

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 472/JP/2019
निर्धारण वर्ष / Assessment Year :2009-10

Smt. Swarna Rekha Saini, G-4, Lapuriya Gagan Apartment, Sector-2, Vidhyadhar Nagar, Jaipur-302032.	बनाम Vs.	I.T.O., Ward 4(2), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ADGPS 5972 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 12/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 12/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the assessee against the order of the Id. CIT(A), Ajmer dated 29/01/2019 for the A.Y. 2009-10.

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

3. Rival contentions have been heard and record perused. From perusal of record, we observed that in Form No. 3 issued by the designated authority of the department has mentioned the fact that the appeal has been filed beyond the prescribed time period of filing of appeal. No evidence for condonation of such delay by the appellate authority is on record. Form-3 is

issued conditionally subject to the applicant obtaining order of condonation of delay from the relevant appellate authority. In this regard, the Id. Counsel for the assessee furnished an application for withdrawal of this appeal as well as mentioning the fact that there was no delay in filing of this appeal before the ITAT. The contention made in the said application reads as under:

"Kindly refer to the captioned appeal fixed for hearing before the Hon'ble Bench on 12/03/2021.

In the matter, it is submitted that Form 3 is issued by the Pr. CIT in response to application in Form 1&2 under Vivad to Vishwas Scheme filed by the assessee. Copy of Form 3 enclosed.

It is further submitted before your honour hat in Form 3, it is mentioned that the captioned appeal is filed beyond time limit specified under Income Tax Act and it is further stated that Form 5 shall be issued subject to condonation of delay in filing appeal by appellate authority. In this regard, it is submitted that order passed by Id. CIT(A) (against which the captioned appeal was tiled) was served on assessee on 04.02.2019, against which appeal was filed on 04.04.2019. Your honour would appreciate that appeal was filed on 59th day from the receipt of order of Id. CIT(A), calculation of which is as under:

<i>Name of Month</i>	<i>Days from CIT(A) order</i>
<i>February</i>	<i>24 (as order was served on 4th February)</i>
<i>March</i>	<i>24+31=55</i>
<i>April</i>	<i>4 (as appeal filed on 4th April)</i>
<i>Total</i>	<i>49</i>

In view of above, it is submitted that there is no delay in filing of appeal, which is also evident from the fact that assessee has not

received any notice regarding delay in filing of appeal from the office of Assistant Registrar in this regard.

It is therefore humbly requested before your honours to please allow the assessee to withdraw present appeal and further prayed that necessary observations be made with respect to the delay stated by Pr. CIT in Form No. 3.

Yours faithfully,

*(Manish Agarwal)
A/R"*

5. The Id DR has raised no objection if the appeal of the assessee is allowed to be withdrawn but submitted that in Form No. 3 issued by the designated authority, it has been mentioned that there was delay in filing the present appeal.

5. Having considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observe that the Id. CIT(A) had passed his appellate order on 29/01/2019 and as per the assessee, copy of the order was served to the assessee on 4th February, 2019 and the present appeal has been filed by the assessee before this Bench on 04/04/2019. The details of days of receiving of the order from the Id. CIT(A) and filing appeal before the ITAT are as under:

<i>Name of Month</i>	<i>Days from CIT(A) order</i>
<i>February</i>	<i>24 (as order was served on 4th February)</i>
<i>March</i>	<i>24+31=55</i>
<i>April</i>	<i>4 (as appeal filed on 4th April)</i>
<i>Total</i>	<i>59</i>

It is a legal jurisprudence that the order of the Id. CIT(A) can be challenged before the ITAT by filing appeal within 60 days from the date of receipt of the order and in view of the above chart, it can be said that the assessee has filed the present appeal before the ITAT on 59th day on the date of receipt of the order from the Id. CIT(A). Considering the fact that the present appeal has been filed before the ITAT within 60 days from the date of receipt of order from the Id. CIT(A), therefore, we are of the view that, there is no delay in filing of present appeal before the ITAT and due to which, no application for condonation of delay is required to be filed before the Bench for condoning the delay.

6. Since the assessee has already approached the department to settle the matter under Vivad Se Vishwas scheme, therefore, we permit the assessee to withdraw this appeal. Accordingly, the appeal of the assessee is dismissed as withdrawn.

7. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 12th March, 2021.

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

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 12/03/2021
*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Swarna Rekha Saini, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 4(2), 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. 472/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar