

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 231/JP/2022
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Reetesh Kumar 97, Kumar Mohalla Chhabra, Baran	बनाम Vs.	The ITO Ward -Baran Baran
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BYNPK 1511 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharvan Kumar Gupta
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 25/08/2022
उदघोषणा की तारीख / Date of Pronouncement: 15 /09/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 24-12-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following ground of appeal.

“1.1 The impugned assessment order u/s 148/144 dated 26.09.2019 as well as notice u/s 148 and the action taken by the Id. AO u/s 147/148 are bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The Id. AO has grossly erred in law as well as on the facts of the case in passing the Ex-party Assessment order u/s 144 without providing adequate and reasonable opportunity of being heard and not considering the material on record in the gross breach of natural justice. Hence the same entire addition may kindly be deleted and the assessment order may kindly be quashed.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in passing the Ex-party order and confirming the order of the Id. AO without providing adequate and reasonable opportunity of being heard and not considering the material on record in the gross breach of natural justice. Hence the same entire addition may kindly be deleted and the assessment order may kindly be quashed.

3. Rs.12,21,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.12,21,000/- made by the Id. AO u/s 56/68/69 on account of entire cash deposit in the bank account, as alleged undisclosed income from other sources, without invoking any provisions of Act, and also erred in not considering the material and evidences available on record in their true perspective and sense and proceeded just on assumption and presumptions. Hence the addition so made by the Id. AO and sustained by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.

4. Rs.2,00,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.2,00,000/- made by the Id. AO on account of alleged regular income of the assessee without invoking any provisions of Act, and also erred in not considering the material and evidences available on record in their true perspective and sense and proceeded just on assumption and presumptions. Hence the addition so made by the Id. AO and sustained by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.

5. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A,B and C. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.”

2.1 During the course of hearing, the Bench noted that there is delay of 100 days in filing the appeal by the assessee for which the assessee filed a condonation application dated 30-05-2022 praying therein as under:-

1. In this connection it is submitted that the applicant is individual and IT assessee. In this case the assessment u/s 148/144 was completed for A.Y. 2012-13 on dated 26.09.2019 after making the addition of Rs.14,21,000/-. Against which the assessee had filed an appeal before the Id. CIT(A)-Kota or NFAC Delhi. The Id. CIT(A) has passed the exparty order of appeal on dt. 24.12.2021 which was not served upon the assessee. However as per date of order the appeal was to be filed on or before 22.02.2022 but the same is being filed on 02.06.2022 i.e by delay of about 3 month 11 days late(which include the 2 month of Covid-19 where the honble Supreme Court has extended the limitation, Hence the same should be excluded). Thus the actual delay is 10 months: Although in actually there is no delay if following facts are being considered.

2. The reason of late filing was that the order was not served physically. The same was send by on Email riteshdhingra83@gmail.com. This email has been created by the earlier counsel of the assessee for the purpose of filling the appeal before the Id. CIT(A) and the assessee was not having the password, the password was laying with the earlier counsel and never used by the assessee. Hence he was not having any knowledge of notices and orders passed by la. CIT(A). It is only some day before while checking e-proceedings on-line he has come to know about the order for A.Y. 2012-13 has been passed by the CIT(A) NFAC Centre Jaipur on 24.12.2021 and come to know that the appeal has been dismissed, then he contact some counsel regarding the matter and after meeting the counsel at Jaipur, the advocates asked to prepare and file the appeal as he is not having the knowledge of orders earlier.

3. That thereafter our new counsel has stated to prepare the appeal and the appeal has been prepared on 30.05.2022 and signed by me.

4. That the assessee is not much literate person and not checked the regular email e-filing portal etc as it was not in habit and depended on the counsel. As He had engaged a counsel at Kota for the CIT(A) appeal proceedings and under impression that he is taking care of the matter, as he was depended upon him. Thus there was also negligence's of the counsel if any (although should not being). Thus it has never come in his notice before 25.05.2022 that any order has been passed, otherwise he could have contacted to the counsel and filed the appeal. Thus there was bonfide mistake of the counsel .Due to all this reason the appeal could not be filed within time. In support of these contention, an affidavit of the Legal Heir is enclosed.

5. 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 sub serves 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(All), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

7. The Hon'ble Jaipur Bench of ITAT has also condoned the dealy 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 Hooligans, 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 has 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).

Prayer: In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned.

To this effect, the assessee has filed an affidavit to condone the delay in view of the above prayers made above by him.

2.2 During the course of hearing, the Id. DR has objected to the assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the case.

2.3 After hearing both the parties and perusing the materials available, the Bench finds that there is sufficient cause in late filing the appeal by the assessee. Hence, the delay made by the assessee in late filing the appeal is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (supra)

2.4 Now Bench proceeds to the grounds of appeal raised by the assessee wherein the Bench observed that both the lower authorities had dismissed the appeal of the assessee ex-parte for want of non-appearance during the course of hearing. It is pertinent to mention that the appeal of the assessee was dismissed by the Id. CIT(A by observing as under:-

“Decision on Ground No. 1

This ground is raised against the addition of Rs.12.21,000/- made on account deposits.

5. I have carefully considered the facts of the case and assessment order of the AO. The AO has made addition on the ground that the appellant has cash deposits in the account which remained unexplained. During assessment proceedings, various opportunities by issue of notice u/s 142(1) were granted to the assessee, as discussed above, however, no compliance was made. Show-cause notice dated 07.09.2019 fixing the hearing on 13.09.2019 was issued, which was not complied to. Information u/s 133(6) was called from the Bank of Baroda, Chhabra on 11.04.2019, wherein the account has been maintained by the appellant. During appellate proceedings, various opportunities for explaining the

source of cash deposits was given by issue of notice, however, no compliance has been made, as per the chart below:

Date of Notice	Date of Compliance	Remarks
23-12-2020	07-01-2021	No response
04-02-2021	19-02-2021	No response
12-03-2021	22-03-2021	No response
05-10-2021	29-11-2021	No response
01-12-2021	13-12-2021	No response

No compliance was made to the above hearing notices. In the circumstances, I presume that appellant has nothing to say in the appeal proceedings. Therefore, the case is being decided on merits respectfully following the decision in the case of the Hon'ble Bombay High Court in the case of CIT Vs. Premkumar Arjundas Luthra (HUF) (2016) 240 Taxman 133/69 taxmann.com 407 (Bom.)

5.1 I have carefully considered the facts of the case, grounds of appeal and statement of facts filed by the appellant. It is seen that the cash deposits are made with the bank account maintained with Bank of Baroda, Chhabra bearing account no.32350100000307 to the tune of Rs.12,21,000/-. The AO has also disallowed Rs.2,00,000/- on account of household withdrawals, social and other customary expenses incurred during the year. In the statement of facts the Appellant has stated that "the AR of the assessee not appeared before the learned ITO, Baran. Every time he asked the assessee that he will handle the case. Due to accidental fracture in his leg, assessee was on the bed on that time also." The appellant in the ground of appeal has stated that the AO failed to consider that the deposits are out of the withdrawals made on various dates. The claim of the appellant that the case remained unattended because of medical reasons and the cash deposits are out of withdrawals from the bank on various dates, cannot be accepted as no documentary evidence, whatsoever, has been brought on record, during assessment as well as appellate proceedings. Factually, the onus is cast upon the assessee to explain his accounts by giving a cogent and reliable evidence. Once the appellant discharge his onus, then the onus shifts on the department. In the instant case, such onus has not been discharged by the appellant by explaining the source of the said cash deposits in the bank account, which has not been discharged. Under these circumstances, I am inclined to sustain the addition made by the AO as the appellant failed to explain the source of cash deposits, during assessment as well as appellate proceedings. Ground dismissed.

DECISION on Ground No.2

This ground is raised against the addition of Rs.2,00,000/- on account of household withdrawals, social and other customary expenses.

6. I have carefully considered the facts of the case, order of the AO and grounds of appeal. During assessment, the AO has made addition of Rs.2,00,000/- taking it as regular income as various expenses which were claimed remained unexplained.

The AO has disallowed the same stating that "In addition to income from other sources as mentioned at S.No.1 above, an income of Rs.2,00,000/- is hereby taken as regular income of the assessee for the year under consideration as per the show cause notice issued to him which remains uncomplied with. Since, the assessee has concealed his income penalty proceedings u/s 271(1)(c) are also initiated on this issue."

6.1. The case of the appellant have been carefully considered. It is the case of the appellant that he has claimed Rs.2,00,000/- in the expenses. During the assessment as well as appellate proceedings, as discussed above, no compliance has been made. The AO also issued show-cause in this regard, which remained unanswered. Under these circumstances, it cannot be said that the expenses incurred are wholly and exclusively for the purpose of business. Hence, the addition made by the AO is sustained. Ground dismissed.

In result the appeal is DISMISSED.”

2.5 During the course of hearing, the ld. AR of the assessee prayed that assessee should be given one more chance to contest his case before the AO otherwise the assessee will be deprived of his right to argue the case. He further submitted that the case of the assessee may kindly be restored to the AO for afresh decision.

2.6 On the other hand, the ld. DR strongly opposed to the submissions of the ld. AR of the assessee.

2.7 After hearing both the parties and perusing the materials available on record it is noted that both the lower authorities have passed ex-parte order and the assessee could not defend his case before them. In view of the request of the ld. AR of the assessee, the appeal of the assessee is restored to the file of the AO for afresh assessment. The assessee is also directed to cooperate the AO during the course of afresh assessment and submit the documents before the AO to defend his case. The Bench further noted that because of the casual and cavalier attitude of the

assessee, cost of Rs.2,000/- is imposed on the assessee which will be deposited by the assessee in Prime Minister Relief Fund. Thus the appeal of the assessee is allowed for statistical purposes.

3.0 In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 15 /09/2022

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

जयपुर / Jaipur

दिनांक / Dated:- 15 /09/2022

*Mishra

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

1. The Appellant- Shri Reetesh Kumar, Baranr,
2. प्रत्यर्थी / The Respondent- ITO, Ward-Baran
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. 231/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar