

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

डॉ. 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. 47/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2011-12

Sardar Singh Rathore 304, Subhash Colony, Shastri Nagar, Jaipur.	बनाम Vs.	ITO, Ward- 4(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEDPR 5993 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani (C.A.)  
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing 14/03/2023  
उदघोषणा की तारीख / Date of Pronouncement : 20/03/2023

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"], dated 30.11.2022 for the assessment year 2011-12, which in turn arises from the order passed u/s 271(1)(c) of the Income Tax Act, 1961 ( in short ' the Act' ) by the Income Tax Officer, ward-4(5), Jaipur dated 25.04.2019.

2. The assessee has raised the following grounds:-

*“1. In the facts and circumstances of the case and in law, the ld. CIT(A) has erred on confirming the imposition of penalty amounting to Rs. 6,63,370/-. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the penalty imposed of Rs. 6,63,370/-.*

*2. In the facts and circumstances of the case and in law, the ld. CIT(A) has erred in not condoning the delay in filing the appeal and dismissing the appeal of the assessee at the threshold. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Appropriate relief may please be granted.*

*3. In the facts and circumstances of the case and in law, the ld. CIT(A) has erred in passing the ex-parte order without deciding the case on merits. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing such order.*

*4. The assessee craves his rights to add, amend or alter any of the grounds on or before the hearing.”*

3. The brief facts of the case are that as per AIR information generated through AST system the assessee had deposited cash of Rs. maintained in SBBJ, Gopalbari, Jaipur Rs. 26,33,500/- in his savings bank account and ICICI Bank during the Financial year 2010-11 relevant to A.Y.2011-12. Though, in the absence of full and true particulars reliance is placed on AIR information available on record. In respect of

the aforementioned cash deposit/credit transactions of Rs. 26,33,500/- no compliance was made by the assessee during the course of the whole proceedings and no return of income was filed in response to the notice issued u/s 148 of the IT Act, 1961. Therefore, the assessee failed to furnish any satisfactory explanation /justification with regard to the source of the cash deposit/credit transactions made during the year. Therefore, cash deposit/credit transactions made to the tune of Rs. 26,33,500/- is treated as unexplained credit within the meaning of provisions of section 68 of the IT Act, 1961. Accordingly an addition of Rs. 26,33,500/- is made to the total income of the assessee.

4. The Id. AO observed that the assessee has furnished inaccurate particulars of income and thereby concealed the income to the tune of Rs. 26,33,500 as per the assessment order u/s 144 r.w.s. 147 dated 08.10.2018. Therefore, he is liable for imposition of penalty u/s 274 r.w.s. 271(1)(c) of the Act on the concealed income. Accordingly, penalty of Rs. 6,63,370/- u/s 271(1)(c) which is 100% of tax sought to be evaded is hereby imposed, calculated as under:-

1.	Tax on total income including conceal income	Rs. 6,63,370/-
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2.	Tax on income excluding concealed income	Rs. 0/-
3.	Tax sorted to be evaded (1-2)	Rs. 6,63,370/-
4.	100% of tax sought to be evaded	Rs. 6,63,370/-
5.	300% of tax sought to be evaded	Rs. 19,90,110/-

Penalty u/s 271(1)(c) is imposed for Rs. 6,63,370/- being 100% of tax sought to be evaded.

5. The assessee has filed the appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving his following relevant findings on the issues:-

“ The appellant has filed the appeal on 02.10.2020 against the order received by it on 27.08.2020, which is belated as per Section 249(2) of the I.T. Act, 1961. The appellant has claimed to have received the certified true copy of the order under consideration on 27.08.2020. However, from the perusal of the attached copy of the assessment order, it is clear that the appellant had received the order on time as no certification by the Assessing Officer is apparent on the face of the assessment order with regard to the certified copy being given to the appellant after such a long delay of six months, which is the mandatory procedure adopted by AO while handing over the copy of assessment order on request. Moreover, even if the claim of the appellant regarding the late service of the order is considered, the appeal has been filed after a period of 36 days after the receipt of order, as claimed by the appellant, thereby resulting into a overall delay in filing of appeal. Therefore, considering the above facts, it is

clear that there is no reasonable cause of delay in filing the appeal. Hence, the appeal of the appellant is not admitted and condonation of delay is not granted.

5. As a result, the appeal is dismissed.”

6. The ld. AR for the assessee appearing before us submitted that the assessee was under the bonafide belief that the since his quantum appeal is pending, the penalty appeal may not persuaded and therefore, under that bonafide believe he remained non-compliant before the ld. CIT(A). The ld. AR for the assessee has submitted that an affidavit stating that the quantum appeal is pending for disposal that he sought adjournment in quantum appeal on 07.11.2022, notice for enablement was issued in quantum appeal. The said quantum appeal is pending for disposal under Appeal No. NFAC/2010-11/10009042. The screenshot of the Income Tax Portal evidencing the said appeal is placed on record. That on 07.11.2022 notice for enablement was also issued in penalty appeal. That the ld. CIT(A) vide order dated 30.11.2022 decided the penalty appeal before the quantum appeal.

7. On the other hand, ld. Sr. DR supported the order of the ld. CIT(A) and submitted that the assessee remained non-compliant to the three notices issued and has not submitted any justifiable reason so as to

remain non attentive to the notices so issued. At the same time looking to the arguments of the ld. AR, she has fairly admitted that in the interest of justice let this the issue be restored to the file of the ld. CIT(A) as the quantum appeal of the assessee is pending before ld. CIT(A).

8. We have heard both the parties, perused materials available on record. To support the contention the ld. AR for the assessee was directed to file proof of pendency of appeal and the affidavit by the bench. The ld. AR for the assessee submitted vide his letter dated 01.03.2023 filed the screen shot and affidavit of the assessee. From the screen shot submitted as extracted from the system it is clear that the quantum appeal of the assessee pending. This is fact is also declared by the assessee in his sworn affidavit filed by him. The content of the affidavit is reproduced here in below :

“Affidavit

I, Sardar Singh Rathore, Aged 48 years, resident of Plot No. 304 subhash Colony, Shastri Nagar, jaipur, do hereby declare on oath as under:

1. That I am regularly assessed to tax and my PAN is AEDPR 5993L.
2. That assessment u/s 147 for A.Y. 2011-12 was completed in my case vide order dated 08.10.2018. Addition of Rs. 26,33,500 was made. Aggrieved by the said order, I preferred appeal before CIT(A).

3. That resultant penalty u/s 271(1)(c) amount to Rs. 6,63,370/- was imposed vide order dated 24.04.2019. Aggrieved by the said order, I preferred appeal before Id. CIT(A).
4. That both quantum appeal and penalty appeal were fixed.
5. That I sought adjournment in quantum appeal on 07.11.2022 notice for enablement was issued in quantum appeal. The said quantum appeal is pending for disposal under Appeal No. NFAC/2010-11/10009042. The screenshot of the Income Tax Portal evidencing the said appeal is placed on record.
6. That on 07.11.2022 notice for enablement was also issued in penalty appeal.
7. That the Id. CIT(A) vide order dated 30.11.2022 decided the penalty appeal before the quantum appeal.”

8.1 Further, the Id. AR for the assessee has strongly supported his arguments with this Hon’ble Bench order in case of Shri Dharamraj Singh vs. ITO in ITA No. 438/JPR/2022 dated 20.02.2023 wherein held as under:-

“7.1 The Bench also noted from the entire episode that the assessee is deprived off to get the justice from the judicial authorities below because of technical latches as quantum appeal of the assessee has direct bearing on the levy of penalty and the same is pending before Id. CIT(A) and the assessee merely on technical ground deprived off from the justice which should not be done. Hence, the Bench in the interest of equity and justice restores the appeal of the assessee to the file of the Id. CIT(A) for afresh adjudication taking into consideration the fact that the quantum appeal of the assessee is also pending before Id. CIT(A). The assessee is also directed not take adjournment on frivolous ground and cooperate the Id. CIT(A) for adjudication of the appeals filed by the assessee.”

Since the issue involved in the appeal of the assessee for the assessment year 2011-12 is similar to the appeal in the case of Shri Dharamraj Singh vs. ITO (supra) therefore, the decision taken by us in the case of Shri Dharamraj Singh vs. ITO (supra) shall apply mutatis mutandis, Thus, the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open Court on 20/03/2023.

Sd/-

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur  
दिनांक / Dated:- 20/03/2023.

**\*Santosh**

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

1. अपीलार्थी / The Appellant- Sardar Singh Rathore, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(5), Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 47/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar