

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 210/JP/2022  
निर्धारण वर्ष/Assessment Year : 2008-09.

Praveen Kumar Meenawat, Village : Brijrajpora, Tehsil: Chaksu, Jaipur.	बनाम Vs.	Income-tax Officer, Ward 7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ENSPS 5904 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)

राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 03/01/2023  
उदघोषणा की तारीख / Date of Pronouncement: 3/04/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 24.01.2018 of Id. CIT (A)-3, Jaipur for the assessment year 2008-09. There is a delay of 1526 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 dated 31<sup>st</sup> May, 2022. In the affidavit, the assessee has explained the delay as under :-

1. That I am an agriculturist.
2. That the appellate order passed by the learned CIT (A)-3, Jaipur on 21.04.2016 for assessment year 2008-09 was not served to me in any manner.

3. That the learned CIT (A) dismissed the appeal on the ground that the appellant has not filed e-appeal after giving so many opportunities.
4. I was not registered on ITBA portal and also not aware with all these procedures. I have not received any notice or any order from CIT (A).
5. After COVID 19, I contacted with my counsel then my PAN was got registered on ITBA portal and it was found that the order was passed by CIT (A) on 24.01.2018. Thereafter I obtained copy of appeal order on 27.05.2022 from portal and filed appeal before the Hon'ble Tribunal.
6. I pray your good self to condone my bonafide lapse and admit the appeal."

2. We have heard Id. Counsels of both the parties and perused the material on record. We have considered the written submissions submitted by both the parties, case laws cited in respect of condonation of delay, contents of the affidavit of the assessee and the orders of the revenue authorities. On going through the impugned order, We note that the Id. CIT (A) has dismissed the appeal of the assessee by observing in para 2 and 3 of his order as under :-

" 2. The hearings in this case was initially fixed for 03.10.2017 but on appointed date neither appellant attended nor filed any adjournment letter. The notice again issued fixing for hearing on 20.11.2017 but on appointed date neither appellant attended nor filed any adjournment letter. The notice again issued fixing for hearing on 04.12.2017 but on appointed date neither appellant attended nor filed any adjournment letter. The notice again issued fixing for hearing on 05.01.2018 but on appointed date neither appellant attended nor filed any adjournment letter. The notice again issued fixing for hearing on 23.01.2018 issuing a letter as under :-

*" On verification of record it is find that you have not filed appeal electronically. The I.T. Rule 45(1) amended from 01.03.2016 for filing appeal electronically. Therefore you are*

*requested to file an e-appeal, otherwise your appeal filed manual will be treated as unrest."*

The notice was affixed by the Assessing Officer, which was duly served on the appellant.

3. On the appointed date neither the appellant attended nor filed any adjournment letter. The appellant failed to file the e-appeal after giving so many opportunities. Therefore, the manual appeal filed by the appellant is treated as unrest."

Thus it is evident that the Id. CIT (A) has dismissed the appeal of the assessee for want of prosecution and not filing e-appeal after giving so many opportunities to the assessee. Therefore, in the facts and circumstances of the case and in the interest of natural justice, we are of the considered view that though the assessee is guilty of negligence in not appearing before the Id. CIT (A) in spite of several notices of hearing 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, and also considering the contents of the affidavits of the assessee, we condone the delay of 1526 days in filing the present appeal subject to cost of Rs. 10,000/- 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. Under the facts and circumstances of the case the learned CIT (A) erred in passing the ex-parte order without giving the opportunity to the assessee of being heard.
2. Under the facts and circumstances of the case the learned CIT (A) erred in confirming the addition of Rs. 1,33,05,494/- by adopting the sales consideration of Rs. 1,53,18,600/- as against Rs. 20,13,106/-.

3. Under the facts and circumstances of the case the learned CIT (A) erred in dismissing the appeal of the assessee on technical ground that the assessee has not filed the e-appeal as per IT Rule 45(1) w.e.f. 01.03.2016 whereas the assessee's PAN is not registered on IT portal.
4. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

4. At the outset, we note that the order passed by 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 Id. CIT (A) 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 3/04/2023.

Sd/-

( राठौड़ कमलेश जयंतभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 3/04/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Praveen Kumar Meenawat, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(2), 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. 210/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar