

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 242/JP/2021
निर्धारण वर्ष/Assessment Year :2016-17

Ashish Sharma 11/1358 11/1358, Malviya Nagar, Jaipur	बनाम Vs.	ITO Ward 1(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DHVPS1408F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Abhishek Soni (Adv)
राजस्व की ओर से/ Revenue by : Sh. Runi Pal (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 02/02/2022
उद्घोषणा की तारीख/Date of Pronouncement: 10/02/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by an assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 17/09/2021 [here in after (NFAC)] for assessment year 2016-17.

2. The appellant has taken single ground, which is reproduced here in below:

"The learned CIT(A) has erred while dismissing the appeal in the ground of condonation of delay in the ground of condonation of delay after the notice was served to the assessee seeking argument on the grounds of appeal"

3. The assessee has declared his income from salary and business & profession during the year. The case has been selected through CASS for the purpose of '**Limited Scrutiny**' on a reason – "Whether the investment and income relating to securities (derivative) transaction are duly disclosed".

3.1 As the details were not filed even though various notices were issued to the assessee, the AO issued a show cause notice dated 26-11-2018 directing the assessee to file the details in connection with the reasons of the scrutiny assessment. There was no response from the assessee the learned assessing officer completed the assessment on the basis of the material available before him and determined the income at 13,22,160/- as against the returned income of Rs. 2,46,670/-.

3.2 Aggrieved from the said assessment order, the assessee has filed an appeal on 14.05.2019 against the assessment order dated 10.12.2018 thus, the appeal is delayed by 125 days.

3.3 While filling an appeal before the Commissioner of Income Tax Appeal CIT(A) reasons for filling the appeal belatedly were explained. The assessee contended that he was out of India in the intervene period and return to India, he felt seek. Thus, the appeal was filed belated.

3.4 The assessee complied with the notices issued by the NFAC/CIT(A) and filed the written submission. The learned officer in the NFAC has dismissed the appeal of the assessee by holding that the assessee failed to explain the reasons as to why and what grounds the

day-to-day delay in filling an appeal has occurred. The relevant finding based on which the appeal was dismissed is reiterated herein below for the sake of brevity of the facts of the case;

Para 6.3

“However, the appellant did not furnish the details like –(i) date on which he arrived in India (ii) date on which when he feel ill (iii) what was the illness or poor health (iv) date on which he recovered from illness or poor health etc.,

In the absence of these basic details the reasons given for the delay in filling appeal are vague. Thus, the appellant failed to explain the delay in filling the appeal on day-to-day basis. Moreover, the appellant did not file any affidavit explaining the delay in filling the appeal.”

The learned officer at NFAC has quoted judgment in the case of Satbarg Singh Vs. ITO of Chandigarh Bench and relying on that judgement the delay of 125 days in filling the appeal was not condoned and the appeal was dismissed.

4. The only grievance raised before us by the assessee in this appeal is that the learned NFAC has passed the order without giving the assessee an opportunity of being heard and the order has been passed contending that no evidence placed on record in respect of the delay in filling an appeal by 125 days by the assessee.

5. While arguing the case the AR of the assessee draws our attention to page 2, first para of the order in appeal in that page of the order of the NFAC dated 17.09.2021, the learned NFAC has extracted

the Condonation Delay prayer of the assessee and same is extracted here in below for the sake of brevity of the facts;

CONDONATION OF DELAY

"The party in question returned to India in February of current year after about ten months. He is apologetic towards the fact that he could not attend to this matter soon after his arrival in India due to his poor health. It is out humble request that you wield a lenient stance towards this case and accept this appeal towards the order passed by the assessing officer"

So, the AR of the assessee argued that without pointing out to submit any details on the factual aspect of delay in filling appeal the NFAC has dismissed the appeal which is against the principles of natural justice.

5.1 The AR of the assessee then draw our attention to the notice dated 06.01.2021 issued by the NFAC vide DIN No. ITBA/NFAC/F/APL_1/2020-21/1029526477(1) requesting him to submit the reply on 21.01.2021. The AR again draws our attention to another notice dated 26.03.2021 issued by NFAC filed in the paper book. Both the notices are almost similar and the AR of the assessee draw our attention to the operative part of the notice which is extracted for the sake of brevity and relied upon by the AR of the assessee;

"OR

If you are not opting for Vivad Se Viswas Scheme 2020, the in support of your Grounds of Appeal, you are requested to furnish or cause to be furnished Ground wise written submission, along with supporting documentary evidences(s) and /or documents as specified in the attached Annexure, if any and if not already submitted electronically on the E filling portal."

So, AR of the assessee argued that as he was under the bona fide belief that the reasons submitted for delay in filling an appeal by the assessee

for an about 125 days delay has been accepted, and he was directed to submit the submission on merits. Thus, he has submitted reply on merits, but the order has been passed without considering the merits of the case and that too without giving an opportunity of being heard and no opportunity granted to submit reply in respect of the delay in filling appeal. Thus, he has argued that the order of the lower authority is against the principles of natural justice.

6. On the other hand, the DR has vehemently argued that the assessee has remained non-compliant before the assessing officer and has not filed any details. The DR further argued that the reasons for filling an appeal by 125 days has not been explained by filling the evidences. He further argued that the averments of the assessee is not supported by any evidence as stated in the order of the NFAC being the first appellate authority and the assessee cannot submit the evidence now. The DR further argued that even the assessee has not filed the affidavit in support of his reasons for belated appeal.

7. Against the arguments of the Id DR, the Id AR submitted that the appeal memo has been signed by the assessee declaring the fact stated in the appeal memo may be considered the facts declared on oath. The appeal has been filed with the competent authority wherein he has not attached that passport but the contention was very well raised to support the delay in filling appeal. As regards the non-filing of passport in the hearing before NFAC assessee was under the bona fide belief that as he was directed to file the submission on merits, has not filed anything in respect of the delay in filling an appeal, as the notice is

issued directing the assessee to file the submission as per grounds of appeal.

8. We have considered the rival submission and contentions raised. As the assessee has contended that the decision of NFAC in not allowing the proper opportunity to submit the submission in respect of delay in filling an appeal is against the principles of natural justice. Therefore, considering the facts of the case that the assessee was out of India is transpired from the copy of the passport placed on record. We feel that when the circumstances were beyond the control of the assessee and we considered this compliance of the assessee as valid compliance raised in the appeal memo and was not given specific opportunity to place on record the evidence. Thus, the order of the lower authority is against the principles of natural justice. Looking to this aspect on facts the delay declared on sworn statement and considering the dates given in the pass port that the assessee was out of India the appeal dismissal is not correct and that too without giving an opportunity on this aspect. The DR has not objected of submitting this evidence as assessee under the faceless appeal was prevented to submit this detail. Ongoing through this evidence we found force in the contention of the assessee.

9. In the result the delay in filling an appeal by the assessee is condoned. As it is evident that the addition made by the assessing officer in his assessment order are on account of non-submission of the details by the assessee. Therefore, assessee is directed to file all the details connected with the assessment before the assessing officer and make compliance in accordance with law and the assessing officer may

frame the assessment after giving proper opportunity to the assessee. Thus, the case is remanded to the file of the Assessing Officer.

10. In the result the appeal of the assessee is allowed.

Order pronounced in the open Court on 10/02/2022.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/02/2022

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Ashish Sharma, Malviya Nagar, Jaipur
2. प्रत्यर्थी / The Respondent- ITO Ward 1(3), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 242/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar