

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डॉ. मीठा लाल मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & DR. MITHA LAL MEENA, AM

आयकर अपील सं./ITA Nos. 77 & 78/JP/2022  
निर्धारण वर्ष/Assessment Years : 2009-10 & 15-16.

Rajasthan Cricket Association, North Block, SMS Stadium, Jan path, Jaipur.	बनाम Vs.	Income Tax Officer Ward-1 (Exemptions) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAATR 0798 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shyam Lal Agarwal, CA

राजस्व की ओर से / Revenue by : Shri Avdhesh Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 31.05.2022.

घोषणा की तारीख / Date of Pronouncement : 29/07/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

These are two appeals filed by the assessee against two separate orders of Id. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi both dated 29.12.2021 for the assessment years 2009-10 and 2015-16. The grounds raised by the assessee are as under :-

**ITA NO. 77/JP/2022 (A.Y. 2009-10) :**

1. Ld. CIT (A) has erred in law as well as in facts in not allowing the condonation of delay in filing appeal, even when the manual appeal was already filed within due time.

2. That the order of the Honourable Jaipur Bench of ITAT was not followed in totality.
3. That Ld. AO has erred in law as well as in facts in disallowing the corpus donation of Rs. 1.5 crores on the basis that the donation is given for specific expenditure and does not form part of the Corpus Fund.
4. That the Ld. AO has erred in law as well as in facts in disallowing Rs. 50 lacs as unverifiable expenses on an ad hoc basis.
5. The Ld. CIT (A) has erred in not providing proper opportunity of being heard to the assessee.

**ITA NO. 78/JP/2022 :**

1. Ld. CIT (A) has erred in law as well as in facts in not allowing the condonation of delay in filing appeal, even when the manual appeal was already filed within due time.
2. The Ld. Assessing Officer has erred in law as well as in facts in not allowing benefits of section 11 to the assessee trust on the basis that it is not registered under section 12AA and thereby making an addition of the surplus as per income and expenditure account of Rs. 33,65,894/-.
3. That Ld. AO has erred in law as well as in facts of the case in making an ad-hoc addition of 25% of the total expenses of assessee trust Rs. 2,55,23,886/-, amounting to Rs. 55,39,498/- on the basis that the same could not be verified. The addition being contrary to the provisions of the law and facts be deleted in full.
4. The Ld. CIT (A) has erred in not providing proper opportunity of being heard to the assessee.

**ITA NO. 77/JP/2022 :**

Ground No. 1 raised in both the appeals is common i.e. not allowing the condonation of delay in filing appeal. Therefore, for the

sake of convenience, we first adjudicate Ground No. 1 of both the appeals.

2. The brief facts of the case are that the assessee Rajasthan Cricket Association (in short RCA), Jaipur is a charitable body registered under section 12AA of the Income Tax Act, 1961, involved in the promotion of the game of cricket in the state of Rajasthan, registered with the Registrar of Societies, Rajasthan as a Trust under Rajasthan Society Trust Registration Act, 1958 vide S. No. 267/86/87 dated 18.02.1987. RCA is also registered under Sport Association, Accreditation Act, 2005 vide S. No. 020/2005 dated 27.04.2005, with the object mentioned in Article 5 as a Governing Body of the game of Cricket in the State and its object shall be to Promote, advance and safeguard the interest of the game of cricket.

2.1. The assessee filed its return of income for the assessment year 2009-10 on 30.09.2009 under section 139(1) of the Income Tax Act, 1961 declaring Nil income, the assessment was completed on 13.12.2011 under section 144 of the Act determining the total income at Rs. 18,45,66,180/- by making disallowances of corpus donation, depreciation, income tax (TDS), Interest on TDS and lump sum disallowances out of the expenses claimed in the Income & Expenditure account on the basis that the expenses are unverifiable. Aggrieved, the assessee filed an appeal against the original order before the Id.CIT (A)-I, Jaipur. The Id. CIT (A) allowed the appeal of the assessee on the

grounds of depreciation (Rs. 2,16,62,215/-), and addition made on account of TDS (Rs. 3,18,724/-) and confirmed the order of AO on other remaining grounds. Being not satisfied with the order of the Id. CIT (A), both the parties i.e. assessee and revenue filed cross appeal before ITAT Jaipur Bench to decide the matter afresh. The Tribunal allowed the appeal in favour of the appellant by confirming the benefits of section 11 & 12. However, the order of AO was set aside on the matter of Corpus donation of Rs. 1,50,00,000/- and lump sum addition of Rs. 50,00,000/- and directed him to decide the issue afresh on merits.

2.2. Consequently, in order to give effect of the order of Tribunal, the AO issued notice to the assessee, while the appellant requested to stay the proceedings as the Office of assessee was locked and the books of accounts and other documents could not be submitted. However, the Id. AO after issuing the final notice on 06.12.2018 completed the proceedings on 20.12.2018 again confirming the addition of Rs. 1,50,00,000/- and Rs. 50,00,000/-. Aggrieved by this order of the AO, the assessee filed manual appeal before the Id. CIT (Appeals) on 18.06.2019 while the appeal was e-filed on 17.03.2021 with a delay 634 days. Before the Id. CIT (A), the assessee filed a condonation application dated 10.12.2021 explaining that there was a reasonable and sufficient cause for the delay, along with an Affidavit. However, the Id. CIT (A) passed an order rejecting to admit the appeal and observed that he is not satisfied with the assessee's explanation "sufficient cause" for

not presenting the appeal within the due date stipulated under section 249(2)(b) of the IT Act.

3. Now the assessee is in appeal before us requesting to condone the delay and decide the appeal accordingly.

4. We have heard both the parties, perused the material on record, orders of the Assessing Officer and the Id. CIT (Appeals). Since there was a delay in filing the appeals before the Id. CIT (A), the appeals of the assessee were dismissed as not maintainable in limine by the Id. CIT (A). The Id. A/R of the assessee has submitted that the assessee has explained the delay in filing the appeals before the Id. CIT (A) vide its application dated 10.12.2021 as under :-

*"10.12.2021.*

*Before the Learned Commissioner of Income Tax (Appeals),  
NFAC,  
Delhi.*

*In the matter of appeal of Rajasthan Cricket Association, North Block, SMS Stadium Ambedkar Circle, New Vidhan Sabha, Jaipur for the Assessment Year 2009-10. PAN : AAATR 0798J.*

*Appeal No. NFAC/08-09/10005485  
Application for condonation of delay u/s 249(3) of the I.T. Act, 1961 read with section 5 of Indian Limitation Act, 1961 in filing of appeal.*

*Respected Sir,*

*The humble assessee appellant applicant respectfully prays for the condonation of delay in the filling of appeal for the following reason :*

*1. That the Id. Income Tax Officer (Exemptions), Ward-1, Jaipur passed his order under section 143(3) of the*

*Income Tax Act, 1961 on 20.12.2018 which was served upon the assessee appellant applicant 23.05.2019.*

- 2. That the assessee appellant is a Governing body of the game of Cricket registered as charitable institution with the Income Tax Department having object of advancement and safeguarding the interest of the game of cricket.*
- 3. That the appellant had filed a manual appeal against the order of the Assessing Officer on 18<sup>th</sup> June, 2019 which was within 30 days of receipt of order and the appeal fees of Rs. 1000/- was also paid on 15.06.2019. The Appellant was not aware of the procedure of electronically filling of the appeal at that time, and therefore, the assessee could not e-file the appeal. The assessee did not have any intention to avoid the proper procedure for filling of appeal, it was just a lack of understanding. The copy of the cover letter for filing of appeal with the stamp of receipt at the Office of Learned CIT (Appeals)-3, Jaipur and the challan of Rs. 1000/- which was paid on 15.06.2019 is enclosed herewith for your ready reference.*
- 4. That subsequently, it came to the notice of Association that it was mandatory to file the appeal electronically at that time also and hence, without any further delay, the assessee filed this appeal before the Ld.CIT (Appeals) on 17.03.2021 with the delay of 634 days.*
- 5. An Affidavit duly sworn in this regard is also enclosed herewith.*

*With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and please consider also in public interest.*

*That in these circumstances we request your good self to kindly condone the delay and oblige.*

*Thanking you,  
Yours faithfully,  
For Rajasthan Cricket Association, Jaipur.  
Sd/  
(Mahender Sharma)*

*Secretary*  
*Encl. as above.*

The Id. A/R submitted that where the order is ex parte, at least the service of the order could have been to the proper person/authorized representative. The affidavit for the justified reason having sufficient cause was duly submitted but the Id. CIT (A), without giving opportunity has arbitrarily passed the order without considering that it was beyond control of the appellant to file the appeal earlier. The sufficient cause given was not considered stating that it is discretion of CIT. The Id. A/R has drawn our attention to para 7.13 at page 14 of Id. CIT (A) order wherein he has observed that "***It is also important to note that as per the settled position of law, adjudication of condonation of delay is a matter of discretion of the adjudicating authority/court and not of right of the applicant***". Thus, the Id. A/R submitted that it is very clear that neither any opportunity was provided after the detailed submissions made along with affidavit nor the reasons were gone through at all, and only the discretion has been used. The Id. A/R placed reliance on the judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst Katiji & Others, 167 ITR 471 (SC) wherein the Hon'ble Apex Court has held as under :-

*" The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Court to apply the law in a meaningful manner which sub serves the end of justice that being the life-purpose of the existence*

*of the institution of courts. It is common knowledge that this court is making a justifiable liberal approach in manner instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.”*

The Id. A/R further placed reliance on the following documents :

N. Balakrishnan vs. M. Krishnamurthy (SC)  
Dated : 03.09.1998.

Jaipur District Cricket Association & Another vs. The  
Registrar,  
Co-op Societies & Ors. (S.B. Civil Writ Petition No.  
12961/2017.(Raj.HC)

Orbit Dealmark (P) Ltd. vs. ITO  
ITA No. 513/Kol/2020 dated 22.04.2022.

Shri Rakesh Garg vs. ITO  
ITA Nos. 316 to 318/JP/2020 dated 28<sup>th</sup> January, 2021.

The Id. A/R, therefore, prayed that the delay caused in filing of the appeal may please be condoned and the appeal be restored to the file of the Assessing Officer for decision afresh after providing an opportunity of being heard to the assessee.

5. On the other hand, the Id. D/R has opposed the condonation of delay and submitted that the order of the Id. CIT (A) be sustained.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the Id. A/R and Id. D/R during the course of hearing before us in the

context of factual matrix of the case with regard to condonation of delay. We had also carefully gone through the evidences placed on record for the efforts done by the assessee for furnishing documents as required by the AO. After going through the detailed reasons given for delay in filing the appeal before the Id. CIT(A), we observe that there was a reasonable and bonafide cause for delay. The Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & ors. 167 ITR 0471 has observed as under:

*"The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 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. 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 even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be*

*informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."*

It is very clear from the above verdict of the Hon'ble Supreme Court that "sufficient cause" for the purpose of condonation of delay should be interpreted with a view to even-handed justice on merits in preference to approach which scuttles a decision on merits. Further the more power to condone the delay is conferred with a view to enable the courts to do substantial justice to litigants by disposing of the cases on merits. Considering the totality of the facts and circumstances of the case, we condone the delay and the order of the Id. CIT (A) is set aside. The matter is restored back to the file of the A.O. for deciding afresh on merit after giving due opportunity of hearing to the assessee.

7. The assessee has not pressed other grounds, therefore, the same are dismissed as not pressed.

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

**ITA No. 78/JP/2022 (AY 2015-16) :**

9. The grounds involved in this appeal are identical to grounds raised in ITA No. 77/JP/2022 for the assessment year 2009-10. Accordingly, on the identical facts, the Tribunal has found that the cause for delay explained by the assessee as reasonable. Therefore, to maintain the rule of consistency, by following the decision of this Tribunal given herein above, the delay in filing the appeal before the Id. CIT

(A) is condoned. The matter for the assessment year under consideration is set aside to the record of the A.O. for deciding afresh on merits after giving an opportunity of hearing to the assessee.

10. In the final result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 29/07/2022.

Sd/-  
( डॉ. मीठा लाल मीना )  
( DR. MITHA LAL MEENA )  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/07/2022.

das/

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

1. अपीलार्थी / The Appellant- Rajasthan Cricket Association, Jaipur. ITO Exemptions, Ward, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, 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. 77 & 78/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

