

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 GOSIAN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 85/JP/2016
निर्धारण वर्ष/Assessment Year : 2006-07

Shri Uttam Chand Jain, 121/212, Agarwal Farm, Mansarovar, Jaipur.	बनाम Vs.	I.T.O., Ward 2(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADBPJ 9327 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 391 to 394/JP/2018
निर्धारण वर्ष/Assessment Year : 2007-08 to 2009-10 & 2013-14

Shri Uttam Chand Jain, 121/212, Agarwal Farm, Mansarovar, Jaipur.	बनाम Vs.	I.T.O., Ward 2(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADBPJ 9327 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/02/2021
उदघोषणा की तारीख / Date of Pronouncement : 02/03/2021.

आदेश / ORDER

PER: BENCH

These are the appeals filed by the assessee are directed against the separate orders of Id. CIT (A)-I, Jaipur dated 06/11/2015 and 26/10/2017 for the assessment years 2006-07 to 2009-10 & 2013-14 respectively.

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Since, common issues are involved in all these appeals, therefore, all are clubbed and heard together and for the sake of convenience and brevity, a common order is being passed.

4. At the time of hearing, we noticed that there was delay of 86 days in filing the four appeals i.e. ITA Nos. 391 to 394/JP/2018 for the A.Y. 2007-08 to 2009-10 and 2013-14 and the assessee has filed applications for condonation of delay. The contents made in one of the condonation application reads as under:

"The order u/s 250 was passed by the Id. CIT(A)-I on 26.10.2017 and was served on 01.11.2017. Accordingly, I was supposed to file the appeal within 60 days of the receipt of order i.e. on or before 31.12.2017. But the present appeal is delayed by 86 days.

*It is humbly submitted that since December, 2017, I am not keeping well. I was suffering from severe back pain and after consulting a doctor, it was detected that there was some severe problem in my spinal cord and because of which I was bed ridden upto March, 2018 (**Evidence enclosed**). Thereafter also, I met with an accident on 16th March, 2018 and got my hand fractured.*

In view of the above reason, I was not able to comply with any of the legal procedural requirements under Income Tax Laws.

I, therefore, make a humble prayer that on account of the above reason, delay in filing appeal may please be condoned. Reliance is placed on the following judicial pronouncements:-

1. Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471

"The legislature has conferred the power to condone delay by enacting S.5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the end of justice —that being the life-purpose of the existence of the institution of courts."

2. M/s GMG Engineering Industries vs. M/s Issa Green Power Solution (Civil Appeal No. 447312015) With A.C. Govindaraj and Ors. vs. M. Krishnamoorthy & Ors. (Civil Appeal No. 4473/2015):

In this case, Hon'ble Supreme Court held in Para 8 as under:

"It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bonafide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence."

I, therefore, make a humble prayer that on account of the above reason, delay in filing appeal may please be condoned."

5. On the other hand, the Id DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay of 86 days in filing the present appeals before the Id. CIT(A).

6. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In

case of Collector, **Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come on the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

7. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case, we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 86 days in filing the present appeals and admit the same for hearing and adjudication.

8. Now we deal with the appeal of the assessee being ITA No. 85/JP/2016 for the A.Y. 2006-07 as a lead case for the deciding the appeals. In this appeal, the assessee has raised following grounds of appeal :-

- “ 1. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in reopening the assessment u/s 147 of Income Tax Act, 1961. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without any basis.*
2. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in making the addition of Rs. 5,00,000/- u/s 69 of Income Tax Act, 1961 on account of alleged unexplained investment in capital. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 5,00,000/-.*
3. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in making the addition of Rs. 11,60,000/- u/s 69 of Income Tax Act, 1961 on account of alleged unexplained sundry creditor (Shri S.K. Jain Rs. 5,00,000/- and Shri S.K. Pandya Rs. 6,60,000/-). The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 11,60,000/-.*
4. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in making the addition of Rs. 4,00,000/- u/s 69 of Income Tax Act, 1961 on account of alleged reason that the source of these cash receipts are not explained. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 4,00,000/.*
5. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in making the addition of Rs. 11,07,780/- u/s 69 of Income Tax Act, 1961 on account of cash received from the following persons:*

Name	Amount
<i>Ghanshyam Dilani</i>	2,00,000/-
<i>V.K. Nagpal</i>	8,56,780/-
<i>Suryakant Sharma</i>	51,000/-
TOTAL	11,07,780/-

The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs. 11,07,780/-.

6. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the action of the Id. AO in making the addition of Rs. 17,00,000/- received from Chopra and Jain Colonizers for the alleged reason that source of these cash receipts are not explained. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs.17,00,000/-."*

9. On perusal of the record filed by the assessee, we noticed that initially, the assessee was appearing through his authorized representative but had been seeking dates on one ground or the other and at a later stage, the representative of the assessee had withdrawn his power of attorney, therefore, notices were directed to be served upon the assessee through the Id. DR. The Id. DR has today drawn our attention to the report filed by the office of DR which reflects that the notices were duly served upon the assessee for today's date but even in spite of that neither the assessee nor his authorized representative appeared before the Bench when the case was called for hearing. We have gone through the fact that the appeal under consideration i.e. ITA No. 85/JP/2016 belongs to A.Y. 2006-07 and already approximately 36 dates have already been granted by the Bench for arguments and matter is getting old. The conduct of the assessee shows that

he is not interested to pursue the present appeals and whereas it was the bounden duty of the assessee either to appear himself or through authorized representative before the Court for disposal of the appeals. Therefore, we find no reasons to further adjourn the hearing of the appeal.

10. The Id. DR has appeared in the court and is ready with the arguments, therefore, we have decided to proceed with the hearing of the case ex parte.

11. After perusal of the case file and after hearing the Id. DR, we found that as per facts of the present case, in response to notice issued U/s 148 of the Income Tax Act, 1961 (in short, the Act) filed his return of income on 20/05/2013 declaring total income of Rs. 5,58,483/-. The A.O. passed assessment order U/s 148/143(3) of the Act on 31/03/2014 determining total income of assessee at Rs. 59,52,238/-.

12. Aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and the Id. CIT(A) after considering the submissions as well as material placed on record, given part relief to the assessee. Against, which the assessee has preferred the present appeal on the grounds mentioned above.

13. Ground No. 1 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the action of the A.O. in reopening the assessment U/s 147 of the Act. From perusal of the impugned

order, we found that the Id. CIT(A) has dealt with the issue in para 3.1.2. of his order and the same is reproduced as under:

"3.1.2 Determination:

(i) I have carefully perused the submissions of the appellant, the assessment order and the material placed on record. I have also examined the relevant assessment record and observed that vide his letter no. Addl. CIT/R-2/Jpr/C-7/2012-13/2853 dated 22.03.2013, the Addl. CIT, Range-2, Jaipur accorded his approval for taking necessary action u/s 147/148 of the Act. The same facts have already been mentioned in the assessment order. Therefore, this ground of appeal has no merit and thus deserves to be rejected."

The Id. CIT(A) has rejected this ground by holding that the Addl. CIT, Range-2, Jaipur accorded his approval for taking necessary action u/s 147/148 of the Act. The same facts have already been mentioned in the assessment order, therefore, we find no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

14. Ground No. 2 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 5,00,000/- U/s 69 of the Act. From perusal of the impugned order, we found that the Id. CIT(A) has dealt with the issue in para 3.6.2. of his order and the same is reproduced as under:

"3.6.2 Determination:

(i) *I have carefully perused the submissions of the appellant and the material placed on record. The AO has discussed the issue in detail on pages 9 and 10 of the assessment order. There was a difference of Rs 5 lac in the closing balance as on 31.03.2005 and opening balance as on 01.04.2005. It was the contention of the appellant that the closing balance as on 31.03.2005 was actually Rs. 20,44,301 whereas it was shown at Rs. 25,44,301/- in the confirmation filed during AY 2005-06 and this mistake has been rectified by passing a journal entry. The AO required the appellant to produce books of accounts of M/s Jain Township and Land Developers in which the appellant was a Director but the same were not produced before the AO though various opportunities were provided by him.*

(ii) *As the appellant was not able to controvert the finding of the AO even during the appellate proceedings with documentary evidences, therefore I do not see any reason to interfere with the order of AO and hence the addition of Rs 5 lac made by the AO is sustained."*

The Id. CIT(A) has rejected this ground by holding that the AO required the assessee to produce books of accounts of M/s Jain Township and Land Developers in which the assessee was a Director but the same were not produced before the AO though various opportunities were provided by him. The assessee was not able to controvert the finding of the AO even during the appellate proceedings with documentary evidences, therefore, we find no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

15. Ground No. 3 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs.

11,60,000/- U/s 69 of the Act. From perusal of the impugned order, we found that the Id. CIT(A) has dealt with the issue in para 3.7.2 of his order and the same is reproduced as under:

"3.7.2 Determination:

(i) I have carefully perused the submissions of the appellant and the material placed on record. It is noted that the AO made the addition of Rs. 11,60,000/- as the appellant failed not only to file confirmation from these two persons but also to produce them before the AO. In spite of a number of opportunities provided by the AO, no compliance was made and thus the AO made the said addition. It was the contention of the appellant that the amounts were received through cheques has no weight and deserves to be rejected as it has been held in a number of cases that payment through banking channels do not make the transactions sacrosanct. The appellant failed to prove the identity, credit worthiness of these creditors and thus the initial onus required to discharge by it was not discharged. In view of the above, the addition of Rs. 11,60,000/-made by the AO is justified and hence sustained."

The Id. CIT(A) has rejected this ground by holding that the assessee failed to prove the identity, creditworthiness of these creditors and thus the initial onus required to discharge by it was not discharged, therefore, we find no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

16. Ground No. 4 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs.

4,00,000/- U/s 69 of the Act. From perusal of the impugned order, we found that the Id. CIT(A) has dealt with the issue in para 3.8.2 of his order and the same is reproduced as under:

"3.8.2 Determination:

(i) I have carefully perused the submissions of the appellant and the material placed on record. It is noted that the AO made the addition of Rs. 4,00,000/- as the appellant failed to produce Suwa and Rukma from whom the appellant claimed to have received Rs. 2 Lac each in cash during the year under consideration. The appellant admitted that after due verification, the AO accepted the receipt of cash from 8 out of 10 persons. Since the appellant failed to make the verification of cash received from these two persons, the AO made the addition of Rs. 4 Lac. During appellate proceedings, same assertions were made as made before the Id. AO. I agree with the decision of AO in this regard as the appellant failed to prove its claim that it received cash from these two persons as it failed to produce these persons before the AO. The appellant failed to prove the identity, credit worthiness of these creditors and thus the initial onus required to discharge by it was not discharged. In view of the above, I do not see any reason to interfere with the decision of AO and hence the addition of Rs. 4 lac made by the AO is sustained."

The Id. CIT(A) has rejected this ground by holding that the assessee failed to prove its claim that it received cash from these two persons as it failed to produce these persons before the AO. The assessee failed to prove the identity, creditworthiness of these creditors and thus the initial onus required to discharge by it was not discharged, therefore, we find

no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

17. Ground No. 5 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 11,07,780/- U/s 69 of the Act on account of cash received from three persons. From perusal of the impugned order, we found that the Id. CIT(A) has dealt with the issue in para 3.9.2 of his order and the same is reproduced as under:

"3.9.2 Determination:

I have carefully perused the submissions of the appellant and the material placed on record. It is noted that the AO made the addition of Rs. 11,07,780/- as the appellant failed to produce Shri Ghanshyam, V K Nagpal and Surya Kant Sharma from whom the appellant claimed to have received money in cash during the year under consideration. The appellant admitted that after due verification, the AO accepted the receipt of cash from 9 out of 12 persons. Since the appellant failed to make the verification of cash received from these three persons, the AO made the addition of Rs. 11,07,780/-. During appellate proceedings, same assertions were made as made before the Id. AO. I agree with the decision of AO in this regard as the appellant failed to prove its claim that it received cash from these three persons as it failed to produce them before the AO for verification. The appellant failed to prove the identity, credit worthiness of these creditors and thus the initial onus required to discharge by it was not discharged. In view of the above, I do not see any reason to interfere with the decision of AO and hence the addition of Rs. 11,07,780/- made by the AO is sustained."

The Id. CIT(A) has rejected this ground by holding that the assessee failed to prove its claim that it received cash from these three persons as it failed to produce these persons before the AO. The assessee failed to prove the identity, creditworthiness of these creditors and thus the initial onus required to discharge by it was not discharged, therefore, we find no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

18. Ground No. 6 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 17,00,000/- received from Chopra and Jain Colonizers. From perusal of the impugned order, we found that the Id. CIT(A) has dealt with the issue in para 3.10.2 of his order and the same is reproduced as under:

"3.10.2 Determination:

(i) I have carefully perused the submissions of the appellant and the material placed on record. It is noted that the appellant claimed before the AO that it received Rs 17 lac in cash from the partnership firm M/s Chopra and Jain Colonizers. The appellant could not produce the copy of dissolution deed of the said firm or confirmation from the said firm and thus the AO made addition of Rs. 17 Lac as unexplained.

During the appellate proceedings, the same assertions were made as made before the AO. The confirmation given by the appellant on behalf of the firm cannot be accepted as it is a self-serving document and it is not open to verification in absence of books of accounts. Further, no dissolution deed was filed by the appellant. In view of the above, I do not find any reason to interfere with the order

of the AO in this regard and hence the addition of Rs. 17 Lac made by the AO is sustained."

The Id. CIT(A) has rejected this ground by holding that the assessee claimed before the AO that it received Rs 17 lac in cash from the partnership firm M/s Chopra and Jain Colonizers. The assessee could not produce the copy of dissolution deed of the said firm or confirmation from the said firm. During the appellate proceedings, the same assertions were made as made before the AO. The confirmation given by the assessee on behalf of the firm cannot be accepted as it is a self-serving document and it is not open to verification in absence of books of accounts. In view of the above facts and circumstances, we find no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

19. In the result, this appeal of the assessee stands dismissed.

20. Now we take ITA No. 391 to 394/JP/2018 for the A.Y. 2007-08 to 2009-10 and 2013-14. From perusal of the record, we noticed that the facts and circumstances of these appeals are identical to the facts and circumstances of ITA No. 85/JP/2016 for the A.Y. 2006-07. Since, the facts and circumstances of the present appeals are identical to the facts and circumstances of ITA No. 85/JP/2016 for the A.Y. 2006-07, therefore, we find no reason to interfere into or deviate from the

findings so recorded by the Id. CIT(A) in these appeals also and we uphold the order of the Id. CIT(A) qua the issues raised in these appeals.

21. In the result, all these appeals of the assessee are dismissed.

Order pronounced in the open court on 02/03/2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाई)
(SANDEEP GOSIAN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02/03/2021.

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Uttam Chand Jain, Jaipur.
2. प्रत्यर्थी / The Respondent-The I.T.O., Ward 2(4), 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. 85/JP/2016 & 391 to 394/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar