

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. 247 to 250/JP/2020
निर्धारण वर्ष / Assessment Years :2013-14 to 2016-17

M/s Oriental Bank of Commerce, Post Box No. 56, Sardarsahar, Churu.	बनाम Vs.	I.T.O., TDS-3, Jaipur.
TAN No. JPRO01610A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shravan Kumar Gupta (Adv)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 14/09/2021
उदघोषणा की तारीख / Date of Pronouncement : 06/10/2021

आदेश / ORDER

PER: BENCH

All these appeals have been filed by the assessee against the separate orders of the Id. CIT(A)-3, Jaipur all dated 08/01/2019 for the A.Ys. 2013-14 to 2016-17 respectively.

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

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

4. For deciding the appeal, we take ITA No. 247/JP/2020 for the A.Y. 2013-14 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

- "1. The impugned order u/s 201(1)/201 (1A) dated 06.03.2017 as well as the notices both are invalid, illegal and are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.*
- 2. The Ld. CIT (A) has grossly erred in law and on facts in not accepting the manual appeal of the assessee and dismissing the same as unrest only due to the reason the appeal has not been filed online, which was beyond control to the assessee due to some technical reason. Hence the appeal so dismissed by the Ld. CIT (A) is being totally contrary to the provisions of the law and facts on the record and hence kindly to be directed to treat the same as valid appeal.*
- 3. The Ld. CIT (A) has grossly erred in law and on facts in sustaining the demand of Rs. 46,017/- raised by the A.O. u/s 201(1) of the Income-Tax Act on account of short deduction or non deduction of TDS on Interest and Rs.27,611/- u/s 201(1A) on account interest thereon totalling to Rs.73,628/- . Hencethe demand so raised by the A.O. and confirmed the Ld. CIT (A) by treating the assessee as assessee in default is being totally contrary to the provisions of the law and facts on the record and hence kindly to be deleted in full.*
- 4. The appellant prays your honors indulgence to add, amend, alter or withdraw all or any of the grounds of the appeal on or before the date of hearing."*

5. In this appeal, there is delay of 366 days in filing the present appeal and for which the assessee has filed application for condonation of delay and the contents of the same are as under:

- "1. In this connection it is submitted that the applicant is a Banking financial institute, having branch office at Sardarshahar Churu. In*

this case the TDS assessment was completed on 06.03.2017 u/s 201(1)/201(1A) raising the demand. Against which the assessee had filed an appeal before the Id. CIT(A)-3, Jaipur. The Id. CIT(A)-Jaipur has passed the order of appeal on 08.01.2019 which was served on the assessee branch by post in Month of January 2019. Hence the appeal was to be filed on or before Month of March 2019 but the same is being filed on 27.02.2020. i.e. by delay of about 11 Month late.

- 2. The reason of late filing was that as the applicant is being a Branch office of OBC Bank and they have to follow various procedures which takes so much times. As in this case the order was received in the month of January 20 last Thereafter some later time the same was to be sent to the nodal officer at Jaipur for necessary action and the same has been sent to him in first week of March 2019 for his approval or for necessary action.*
- 3. The nodal officer has kept this order with him in the file to checkup and to consult the counsel for next week. However the march is being the closing Month and in the banks there are so many works in the March, hence due to the heavy pressure of Work of march and Audit in the First week in the April , this order has escaped from his mind and the same has also misplaced with him, and he forget the same. However some day before during the course of discussion with the local counsel for TDS matter, he got remembered about the TDS orders and tried to locate the order but despite his best efforts I could not traced out the order, then I asked to my counsel to get the certified copies of the order and to file the appeal.*

4. *That the Staff of the counsel has received the certified copy of order on 21.11.2019 from the office of CIT(A). After receiving the order staff has kept the same at the desk of counsel at because at that time the counsel was not in the office and when there were also some more files or records were laying at the desk of counsel and the order has been mixed in search assessment records or other assessment records of the counsel. Because at that time there was heavy pressure of search assessment or other assessment in the month of November and December. Thus by coincidence the order has again escaped or misplaced.*

5. *That just some days before while seeing other records the staff of the counsel saw this order in other files, then he/she handover to counsel . Hence the appeal has been prepared on and signed by me as an Authorized officer now.*

Due to all this reason the appeal could not be filed within time. In support of these contention an affidavit of the my (Nodal officer) is enclosed

6. *It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:*

"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 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 ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

6. *The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy(1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Anothers 118 ITR 507 .*

That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(AII), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

7. *The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt. Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.*

In the instant case also, the appeal could not be filed in time because of the above time taking a various process which were bonafide and was a sufficient cause and there was no melafide intention.

8. *Recent Decision of Apex Court : in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court have also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).*

6. On the other hand, the Id DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay.

7. 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 in 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.

8. 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 366 days in filing the present appeal and admit the appeal for hearing.

9. The facts of the case in brief are that the assessee is a public sector bank, engaged in banking activities. In this case, a letter dated 21.10.2016 was issued to the bank calling for certain information relating to interest paid/credited exceeding to Rs. 1,50,000/- u/s 133(6) of the Income Tax Act, 1961 (in short, the Act) with the approval of worthy CIT-TDS under second proviso of s. 133(6) of the Act. It is relevant to mention here that during the course of TDS verification at Banks, various anomalies were noted relating to filing of form 15G/15H etc. It was seen that in cases

where form 15H/15H were provided by the customers, then there was no deduction of TDS u/s 194A irrespective of the amount of interest being paid and these entries were not reflected in IDS returns filed by the assessee. Hence, relating to the issue of non deduction of TDS due to form 15G/15H or otherwise, details were asked. In response to the above mentioned query letters. Branch Manager submitted required details/ Information. Finally, the A.O. made the addition U/s 201(1) and 201(1A) of the Act at Rs. 73,628/-.

10. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and the Id. CIT(A) noticed that Rule 45 of I.T. Rules 1962 mandating compulsory e-filing of appeals before CIT(A) with effect from 1st March 2016, therefore Id. CIT(A) dismissed the appeal in limini by holding that mandatory requirement of e-filing of appeal have not been fulfilled by the assessee. Therefore the appeal filed manually was not treated as valid appeal and hence the same was dismissed.

11. Now the assessee is in appeal before the ITAT on the grounds mentioned above.

12. Now before us, the Id. AR has challenged the order of Ld. CIT(A) in not allowing hearing of appeal filed by the assessee merely on the basis of alleged default of not having filed electronically.

13. Ld. AR reiterated the same arguments as were raised before Ld. CIT(A) and submitted even though the appeal was filed in paper form and under the relevant provisions of Act, but the Ld. CIT(A) has erred in not allowing hearing of appeal filed by the assessee merely on the basis of alleged default of not having filed electronically. Ld. AR further submitted that Ld. CIT(A) ought to have taken into account that the alleged compliance defaults were of a technical nature and being introduced for the first time in the statute books ought to have considered legally and heard the appeal on merits. It was further submitted that Ld. CIT(A) has erred in denying an opportunity of appeal to deserving assessee and thus resulted in denial of opportunity of Justice in the deserving case.

14. On the other hand, Ld. DR appearing on behalf of the Department supported the orders passed by the revenue authorities.

15. We have heard the Id. counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide Rule 45 of I.T. Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1stMarch 2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of

the substantive law i.e I.T. Act, 1961. As per the facts of the present case, the assessment in the above case was completed u/s 201(1) and 201(1A) of the Act. However, the assessee has filed appeal before Ld. CIT(A) in paper form as prescribed under the provisions of I.T. Act 1961 within the prescribed period of limitation. But the same was dismissed by Ld. CIT(A) by holding that assessee had not filed appeal through electronic form, which is mandatory as per I.T. Rules 1962.

16. After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of 'State of Punjab Vs. Shyamalal Murari and others reported in AIR 1976 (SC) 1177' has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice. The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation. The Hon'ble Supreme Court in its judgement reported as AIR 2005 (SC) 3304 in the case of 'Rani Kusum Vrs. Kanchan Devi,' reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always

subservient to and is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed. From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgement of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negated by such technical considerations. Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in appeal ITA No. 6595/Del/16 in case titled Gurinder Singh Dhillon Vrs. ITO had restored the matter to the file of Ld. CIT(A) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

17. Since in the present case, we find that appeal in the paper form was already with Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner. Keeping in view the facts and circumstances as well as the case laws

discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of Ld. CIT(A) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are followed then in that eventuality, the Ld. CIT(A) is further directed to consider the appeal filed by the assessee on merits by passing a speaking order. Resultantly, we allow the appeal filed by the assessee.

18. Before parting, we may make it clear that our decision to restore the matter back to the file of Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by Ld. CIT(A) independently in accordance with law.

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

20. Now we take ITA No. 248 to 250/JP/2020 for the A.Y. 2014-15 to 2016-17.

In these appeals also, facts and circumstances and delay in filing these appeals are identical to the facts and circumstances and delay in filing of ITA No. 247/JP/2020 for the A.Y. 2013-14. The submissions of both the parties are same as were taken in ITA No. 247/JP/2020 for the A.Y. 2013-

14, therefore, our findings given in ITA No. 247/JP/2020 for the A.Y. 2013-14 shall apply mutatis muntadis in these appeals.

21. In the result, all these appeals of the assessee are allowed for statistical purposes only.

Order pronounced in the open court on 06th October, 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:- 06/10/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Oriental Bank of Commerce, Churu.
2. प्रत्यर्थी / The Respondent- The I.T.O., TDS-3, 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. 247 to 250/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar