

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. 54 & 55/JP/2021  
निर्धारण वर्ष / Assessment Year :2009-10

Dalu Ram Meena, Plot No. 34, Surya Vihar, Jagatpura, Jaipur-302025.	बनाम Vs.	I.T.O. Ward 6(5) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BTUPM 8782 M		
Appellant		Respondent

निर्धारिती की ओर से / Assessee by: Shri Akshay Shah (CA)  
राजस्व की ओर से / Revenue by: Shri Aashish Nehra (Addl. CIT-DR)

सुनवाई की तारीख / Date of Hearing : 13/09/2021  
उदघोषणा की तारीख / Date of Pronouncement : 13/10/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

Both these appeals have been filed by the assessee against the separate orders of the Id. CIT(A), National Faceless Appeal Centre (NFAC) Delhi both dated 15/03/2021 for the A.Y. 2009-10. The grounds taken by the assessee in both these appeals are as under:

Grounds of ITA 54/JP/2021 for the A.Y. 2009-10

- "1. That the subject order passed by the Id. CIT(A) is liable to be quashed as the order is passed in haste manner, without taking into consideration the written submission, facts, documents and evidences as furnished by appellant available on record.*
- 2. That the Id. CIT(A) and the A.O. have failed to appreciate that:*

- a. *The appellant was not required to file the return under the law as the appellant's gross total income was below the amount not chargeable to tax.*
  - b. *The notices issued was never served to the Appellant.*
  - c. *The Hon'ble CIT(A) have failed to consider the written submissions and additional evidences such as Purchase deed, sale deed, bank statement, affidavit, computation of income etc. filed on record.*
  - d. *The capital gain was computed without considering the cost of plot, its indexation value and the investment deduction made u/s 54F of the Act.*
3. *The Id. CIT(A) have violated the principle of natural justice as no opportunity of being heard was provided to the Appellant on specifically being asked for, therefore, the order should be deleted.*
  4. *That the appellant craves right to amend, add, delete or withdraw any of the grounds of appeal either before or at the time of hearing of this appeal."*

Grounds of ITA 54/JP/2021 for the A.Y. 2009-10

- "1. *That the subject order passed by the Id. CIT(A) is liable to be quashed as the order is passed in haste manner, without taking into consideration the written submission, facts, documents and evidences as furnished by appellant available on record.*
2. *That on the facts and in law, the Id. CIT(A) and the A.O. in levying penalty U/s 271(1)(c) of the Act have failed to appreciate and consider the facts of the case that:*
  - a. *The appellant was not required to file the return under the law as the appellant's gross total income was below the amount not chargeable to tax. (Duly submitted by the appellant vide his submission dated 13 June 2018).*
  - b. *The notices issued was never served to the Appellant.*

c. *The capital gain was computed without considering the cost of plot, its indexation value and the investment deduction made u/s 54F of the Act.*

3. *The Id. CIT(A) have violated the principle of natural justice as no opportunity of being heard was provided to the Appellant on specifically being asked for, therefore, the order should be deleted.*
4. *That on the facts and in law, the Id. CIT(A) failed to appreciate that penalty proceedings are separate and distinct from the assessment proceedings and any additions/enhancements made in the assessment does not ipso-facto warrant levy of penalty.*
5. *That the appellant craves right to amend, add, delete or withdraw any of the grounds of appeal either before or at the time of hearing of this appeal.”*

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

3. Firstly, we take ITA No. 543/JP/2021 for the A.Y. 2008-10 for deciding the appeals.

4. In this appeal, there is delay of 48 days in filing the present appeal. It was submitted by the Id AR that there was no malafide or deliberate delay in filing the present appeal and in the interest of substantial justice, the delay in filing the present appeal may be condoned and the appeal be admitted for adjudication. It was further submitted that there is no prejudice which will be caused to the department as the assessee has already moved an application for settlement of present dispute and

payment of taxes. In support, reliance was placed on the Hon'ble Delhi High Court's decision in case of **HL Malhotra & Company Pvt. Ltd. Vs DCIT, Circle-12, New Delhi (ITA No. 211/2020 & CM Appeals 32045-32047/2020 dated 22<sup>nd</sup> December, 2020)** wherein delay of 498 days in filing was condoned by the Hon'ble Delhi High Court and it was held that in absence of anything male fide or deliberate delay as a dilatory tactic, the Court should normally condone the delay as the intent is always to promote substantial justice following the Hon'ble Supreme Court decisions in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs Mst. Katiji and others (1987) 2 SCC 107** and **N. Balakrishnan Vs M. Krishnamurthy 1998 (7) SCC 123.**

5. Per contra, the Id. DR submitted that there is a substantial delay of 48 days in filing the present appeal by the assessee. He opposed the prayer for condoning the delay in filing the present appeal.

6. We have heard the rival contentions and pursued the material available on record. There is no dispute and is an admitted fact that there has been a delay in filing the present appeal by 48 days. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there exists a sufficient cause on the part of the assessee for not

presenting the appeal within the prescribed time. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient and reasonable cause on her part in not presenting the present appeal within the prescribed time. In the instant case, it has been stated by the assessee that due to lock down imposed by the State Government from 23<sup>th</sup> of March, 2020 and thereafter by the Central Government from 25<sup>th</sup> of March, 2020 due to Covid 19 which later got extended by the Government from time to time. Due to which, the appeal could not be filed on time before the Tribunal.

7. In case of **Collector, Land Acquisition vs MST Katiji** (Supra), 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-serves 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.

8. In light of aforesaid discussions, in exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal as we are satisfied that there was sufficient cause for not

presenting the appeal within the prescribed time and the appeal is hereby admitted for adjudication on merits.

9. The brief facts of the case are that the assessee is a small trader and trading of stone chokhat. The assessee did not file his return of income for the year under consideration and had sold immovable property on 05/01/2008 worth Rs. 8.75 lacs and not even disclosed his PAN for the above said transaction. Therefore, the case of the assessee was reopened for scrutiny U/s 147 of the Income Tax Act, 1961 (in short, the Act) and determining total income of Rs. 9,95,000/-. It is important to mention here that the assessment order U/s 147/144 of the Act was passed ex parte as in compliance of notice, no body appeared on behalf of the assessee before the A.O.

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) had dismissed the appeal of the assessee by holding that the assessee had only challenging the jurisdictional issue and has not submitted any paper submissions on the merits of the claim.

11. Aggrieved by the order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

12. After having gone through the facts of the present case and after perusal of the documentary evidences placed on record as well as hearing of both the parties at length, we found that the A.O. had received information

that the assessee had sold immovable property in the year under consideration at Rs. 8.75 lacs and since the assessee had not filed his return of income and has not even disclosed his PAN number, hence, the said transaction could not be verified. Therefore, the case of the assessee was reopened since no body appeared before the A.O. even in spite of service of notice, therefore, the order of assessment was passed ex prate U/s 147/144 of the Act. Before the Id. CIT(A), in the appellate proceedings, the only plea taken by the assessee relates to challenging the jurisdiction of the A.O. on the ground that the notice was not served on correct address. Further nothing was submitted on merits itself, thus, the Id. CIT(A) while taking into consideration that notice was issued on the last available address, but the Revenue had dismissed the appeal of the assessee. Now before us, the Id AR has reiterated the same arguments as were raised before the Id. CIT(A) and also drawn our attention towards Form No. 35 filed before the Id. CIT(A) for filing the appeal against the order of A.O. The Id. AR has also drawn our attention to the paper book which contains copy of submissions filed before the NFAC, Delhi dated 31/1/2021, copy of submissions filed before erstwhile CIT(A)-1, Jaipur dated 26/06/2019, copy of additional evidence filed before erstwhile CIT(A)-1, Jaipur under Rule 46A dated 26/06/2019, purchase agreement of plot No. D.B.-77, Siddharth Nagar, Jaipur, power of attorney executed in the name of the assessee, sale deed of plot No. D.B.-77, Siddharth Nagar, Jaipur, purchase deed of plot No. 34, Surya

Vihar, Jagatpura, Jaipur, bank statement for the year 2008, affidavit of the assessee regarding purchase of plot, affidavit of the assessee stating that no notice has been received, computation of income for the year under consideration, copy of income tax return for the A.Y. 2011-12 and 2018-18, PAN allotment letter dated 04/04/2012 and copy of application filed before the ITO for demand of photocopy of order/notices dated 15/05/2017. All the aforementioned documents suggest that since the assessee could not appear before the A.O. as the notice could not be served upon the assessee as the assessee had already changed the old address, therefore, in absence of the assessee, the matter was decided by the A.O. However, in order to put forth all his defence, the assessee had filed an application before the erstwhile CIT(A) under Rule 46A of the Income Tax Rules, 1962 for leading additional evidence and in this respect had placed on record bunch of documents. However, the Id. CIT(A) had not touched or considered the facts of documents placed on record and relied upon by the assessee but had dismissed the appeal filed by the assessee merely on the ground that the assessee had raised merely jurisdictional issue and no paper book or submissions have been filed by the assessee in respect of his claim on merits. After perusal of the record, we found that the assessee had already filed the application for leading additional evidences submitted by other evidences as mentioned by the assessee in above para before the erstwhile CIT(A) on 26/6/2019 but all these documents

escaped the attention of NFAC, Delhi while deciding the appeal of the assessee because of that the rights of the assessee stand prejudiced. Considering the totality of facts and circumstances of the case and in the interest of principles of natural justice, we restore the matter back to the A.O. with direction to decide the appeal afresh while considering all the documents placed before us. Adequate opportunity of hearing shall be provided to the assessee before deciding the appeal on merit.

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

14. Now we take ITA No. 55/JP/2021 for the A.Y. 2009-10.

In this appeal also, there is delay of 48 days in filing the appeal before the Tribunal. Since the facts and circumstances of this case is also identical to the facts and circumstances of ITA No. 54/JP/2021. The submissions of both the parties are same as were stated in ITA No. 54/JP/2021. Therefore, on the basis of same reasoning as well as facts and circumstances of the case, we condone the delay of 48 days in filing the appeal and admit the same for adjudication.

15. In this appeal, the assessee has challenged the order of the Id. CIT(A) in confirming the penalty levied U/s 271(1)(c) of the Act.

16. Since, we have restored the quantum appeal before the A.O. for deciding the same afresh in accordance with law, therefore, this appeal with regard to levying of penalty is also restored back to the A.O. for deciding the same afresh as per law.

17. In the result, both these appeals of the assessee are allowed for statistical purposes only.

Order pronounced in the open court on 13<sup>th</sup> 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:- 13/10/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Dalu Ram Meena, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 6(5), 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. 54 & 55/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar