

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. 342/JP/2022
निर्धारण वर्ष/Assessment Year : 2014-15.

Smt. Indu Sharma B-5, Janta Colony, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 2(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABIPS 1400 M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal, C.A.

राजस्व की ओर से/ Revenue by : Shri Anoop Singh, Addl.CIT

सुनवाई की तारीख/ Date of Hearing : 11/01/2023

उदघोषणा की तारीख/ Date of Pronouncement: 08/02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 30.03.2022 for the assessment year 2014-15. There is a delay of 106 days in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the assessee. In the affidavit the assessee has explained the delay as under :-

- "1. That the appellate order dated 30.03.2022 passed by Id. CIT (A), NFAC, Delhi was served on me through Income Tax Portal.

2. That I was not keeping well at that time and later had to go to Delhi for some family emergency.
3. That after coming back recently, when I enquired from my counsel about the status of appeal filed, I came to know that order was already passed in my case. However, by the time last date of filing appeal had already expired.
4. Thus, it is submitted that the delay in filing the appeal is attributable to the circumstances beyond my control. Hence, the delay is absolutely inadvertent.
5. That, I have always acted bonafide and the delay is of only 102 days."

2. I have heard Id. Counsels of both the parties and perused the material on record. I have considered the rival submissions as well as gone through the contents of the application and affidavit of the assessee. On going through the impugned order, I further note that the Id. CIT (A) has dismissed the appeal of the assessee by observing in para 6.1 and 6.2 of his order as under :-

"6.1. The facts and grounds of the appeal have been carefully considered. It is evident from the assessment order that the AO had given sufficient opportunity to file explanation, first through notices u/s 142(1). The appellant failed to respond to any of these letters/notices. In fact, the appellant did not file any return despite service of notice u/s 148. From this record, it is well understood that the appellant had no explanation about the said addition and therefore AO had rightly concluded the assessment u/s 144 by making addition of unsecured loans of Rs. 13,97,240/- as income from NSEL transaction to the total income of the appellant.

6.2 Though the appellant claims that the AO was not justified in making such assessment, he never put forth any reasons for claiming so. Even during current appellant proceedings, the appellant never came forward with his explanation to the ground mentioned by the appellant despite being offered number of opportunities through hearing notices issued by this office. The onus lies on the appellant to prove his case before seeking relief in the appellate proceedings. On this front, appellant miserably failed. In these circumstances, it is deemed fit not to interfere with the assessment made by the AO.

Accordingly, the addition made by the AO is upheld and grounds are dismissed."

Thus it is evident that the Id. CIT (A) has dismissed the appeal of the assessee for want of any submission or other supporting evidence. Therefore, in the facts and circumstances of the case and in the interest of justice, I am of the considered view that though the assessee is guilty of negligence in not appearing before the AO as well as before the Id. CIT (A) and further not filing the appeal within the period of limitation before the Tribunal, however, since the orders of the authorities below are passed ex parte, therefore, I condone the delay of 106 days in filing the present appeal subject to cost of Rs. 5,000/- for negligent attitude during income tax proceedings, to be deposited in the Prime Minister's Care fund and proof thereof should be produced.

3. The assessee has raised the following grounds of appeal :-

1. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in completing the appellate proceedings ex parte without allowing sufficient opportunity to the assessee to present his case. Therefore, the impugned order passed by CIT (A) is in gross violation of the principles of natural justice deserves to be quashed and the consequent additions deserve to be deleted.

Without prejudice to above :

2. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming the action of Id. AO in reopening the assessment u/s 148 of the Income Tax Act, 1961 and thereafter passing the order u/s 147 r.w.s. 144.
 - 2.1 That the Id. CIT (A) has further erred in confirming the action of Id. AO in completing the re-assessment u/s 147 of the Income Tax Act, 1961 without forming reasonable belief towards escapement of income on the basis of reliable material or evidence in his possession leading to

independent application of mind towards forming of such belief, thus the entire re-assessment proceedings deserves to be held bad in law and consequent order be quashed.

3. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming the action of Id. AO in making addition of Rs. 13,97,240/- by alleging the same to be undisclosed income of the assessee merely on the basis of assumptions and presumptions, without assigning any proper and cogent reasons for the same. Therefore, the addition of Rs. 13,97,240/- deserves to be deleted.
- 3.1 that the Id. CIT (A) has grossly erred in confirming the action of Id. AO in making the addition of Rs. 13,97,240/- without applying his best judgment by not considering that such details and evidences were already submitted on the record of ACIT, Circle-2 in response to notice u/s 133(6) of Income Tax Act, 1961 and also without considering that assessee had sufficient income in relevant year and in earlier years which would be sufficient to explain the source of outstanding balance with NSEL. Therefore, the addition of Rs. 13,97,240/- deserves to be deleted.
4. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming the action of Id. AO in initiating penalty u/s 271(1)(b) of the Income Tax Act, 1961.
5. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming the action of Id. AO in initiating penalty u/s 271(1)(c) of the Income Tax Act, 1961.
6. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

4. At the outset, I note that the orders passed by the AO as well as the Id. CIT (A) are ex parte and without considering any documentary evidence to be filed by the assessee, hence the matter is set aside to the record of the A.O for granting one more opportunity of hearing to the assessee and then decide the matter afresh after considering the arguments as well as the documentary evidence, if any, to be filed by the assessee.

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

Order pronounced in the open court on 8/02/2023.

जयपुर / Jaipur
दिनांक / Dated:- 08/02/2023.

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

Das/

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

1. अपीलार्थी / The Appellant-Smt. Indu Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(5), 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. 342/JP/2022}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar