

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाईं, 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. 80/JP/2021
Assessment Year: 2013-14

Shri Manohar Lal Agarwal, P/o- M/s Mahalaxmi Abhushan Bhandar, 165, Kishanpole Bazar, Chhoti Chopar, Jaipur.	बनाम Vs.	A.C.I.T., Circle-1, Jaipur.
PAN No.: AANPA 6995 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv)
राजस्व की ओर से / Revenue by :Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/08/2021
उदघोषणा की तारीख / Date of Pronouncement : 02/09/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 02/08/2021 for the A.Y. 2013-14. Following grounds have been taken by the assessee:

- "1. Under the facts and circumstances of the case, the Id. CIT(A), Faceless Appeal Centre has erred in dismissing the appeal as belated/delayed appeal without considering the reply and evidences filed by the assessee.*
- 2. In the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the findings of Id. AO in passing the order U/s 143(3)/147 of the Income Tax Act, 1961 which is bad in law as*

the same has been passed without furnishing reasons for issuing notice u/s 148 of the Income Tax Act, 1961.

3. *In the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the addition of Rs. 2,31,28,922/- without considering the written submission filed earlier.*
4. *The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or 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. At the outset, from the record, we noticed that the appeal filed by the assessee before the NFAC was dismissed on the ground that there was delay in filing the appeal by the assessee. Whereas on the contrary, the Id AR appearing on behalf of the assessee has submitted before us that in the present case, the A.O. had passed order of assessment on 17/03/2016. Aggrieved by the said order, the assessee preferred appeal immediately and filed the same within four days i.e. on 21/3/2016 before the Id. CIT(A)-3, Jaipur and acknowledgement in this respect has already been placed on record at page Nos. 1-3 of the paper book. Page No. 4 of the paper book contains the Challan through which the required fee for filing the appeal was also deposited by the assessee on 31/3/2016. It was submitted by the Id. AR that he was under bonafide belief that the appeal was to be filed before the Id. CIT(A)-3, Jaipur, however, later on it transpires that, in fact, the appeal was to file before the Id. CIT(A)-1,

Jaipur, therefore, necessary application for seeking transfer of the appeal from Id. CIT(A)-3, Jaipur to Id. CIT(A)-1, Jaipur was consequently filed and thereafter necessary order for transfer of the said appeal was passed by the Id. CIT(A)-3, Jaipur thereby transferring the appeal to the Id. CIT(A)-1, Jaipur having the jurisdiction over the appeal. The said order has also been placed on record at page No. 6 of the paper book. In this way, it was submitted by the assessee that there was no delay in filing the appeal as the impugned order passed by the A.O. is of 17/03/2016 and the appeal was filed on 21/3/2016 i.e. well within time. However, in order to avoid any technical objection at later stage, the assessee had also filed an application for seeking condonation of delay but all these documents were not considered by the NFAC.

4. After having gone through all the documents placed on record by the assessee in the paper book and also perusal of the impugned order passed by the NFAC, we are of the view that there was no delay on the part of the assessee in filing the appeal against the order passed by the A.O. on 17/03/2016 as the assessee had filed the appeal on 21/3/2016 i.e. well within the stipulated period, although, inadvertently, the assessee had filed the appeal before the Id. CIT(A)-3, Jaipur instead of CIT(A)-1, Jaipur but later on the said mistake was also rectified by moving an application by the assessee which was allowed by the

concerned CIT(A)-3, Jaipur and necessary order in this respect by transferring the appeal to the jurisdictional CIT(A)-1, Jaipur was also passed.

5. It has also been submitted by the Id. AR that he has opted for VSVS Scheme-19 and filed Form No. 1 and 2 and the department has also issued Form NO. 3. However, the benefit of VSVS-19 cannot be taken by the assessee as there is a condition precedent that the appeal filed by the assessee should be pending at the time of obtaining the scheme. Since the appeal filed by the assessee has been wrongly dismissed by the NFAC, therefore, considering the totality of facts and circumstances as narrated above and also considering the principles laid down in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs Mst. Katiji and others (1987) 2 SCC 107** wherein 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. In view of the above discussion, we condone the delay if any in filing the appeal. Since, we found that the appeal of the assessee was summarily

rejected by the Id. CIT(A) by treating the same as belated and now we are convinced that there was no delay in filing the appeal by the assessee, therefore, keeping in view these facts, we restore the matter back to the Id. CIT(A), NFAC for deciding the appeal on merits after giving due and reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 02nd September, 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:- 02/09/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Manohar Lal Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-1, 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. 80/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar