his advice, the present appeal has been filed though with a delay of 427 days.

7. In case of Collector, Land Acquisition vs MST Katiji (Supra), the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serve the ends of justice that

being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that 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. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical considerations are pitted against each other, the 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. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and it does not stand to benefit by resorting to such delay more so considering the fact that it has applied for settlement of present dispute and payment of appropriate taxes. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay in filing the present appeal and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred.

8. Though assessment and penalty proceedings are independent proceedings but at the same time, there is a close connection between the two proceedings and where the assessee has filed the present appeal apparently to safeguard its rights in relation to the penalty proceedings, the

assessee cannot be denied and deprived of his legal defence and pleadings which he may take as so advised in the course of the penalty proceedings. Therefore, without going into the merits of levy of penalty which is not the subject matter of present dispute, where the assessee wishes to plead against levy of penalty, the Tribunal cannot be oblivious of its duty by denying such right to the assessee on mere technicality of delay in filing the present appeal.

9. In light of aforesaid discussions, in exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal as we are satisfied that there was sufficient cause for not presenting the appeal within the prescribed time and the appeal is hereby admitted for adjudication on merits. The Registry is directed to list the matter in due course. A copy of this order may be served on the parties through email.

Order pronounced in the open Court on 27/01/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/01/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Jaipur City Transport Services Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T. (TDS), 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. 1280/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar