

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, 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. 58/JPR/2022
निर्धारणवर्ष/Assessment Year : 2012-13

Kusum Agarwal Prop. M/s Anant Enterprises, 6, Income Tax Colony, Vaishali Nagar, Ajmer.	बनाम VS.	ITO, Ward-2(1), Ajmer
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAQPA 1345 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Devang Gargieya (Adv.)
राजस्व की ओरसे / Revenue by: Ms Monisha Choudhary(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 15/03/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred to as 'NFAC/CIT(A)'], for the assessment year 2012-13 dated 21.12.2021, which in turn arises from the order passed by the Income Tax Officer, Ward-2(1), Jaipur passed under Section 143(3) r.w.s. 148 of the Income Tax Act, 1961 (in short 'the Act') dated 14.12.2019.

2. The assessee has marched this appeal on the following grounds of appeal:-

“1. The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 143(3) r.w.s. 147 of the IT Act, 1961 dated 23.12.2019 also kindly be quashed.

2. The impugned additions and disallowances made in the order u/s 143(3) of the Act dated 21.12.2021 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

3.1 The Id. CIT(A) seriously erred in law as well as on the facts of the case in dismissing the paper appeal filed manually on 7th January 2020 as non-est merely because the appeal was not e-filed although admittedly the same was filed well within the limitation. The dismissal of the appeal merely on technical and venial breach of law, is against the provisions of law, hence the Ld. CIT be directed to decide the appeal on merits.

3.2 The Id. CIT(A) erred in law as well as on the facts of the case in passing the impugned order without affording adequate and reasonable opportunity and even without complying with the mandatory statutory requirement of law. The impugned order having been framed in gross breach of natural justice, kindly be quashed or in the alternate be set-aside to him.

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

5. That appellant prays your honour to add, amend or alter any of the grounds.”

3. The brief facts of the case are that the assessee manually filed the appeal on 07.01.2020 against order dated 14.12.2019 passed u/s 143(3) r.w.s. 148 of the Income Tax Act, 1961 which was well within time. However, by that time the

requirement to e-file the appeal was also made applicable which, in view of the ld. CIT(A) was not observed.

4. The AO observed that during the AO referring to a search & seizure action carried out on one Shri Naresh Jain and his Associates, Mumbai on 19.03.2019, alleged that the appellant was also one of the beneficiaries and the declared LTCG on the sale of scrips of some companies of Rs.5,86, 125/- was bogus and was a case of penny stock. Consequently, a notice u/s 148 was issued on 30.03.2019 in response to which the assessee filed Return of Income on 30.04.2019 declaring total income of Rs.6,17,710/-. Notices were issued and replies were filed however, the AO felt dissatisfied and finally made addition of the entire amount of Rs.5,86,125/- alleging as bogus entry of sale of scrips. Feeling aggrieved the assessee filed appeal before the First Appellate Authority which was dismissed in limine.

5. Being aggrieved by the order of the ld. AO the assessee preferred an appeal before the ld. CIT(A) and the findings of the ld. CIT(A) are reproduced as under:-

“3.1 From the perusal of the appeal filed, it is seen that the appellant has filed the paper appeal (manual appeal) on 07.01.2020 whereas the appellant should have e- filed its appeal as was mandatory, as per Rule 45 of the Income Tax Rules. The appellant was issued the show cause notice dated 14.10.2021 and 29.10.2021 as under:-

“Since it was mandatory as per provisions of Income Tax Act to file appeal electronically from 01.03.2016. As per record, it is not ascertainable whether you have filed an appeal electronically or not. If you have filed electronic appeal then submit the proof of the same so that your appeal decided expeditiously.”

3.2 The appellant responded on the issue in the grounds of appeal but kept silence on the issue of e-filing of appeal to the notice dated 14.10.2021. In interest of justice the appellant was again asked with the above remark vide notice dated 29.10.2021 to submit the proof of e-filing of appeal. The appellant again did not respond on the query raised by the notice dated 29.10.2021. Therefore, it is presumed that the appellant has not filed appeal electronically. Accordingly, the paper appeal filed by the appellant on 07.01.2020 is dismissed being non est.

3.3 Without prejudice to above, this order does not take away the right to appeal from the appellant. The appellant can still e-file the appeal and seek condonation of delay as per law.

4. In the result, the appeal of the appellant is dismissed in limine.

6. Being aggrieved by the order of the Id. CIT(A) the assessee preferred an appeal before us. The Id. AR for assessee submitted a detailed written submissions which are as under:-

“1. Although the Id. CIT(A) very categorically upheld the right of appeal of the appellant and even observe that 'the appellant can still e-file the appeal and seek condonation of delay as per law' still in the last para, he dismissed the appeal in limine. Hence this appeal was filed. Intention of the learned CIT(A) is clear that he wanted to condone the delay provided the appeal was e-filed however by observing that the appeal is dismissed in limine, he has finally adjudicated the matter and decided the same against the assessee. Thus, legally and technically speaking, the appellant may not be permitted to e-file the appeal once again for the same cause of action and therefore, this appeal was preferred.

Appeal cannot be dismissed merely on technical glitch:

2.1 It is not disputed that the appellant had already filed an appeal physically in paper form on dated 07.01.2020 under the relevant provision of the Income Tax Act, within the permissible time limit however, the Id. CIT(A) erred in not allowing the hearing the appeal, merely on the basis of the alleged default of not filing the appeal electronically. Undisputedly there did exist a reasonable cause behind not e-filing the appeal in as much as the appellant remained under the impression that the e-filing in such cases is technical and stands waived automatically without anything to be done on the part of the appellant. The provision was brought for the first time and technically it was too difficult to comply with. Therefore, the Id. CIT(A) ought to have admitted the appeal and the default of not e-filing the appeal was a matter highly technical and venial breach of law, for which, the appellant should not be made to suffer. More particularly, when the assessee had even admittedly filed a reply on merits also. Such an issue is directly covered by the decisions of Hon'ble ITAT Jaipur and Hon'ble ITAT Jodhpur and otherwise also is a strongly arguable case.

2.2 On similar controversy, the Hon'ble Courts and Tribunal have taken a consistent view that in such case, the appeal should not be dismissed by the Id. CIT(A). Kindly refer

2.2.1. All India Federation of Tax Practitioners (AIFTP) vs. ITO in ITA no.7134/Mum/2017 vide order dated 05.04.2018.

2.2.2 Shri Gurinder Singh Dhillon vs. ITO in ITA NO. 6595/Del/2016 vide order dated 19.04.2017.

3. Pursuant to the directions of the CIT(A), the appellant has e-filed the appeal on dated 28.12.2022. Copy of acknowledgement is enclosed herewith. Hence to do substantial justice, kindly restore the appeal to the file to CIT(A) with a direction that the appeal be admitted and decided on merits and oblige.

GOA-4 Charging of Interest u/s 234A & 234B: is consequential and kindly be decided accordingly.”

7. The ld. AR for the assessee was present but did not argue the case before the Bench due to strike by the Rajasthan Bar Council, Jaipur, but however the ld. AR for the assessee requested to consider the written submission filed before us.

8. On the other hand, the ld. DR relied upon the order of the lower authorities.

9. We have gone through the contentions of the ld. DR and perused the materials available on record. The Bench noted that the ld. CIT(A) has passed the order and dismissed the appeal in limine and further noted that the order passed by the ld. CIT(A) was dismissed on technical grounds and waived breach of law which is against the provisions of law, where the ld. AR for the assessee filed an appeal manually on 07.01.2020 and was not e-filed within the limitation, but the ld. CIT(A) has erred in not considering the submissions made by the ld. AR for the assessee during the appellate proceedings, without giving an opportunity the case was dismissed in limine. Therefore, the impugned first appeal order passed by the ld. CIT(A) deserves to be set aside and the matter is fit for remand to the file of ld. CIT(A) for a proper adjudication. The ld. DR fairly agrees to this but prays to direct the assessee to represent his case before ld. CIT(A) and do not seek

unnecessary adjournments. In view of this and also having regard to the principle of natural justice and fair play, we deem it fit and appropriate to remand this matter back to the file of Id. CIT(A) for a proper adjudication after giving opportunity of hearing to the assessee. We order accordingly. The assessee is also directed to ensure participation in the hearings fixed by Id. CIT(A) and do not seek unnecessary adjournment. Thus, the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open court on 15/03/2023.

Sd/-

(राठोड कमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/03/2023

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Kusum Agarwa, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 58/JPR/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar