

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR
BENCHE, "SMC" JODHPUR**

BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

ITA No.412/Jodh/2019
Assessment Year : 2011-12

Sh Narayan Lal Purbiya, C/o O.P.Batheja, D-18, Anand Vihar Railway Colony, Jagatpur, Jaipur 301017	Vs.	The ITO, Ward-4, Bhilwara
PAN NO: AYLPP6893M		
Appellant		Respondent

Assessee by : None
Revenue by : Smt. Monisha, JCIT DR

Date of Hearing : 27.09.2021
Date of Pronouncement : 27.09.2021

आदेश/Order

This is an appeal by the assessee against the order dated 16.09.2019 of Ld. Commissioner of Income Tax (Appeals), Ajmer.

2. The registry has pointed out that the appeal of the assessee is barred by limitation period of 11 days. The assessee vide application dated 11.11.2019 submitted as under:-

**"Petition for condonation of delay of 11 days in filing appeal
before the Hon'ble ITAT.**

May it please your Honours.

The appellant is resident of a small village in Bhilwara District. The appellant was not assessed to tax prior to the assessment year under consideration as his income was below taxable limit. During the previous year relevant to the assessment year 2011-12, the appellant made total cash deposits of Rs. 10,13,900/- in his bank account, on the basis of which the ld. ITO, Ward-4, Bhilwara initiated proceedings u/s. 147/148. For filing the return of income and pursuing the case before the AO the appellant had engaged Sh. Ankit Lakhotiya. As his

*Counsel. However no proper compliance was made by him.. The l-
d.AO completed the ex parte assessment u/s 144 of the Act treating
the entire bank deposits of Rs. 10,13,900/- as unexplained.*

*Against the said order of the ld. AO, the appellant preferred appeal
before the ld. CIT(A), Ajmer, before whom additional evidences
proving the source of bank deposits were filed. The ld. CIT(A)
forwarded a copy of the additional evidences and the submissions of
the appellant to the AO and called for a Remand Report from him. The
ld. AO in his remand report, as discussed in the appellate order of the
ld. CIT(A), stated that the source of bank deposits of the assessee was
explained. Still, the ld. CIT(A) did not admit the additional evidences
filed by the assessee on the ground that these were not filed before the
AO despite sufficient opportunity, and the ld. CIT(A),Ajmer dismissed
the appeal of the appellant , vide his order dated 16.09.2019 which was
served upon the assessee on 03.10.2019.*

*The appellant handed over the appellate order to his Counsel for
filing further appeal. The appellant was under the impression that
the appeal will be filed in time. But the ld. Counsel did not file the
appeal before the Hon'ble ITAT in time on account of some financial
and other disputes with the assessee. As soon as the lapse came to
the knowledge of the appellant, he changed his Counsel and engaged
another Counsel for immediate filing of appeal. The delay of 10-11
days in filing the appeal is beyond the control of the appellant.
There is no willful default or motive of the appellant in not filing the
appeal in time. Therefore, it is prayed that the case of the appellant
may kindly be considered sympathetically and the delay in filing the
appeal may kindly be condoned for the cause of substantial justice.*

Dated: 11.12 .2019 (Narayan Lal Purbiya, Appellant.)”

3. During the course of hearing nobody was present on behalf of the assessee nor any adjournment application was filed. We, therefore, proceeded ex. parte qua the assessee.
4. The Ld. DR opposed the application moved by the assessee for condonation of delay.
5. After considering the submissions of the Ld. DR and the application moved by the assessee, it appears that the delay occurred due to the mistake of the then counsel of the assessee who could not file the appeal in time on account of certain disputes with the assessee and then changed the counsel. Thereafter, the

appeal was immediately filed. We, therefore, considering the short period of the delay in filing the present appeal and the peculiar facts of the case condone the delay by taking a liberal view and considering the principles of natural justice and the appeal is admitted.

6. In the present case, following grounds have been raised:-

1. *The ld. CIT(A) has erred on facts and in law in upholding the validity of initiation of proceedings u/s 147/148 of the I.T.Act,1961.*
2. *The ld. CIT(A) has grossly erred on facts and in law in not admitting the additional evidences furnished by the assessee which go to the root of the matter for deciding the appeal and which could not be filed before the ld. AO for want of sufficient opportunity of being heard.*
3. *The ld. CIT(A) erred in holding that sufficient opportunity of being heard was provided to the assessee by the ld. AO for completing ex parte assessment u/s 147/144 of the Act.*
4. *The ld CIT(A) has erred in upholding the addition of Rs.10,13,900/- particularly when the ld. AO in his remand report submitted to the ld. CIT(A) has stated that the source of bank deposits is explained.*
5. *The ld. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on chargability of interest u/s 234A of the Act.*
6. *The appellant craves leave to add, alter or amend any of the grounds of appeal. All the grounds of appeal are without prejudice to each other.*

7. The main grievance of the assessee relates to the ex.parte orders passed by the Assessing Officer and sustained by the Ld. CIT(A). The facts of the case in brief are that the Assessing Officer framed at an income of Rs. 10,13,900/- the assessment vide order dt 27.11.2018 by passing ex.parte order u/s 147 read with section 144 of the Income Tax Act, 1961.

8. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who dismissed the appeal by passing the impugned order ex. parte. The Ld. CIT(A) mentioned that assessee furnished the written submissions in 'dak'. However, nowhere it is mentioned that opportunity of being heard was given to the assessee. Even it is not mentioned that the notice of hearing was issued. It is well settled that nobody should be condemned, unheard as per the maxim, "*audi alteram partem*". I, therefore, by keeping in view the principles of natural justice deem it appropriate to set aside this case back to the file of Ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open Court on 27.09.2021)

Sd/-
(**N.K. SAINI**)
VICE RESIDENT

Rkk

Date: 27.09.2021

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File