

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 893/JP/2018
निर्धारण वर्ष/Assessment Year : 2011-12

Shri Bhagwati Prasad Sharma Prop: Hotel Agarwal, Near UCO Bank, Gandhi Chowk, Jhunjhunu	बनाम Vs.	The ITO Ward -1 Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABHPP 9238 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani, CA
राजस्व की ओर से / Revenue by: Smt. Runi Pal, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 04/04/2022
उदघोषणा की तारीख / Date of Pronouncement: 06 /04/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal by the assessee is directed against the order of the ld. CIT(A)-3, Jaipur dated 11-05-2018 for the assessment year 2011-12.

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

3.1 At the outset of the hearing, the Bench observed that there is delay of 03 days in filing the appeal by the assessee for which the ld.AR of the assessee filed a

condonation application dated 18-07-2018 alongwith an affidavit of the assessee

mentioning therein as under:-

“It is submitted that assessee is a heart patient and not keeping well. At time of filing appeal also, the assessee was undergoing medical treatment. This resulted into lapse on his part. Due to above, the appeal filing is marginally delayed by two days. Delay was not deliberate.”

To this effect, the ld. AR of the assessee relied on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs Mst. Katiji,[1987) 167 ITR 471 (SC) and prayed that the delay so made in filing the appeal may please be condoned

3.2 On the other hand, the ld. DR objected to such delay but left the matter on the Bench to consider it as deem fit and proper in the case.

3.3 We have heard both the parties and perused the materials available on record. We find that the assessee is prevented by sufficient cause in not filing the appeal in time. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji, 167 ITR 471 observed as under:-

“The Legislature has conferred 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 " in section 5 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. A justifiably liberal approach has to be adopted on principle.

"Every day's delay must be explained" does not imply a pedantic approach. The doctrine must be applied in a rational, common sense and pragmatic manner.

The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner. There is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay.

"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 a vested right in injustice being done because of a non-deliberate delay."

Keeping in view the present facts and circumstances of the case, the application of the assessee for condonation of delay in filing the appeal is allowed.

4.1 The grounds of appeal raised by the assessee are as under:-

‘‘1(a) In the facts and circumstances of the case and in law the Id.CIT(A) has erred in confirming the action of the AO of making addition of Rs.12.00 lacs u/s 69A of the Act. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said addition of Rs.12.00 lacs.

(b) In the facts and circumstances of the case and in law the Id.CIT(A) has erred in confirming the action of the AO in disallowing 10% of the raw material expenses amounting to Rs.66,932/-. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said addition of Rs.6,932/-.

Additional ground raised by the assessee is that In the facts and circumstances of the case and in law the Id.CIT(A) has erred in not accepting the additional evidences submitted before him. The action of the Id. CIT(A) is illegal, , unjustified, arbitrary and against the facts of the case. Appropriate relief may please be granted.’’

5.1 Apropos ground No. 1 as well as Additional Ground of the assessee, the facts as emerges from the order of the AO is as under:-

“4..... the assessee having saving bank account No.79901500582 with ICICI Bank Ltd. deposited cash of Rs.26,00,936/- in the F.Y. 2010-11. In this regard, the assessee was asked to explain the same. Vide his reply dated 9-12-2013, the assessee submitted that the cash deposited in saving bank account is out of his receipts from Hotel Agarwal which was being run by the assessee during the year under consideration. On perusal of entry dated 10-07-2010, it was found that Rs.12,00,000/- has been deposited in S.B. A/c. While the assessee was asked to explain the source of the credit entry, the assessee submitted that it was out of opening cash surplus as on 01-04-2010 and onwards. The explanation given by the assessee is against the fact because in his ROI for the A.Y. 2010-11, assessee had declared closing cash balance of Rs.18,300/ as on 31-03-2010 while during the assessment proceedings the assessee has shown opening cash balance of Rs.12,27,527/- as on 01-04-2010 that seems afterthought. The cash book as well as other books of accounts produced by the assessee during the course of assessment proceedings has no relevancy because the assessee has filed his ITR declaring therein that regular books of accounts of business are not maintained. As the source of cash of Rs.12,00,000/- found credited in bank account have not been explained by the assessee hence the same is added to the total income of the assessee u/s 69A of the Income Tax Act, 1961.”

5.2 In first appeal, the Id. CIT(A) has confirmed the addition made by the AO u/s 69A of the Act by observing as under:-

“ I perused the record I find that the assessee submitted that the cash deposited in saving bank account was out of his receipts from Hotel Agarwal which was being run by the assessee during the year under consideration. On perusal of entry dated 10/07/2010, it found that Rs. 12,00,000/- has deposited in SB A/c. While the assessee was asked to explain the source of credit entry, the assessee submitted that it was from out of opening cash surplus as on 01/04/2010 and onwards. The explanation given by the assessee was against the fact because in his ROI for the A.Y. 2010-11, the assessee had declared closing cash balance of

Rs.18,300/- as on 31/03/2010 while during the assessment proceedings the assessee had shown opening cash balance of Rs. 12,27,527/- as on 01/04/2010 that seems afterthought, The cash book as well as other books of accounts produced by the assessee during the course of assessment proceedings has no relevancy because the assessee has filed his ITR declaring therein that regular books of accounts of business are not maintained. As the source of cash deposits of Rs. 12,00,000/- found credited in bank account have not been explained by the assessee hence the same was added to the total income of the assessee u/s 69A of the Income-Tax, 1961.

Further it is found that time and again the assessee is trying to twist the facts on the pretext of filing cooked up story. These all documents adduced by him are self serving documents and have no cogent evidence. Neither the buyer was produced nor any sale registration of the so called property took place as per condition agreement. The assessee has not shown any amount of Rs.9,00,000/- received as advance on account of sale advance. On other hand, he his filing a sale Iqarnama dated 14/06/2010 for advance against sale of property amounting to Rs. 9,00,000/- as cash. Therefore it is clear that neither in the current financial year nor in the ensuing assessment year any transaction of property took place, whereas, as per condition of so called Iqarnama transaction was to be materialized within one year and registration of the same would have been made within the stipulated time but it is not so in the present case. It is also pertinent to submit here that as per balance sheet filed by the assessee he has shown only the name of Haji Anwar Ali as a creditor for Rs.10,00,000/- in current liabilities. But no where the name Mohd. Yasin S/o Shri SulemanNyapari as a creditor of Rs. 9,00,000/- appears. Copy of balance sheet enclosed as Annexure-'E'. Thus the transaction shown in Iqarnama appears to be false. The additional evidence produced by the assessee is a post thought and a concocted story with no supporting evidence of materializing the transaction or refund of money taken as advance either in the current year or in the ensuing assessment year as per assessment record of the assessee. As such in view of the facts and circumstances of the case the additional evidences adduced by the assessee does not deserves

to be accepted, as the Iqurarnama is only self serving document, neither the identity of so called buyer is known nor the proof of owner ship of the property in question has been adduced.

It is crystal clear from the above facts of the case that the assessee is trying to camouflage his income from undisclosed sources in the guise of advance payments shown by XYZ whose identity is not known nor they were produced before the than A.O. for verification and confrontation nor before the undersigned despite two opportunities and even the sale of the property never took place through a registered sale deed, nor any refund of advance took place in the current or ensuing assessment years as per record (ITRs) available with this office.

Considering the above facts I am the opinion that cash deposited in bank account of Rs. 12,00,000/- is unexplained. Therefore I confirm the addition made by the Assessing Officer of Rs. 12,00,000/- as unexplained deposit in bank account. This ground is not allowed.”

5.3 During the course of hearing, the ld. AR of the assessee prayed that the lower authorities have erred in confirming the addition of Rs.12.00 lacs for which the assessee had lucidly made out the case to the AO during the course of assessment proceedings and all the desired documents were produced relating to sale of shop for Rs.15 lacs to Shri Mohd. Yasin R/o Mohalla-Khera, Jhunjhunu. The assessee had received a sum of Rs.9.00 lacs from Shri Mohd. Yasin as advance against sale of shop and the balance of Rs.6.00 lacs was receivable from him within one year from the date of the agreement made between the parties. The

ld. AR of the assessee submitted that he had given the bifurcation of the amount of Rs.12.00 lacs which is also mentioned in ld. CIT(A)'s order at page 3 as under:-

- .1. Advance receipt against sale of a shop Rs.9,00,000/-
2. Cash out of Stridhan of wife of the appellant Rs.3,00,000/-

5.4 During the course of hearing, the ld. AR of the assessee through additional ground relied upon the decision of Hon'ble Supreme Court in the case of NTPC Ltd. vs CIT (1998) 229 ITR 383 and stated that ld.CIT(A) has erred in not accepting the additional evidence submitted before him. In fact, this contention has no merit as ld. CIT(A) based on that additional evidence called for remand report of AO. Based on the detailed remand report, the additional evidence though submitted but not considered based on the following contention of remand report.

"That I entered into an agreement in relation to sale of my shop for Rs. 15,00,000/- with Mohammad Yasin R/O Mohalla- Khora, Jhunjhunu for Rs. 15,00,000/-. I have received Rs. 9,00,000/- cash from Mohammad Yasin aforesaid, as advance against the proposed sale of my shop and the balance of Rs. 6,00,000/- is receivable from him within 1 year from the date of this agreement. Copy of agreement is enclosed herewith

I have not sold finally and/or not made any registered sale deed for aforesaid sale proposal and have not given physical possession of the premises which is explained in the agreement dated 14/06/2010."

The assessee has also enclosed the copy of Iqarnama dated 14/06/2010. On perusal of the Iqarnama reveals that stamp paper of Rs. 10/- was bought on 27/04/2009 as per stamp of stamp-vendor on the overleaf and the Iqarnama has been executed on 14/06/2010. Thus the validity of stamp paper expired long back, as it has been executed and verified by notary after 1 year which is not registered in the register of Notary Public. Whereas the validity of a stamp paper expires within 1 year, if the same was executed before the assessment proceedings i.e. 26/12/2013 why the assessee could not produce it. It is an afterthought, it is

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gathered from the ITR for A.Y. 2012-13 that the property in question shown in
Iqarnama has not been sold at all as per conditions.’’

5.5 On the other hand, the ld. DR has relied on the order of the lower authorities and stated that there are no contentions raised against the finding in remand proceedings by the assessee.

5.6 We have heard both the parties and perused the materials available on record. The Bench has taken into consideration the orders of the lower authorities wherein the ld. CIT(A) has confirmed the addition of Rs.12.00 lacs on the ground that the assessee was unable to explain the source of cash deposit of Rs.12.00 lacs while the assessee time and again in his submission has prayed that he has received Rs.9.00 lacs cash from Shri Mohd. Yasin as advance against sale of a shop belonging to him and Rs.3.00 lacs pertained to his wife as Stridhan. It is noted from the above discussions that the assessee could not disclose the source of Rs.9.00 lacs substantially with corroborative evidence. He has not countered any observation of the AO and even had not filed such evidences which were placed before the ld. CIT(A) to check the veracity of finding. The ld. AR of the assessee on asking, expressed his inability to file those documents before us. He has also submitted that Rs.3.00 lacs pertained to his wife being Stridhan. Keeping in view the totality of the facts and circumstances of the case, the Bench feels that out of Rs.12.00 lacs disallowed by the lower authorities, the amount of Rs.3.00 lacs as

Stridhan can be considered as a good gesture that the wife of the assessee might have saved such an amount as Stridhan and may have given to the assessee. Thus, Rs.3.00 lacs is allowed and remaining Rs.9.00 lacs is confirmed.

6.1 Apropos ground No. 2 of the assessee, the facts as emerges from the order of the AO is as under:-

“5. The assessee in his I&E A/c has claimed expenses of Rs. 6,69,321/- on account of Raw Material Consumed. On examination during the course of assessment proceedings, the assessee failed to produce complete evidences in respect of the said expenses. The gross profit of assessee declared @ 11.80%. Looking to the previous history of the assessee where in the A.Y. 2009-10 and 2010-11, the assessee declared N.P. 12.01% & 13.14% respectively and the assessee has not furnished any reasonable cause of G.P. and N.P. considering these facts. Considering these facts, 10 % of the Raw Material consumed i.e Rs.66,932/-is disallowed and added to the total income of the assessee.”

6.2 In first appeal, the Id. CIT(A) has confirmed the addition made by the AO by observing as under:-

“6.3 I have carefully considered the material before me. I find that 10% of raw material expenses are not verifiable. The A/R of the appellant failed to file any evidences which prove that the raw material expenses are not fully vouched. Therefore

considering the facts of the case I find that AO rightly treated 10% of raw material expenses as unverifiable and accordingly I confirm the addition of Rs. 66,932/-. This ground is not allowed.’’

6.3 During the course of hearing, the ld. AR of the assessee prayed that the lower authorities have erred in confirming the addition of Rs.66,932/- whereas the books of the assesseees are properly maintained. The ld. AR of the assessee submitted that the assessee had declared a turnover of Rs.21,26,644/- on which the N.P. Rate of 11.80% has been declared in comparison to N.P. Rate of 13.14% in the immediately preceding year. This slight decrease in the profit rate was due to growing competition in the field. The ld. AR of the assessee further submitted that in a business each and every pie of spending cannot be vouched as there are various expenses which a businessman has to incur without any voucher. It is a practical difficulty in the business. The ld. AR of the assessee submitted that the AO has not pointed out any specific defect in the books of account of the assessee and vouchers for the expenses incurred. He has also not given any show cause notice for rejecting book results. Thus, the ld. AR of the assessee prayed for deletion of addition made by the AO and sustained by the ld. CIT(A).

6.4 On the other hand, the ld. DR supported the orders of the lower authorities.

6.5 After hearing both the parties and perusing the materials available on record, the Bench observed that the AO has not pointed out any specific defects in the books of accounts, bills and vouchers maintained by the assessee. It is also noted that the books of account of the assessee are maintained day today and no defect has been noticed by the AO during assessment proceedings. The assessee has declared N.P. Rate of 11.80% as compared to N.P. Rate of 13.14% of immediately preceding year. This slight decrease in the profit is ignorable due to stiff competition in the market for the businessman. It is also noteworthy to mention that provisions of Section 44AD of the Income Tax Act prescribes that in case of non-maintenance of books of account, an assessee may declare his income at a minimum rate of 8% of the turnover and the same is accepted. It means that the Department is satisfied if an assessee declares profit at least at a rate of 8% but in the present case the assessee has declared N.P. Rate of 11.80% which is better than the rate so stipulated u/s 44AD of the Act. Hence, in view of all the facts and circumstances of the case, we do not concur with the findings of the lower authorities. Thus the addition so made of Rs.66,932/- is deleted. The Ground No. 2 of the assessee is allowed.

7.0. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 06/04/2022.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:-

06/04/2022

*Mishra

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

1. The Appellant- Shri Bhagwati Prasad Sharma, Jhunjhunu .
2. प्रत्यर्था / The Respondent- The ITO, Ward 1, Jhunjhunu.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 893/JP/2018)

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar