

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. 88/JP/2018  
निर्धारण वर्ष/Assessment Years : 2009-10

Kalu Ram Jat Vill & Post : Kalwar Teh-Sanganer, Jaipur	बनाम Vs.	Additional Commissioner of Income Tax Range-7, Jaipur
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIAPJ9654M		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Anil Kaushik (CA)  
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 08/03/2021  
उदघोषणा की तारीख/Date of Pronouncement : 15/03/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)- 3, Jaipur dated 12.01.2015 for assessment year 2009-10.

2. It was submitted by the Id AR that the appellant has opted for Vivid Se Vishwas Scheme in this case, which has been approved/accepted and Form 3 has been issued but with the condition that order of condonation of delay be filed along with Form 4 in due course. It was submitted that the order of CIT(A) in this case was passed on 12.1.2015 however it was not served on the appellant in due course, hence an application for obtaining the

certified copy of the order was made to the authorities, and thus a certified true copy of the order was issued on 28.11.2017. Thereafter, the second appeal before the Tribunal was filed on 25.1.2018, which is thus filed within the prescribed time limit of 60 days from the date of order being appealed is communicated, in terms of the provisions of section 253(3) of the Income Tax Act. It was submitted that there was thus no delay in filing the present appeal. It was further submitted that even where it is held that there has been a delay, 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 and which has also been accepted in-principle by the competent authority and Form 3 has been issued though with a condition that the order for condonation of delay may be filed along with Form 4. 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 22<sup>nd</sup> 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.

3. Per contra, the Id. DR submitted that there is a substantial delay in filing the present appeal by the assessee and the application so filed by the assessee does not reflect any reasonable cause on the part of the assessee company for the delay in filing the present appeal. She accordingly opposed condoning the delay in filing the present appeal. At the same time, she fairly submitted that the Form 3 has been issued by the Competent Authority accepting the eligibility of the assessee for the settlement of dispute as per prescribed VSV scheme of settlement and determining the amount of tax liability which has to be deposited by the assessee and only condition which has been stated is that "Form 3 is issued conditionally subject to the applicant obtaining order of condonation of delay from the relevant appellate authority."

4. We have heard the rival contentions and perused the material available on record. In the instant case, it has been stated on behalf of the assessee that the order so passed by the Id CIT(A) has not been served on him and thereafter, the assessee sought a certified copy of the order so passed which was issued on 28.11.2017 and thereafter, the appeal was filed before the Tribunal on 25.1.2018 which is well within the limitation period. The limitation period for filing the appeal before the Tribunal is 60 days from the date when the order being appealed against was communicated to the assessee. The emphasis therefore is on communication of the order. In the instant case, it has been contended that the order so passed by the Id CIT(A) was only communicated or served on the assessee by way of a certified copy on 28.11.2017 and not earlier and therefore, the appeal so filed is within the limitation period as so prescribed. However, on perusal of the certified copy so obtained by the assessee, we find that there is a

assertion by the Id CIT(A) that the original order has been dispatched through registered A.D on 16.01.2015 and now as requested, a certified copy has been provided to the assessee. The question is whether the said order sent through registered A.D has been delivered at the given address or has been returned undelivered and where the same has not returned unserved, a presumption will arise that the same has been communicated to the assessee at the time of dispatch. There is however no sufficient material on record as to whether the original order has returned back unserved by the postal department. Therefore, the plea of the assessee that the original order has not been served on him cannot be decided and is left open in absence of requisite material on record.

5. Having said that, we find that as soon as the assessee became aware of the passing of the aforesaid order, he applied for a certified copy and filed the present appeal, there is thus no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and he does not stand to benefit by resorting to such delay more so considering the fact that he has applied for settlement of present dispute and payment of appropriate taxes. Further, no prejudice is being caused to the Revenue where the present appeal is admitted as the competent authority has accepted the assessee's petition and given its in-principle approval for settlement of tax dispute and Form 3 has been issued. 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 Courts, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the

instant case, the cause of substantial justice will be served by allowing the assessee to avail the benefits of the settlement scheme to which the competent authority has already given its in-principle approval.

6. 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.

7. Since the assessee has applied for withdrawal of this appeal on the ground that the assessee has opted for Vivad Se Vishwas Scheme and the Competent authority has already issued Form No. 3, therefore, we permit the assessee to withdraw the present appeal.

In the result, the appeal filed by the assessee is dismissed as withdrawn.

Order pronounced in the open Court on 15/03/2021.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 15/03/2021.

**Ganesh Kumar**

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

1. अपीलार्थी / The Appellant- Kalu Ram Jat, Jaipur
2. प्रत्यर्थी / The Respondent- Addl. CIT, Range-7, 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. 88/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar