

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 33/JP/2023  
निर्धारण वर्ष/Assessment Years : 2012-13

Swastic Oil Industries F5-F8, 1 Industrial Area Newai, Tonk	बनाम Vs.	ACIT Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJFS 8180 J		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya (Adv.)  
राजस्व की ओर से / Revenue by : Sh. A. S. Nehara (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 20/04/2023  
उदघोषणा की तारीख / Date of Pronouncement : 25/04/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 31/12/2022 [here in after (NFAC)] for assessment year 2012-13, which in turn arise from the order of the ACIT, Circle-07, Jaipur dated 20.03.2020 passed under 271(1)(c) of the Income Tax Act, [ here in after referred to as Act ].

2. The assessee has marched this appeal on the following

grounds:-

“1. The impugned penalty order u/s 271(1)(c) dated 20.03.2020 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. The Id. CIT(A) erred in law as well as on the facts of the case in dismissing the appeal holding that the same was barred by limitation u/s 249(2) of the Act without appreciating the facts and the judicial guideline available on this subject. Hence the impugned order of the Id. CIT(A) may be quashed and the appeal may be held as maintainable before the First Appellate Authority.

3. The Id. CIT(A) erred in law as well as on the facts of the case in not providing any opportunity at all of being heard even if, he was of the view that appeal was delayed in filing u/s 249(2) of the Act by issuing a SCN and thus, has violated the provisions of law and natural justice. Hence, the order of CIT(A) deserves to be quashed and the appeal may kindly be declared as maintainable.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. The fact as culled out from the records is that the assessee firm filed its return of income on 26.09.2012 declaring total income of Rs. 54,63,390/-. The case was selected for compulsory scrutiny and notice u/s 143(2) was issued on 12.08.2013 by ITO, Tonk, which was served upon the assessee on 16/08/2013. The case was transferred to the DCIT, Circle-7, Jaipur vide order dated 31.10.2014 from ITO, Tonk. On change of office of incumbent, fresh notices u/s 143(2) and 142(1) were issued to the assessee on 25.11.2014.

4. The Id. AR of the assessee submitted that all the grounds are interconnected and related levy of penalty u/s 271(1)(c) I.T. Act. The Id. CIT(A) has dismissed the appeal only on the delay of appeal filed by the assessee. Apropos to these appeals, the relevant finding of the Id. CIT(A) is as under:-

“3.1 I have carefully gone through the Grounds of Appeal taken by the appellant and penalty order passed by AO and contents of the Form No. 35 submitted by the appellant. The observations made by the undersigned are as below:-

3.2 The appellant has filed the appeal on 02.06.2020 against the order received on 20.03.2020, which is belated as per Section 249(2) of the I.T.Act, 1961. Moreover, the appellant in para no. 14 of Form 35 has answered ‘No’ in response to the query that ‘whether there is delay in filing appeal? In this way the appellant has misrepresented the facts in respect of the delay in filing of first appeal, hence the appeal filed by the appellant is barred by limitation. 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.

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

5. As the assessee has not found any favour from the appeal so filed before the Id. CIT(A), the assessee filed an appeal before this tribunal on the various grounds as reproduced here in above. To support grounds so raised by the assessee the Id. AR of the assessee relied upon the following written submissions.

“GOA 1

1. In this connection, it is humbly submitted that due to Covid-19 there was complete lockdown in Jaipur and all the offices including the

applicant's office and the consultant's office were closed. The Appellant could not file the appeal within the stipulated limitation period of sixty days due to the prevention measures implemented by the Government.

### GOA 2 and 3

2. That keeping in view the difficulties faced by lawyers and litigants across the country in filing appeals/applications etc. due to the lockdown, the Apex court of India passed an order dated 23.03.2020 in Suo motu Writ Appeal (Civil) No. 3 of 2020 on the issue of law of limitation by observing as follows:

*“To obviate such difficulties and to ensure that the lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under general law or Special Laws whether condonable or not shall stand extended w.e.f. 15 March, 2020 till further orders to be passed by this Court in present proceedings.”*

It was further observed vide order dated 22.05.2020 by the Hon'ble Court that *“in the case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.”*

Even thereafter, the Hon'ble Court had been extending time limits again and again for all the concerned to complete their actions which were getting barred by limitation as also time limit for filing replies and making compliance for the notices were also extended. Recently the Hon'ble Court passed an order dated 10.01.2022 in Suo motu Writ Petition (C) No. 3 of 2020 on the issue of law of limitation by observing as follows: -

*“• Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, Supreme Court has directed as under:*

*• The period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*• In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.*

• *The period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

Accordingly, there is no delay as such the entire period is fully covered by the order of Apex Court. The entire period from 20<sup>th</sup> March, 2020 from the date of the receipt of the Order CIT(A) to 2<sup>nd</sup> June, 2020, (date of filing of the appeal before the CIT(A)) was covered by the Covid period and by the aforesaid judgements of the Hon'ble Apex Court. Hon'ble Supreme Court itself considered the Covid-Period to be the best reasonable cause contributing the delay and granted condonation of delay in all the case. Therefore, the CIT(A) incorrectly held that there was no reasonable cause of delay moreover it is also wrong to say appellant misrepresented the facts because in this view of the matter the appellant correctly said that there was no delay.

Hence, the above the order of the Id. CIT(A) shall be quashed and the matter be restored to its file for the decision in merits.”

6. In addition, the Id. AR of the assessee, submitted that the Id. CIT(A) has not appreciated the fact that even though there is a lock down position in the whole country, the appeal was filed on 02.06.2020 against the order of dated 20.03.2020. The Id. CIT(A) has not appreciated this fact and has dismissed the appeal of the assessee without dealing with the merits of the case.

7. Per contra, the Id. DR representing the revenue relied upon the finding of the lower authorities and submitted that even though the appeal was filed delayed there is no petition filed by the

assessee praying for condonation. This action of the assessee is not in accordance with law and thus the appeal rightly dismissed by the Id. CIT(A).

8. We have heard both the parties and perused the material available on record. The Bench has taken into consideration the order of Hon'ble Apex Court as to the condonation of delay due to outbreak of Covid-19 pandemic vide its decision dated 10-01-2022 in Misc. Application No. 21 of 2022, 665 of 2021 and Suo Motu Writ Petition© No. 3 of 2020 wherein it has been mentioned at Para III by the Hon'ble Supreme Court as under:

“III. In cases the limitation would have expired during the period between 15-03-2020 till 28-02-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01-03-2022. In the event of actual balance period of limitation remaining, with effect from 01-03-2022 is greater than 90 days, that longer period shall apply.”

We find that there is nationwide Covid 19 Pandemic situation which is beyond the control of the human being and the assessee is prevented by sufficient cause in not filing the appeal in time and the Id. CIT(A) should have considered this aspect of the case while deciding the appeal of the assessee. The Hon'ble Supreme Court

in the case of Collector, Land Acquisition vs. Mst. Katiji, 167 ITR

471 observed as under:-

*"The Legislature has conferred 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 " in section 5 is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose of the existence of the institution of courts. A justifiably liberal approach has to be adopted on principle.*

*"Every day's delay must be explained" does not imply a pedantic approach. The doctrine must be applied in a rational, common sense and pragmatic manner.*

*The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner. There is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay.*

*"When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay."*

Keeping in view the present facts and circumstances of the case and the Orders of the Hon'ble Supreme Court (supra), we are of the considered view that while dismissing the appeal of the assessee Id. CIT(A) should have taken the lenient view of the matter and should have considered the appeal filed by the assessee belated. Based on these set of facts we feel that the assessee has not received justice and appeal of the assessee has been dismissed merely on the ground that the appeal was filed

belated, but considering the decision of the apex court as referred here in above, we deem it fit the interest of justice to restore the matter to the file of Id. CIT(A) to decide on this merit of the case. Therefore, we set a side the matter to the file of Id. CIT(A) to decide the appeal of the assesses on merits. The assessee is also directed to co-operate with the Id. CIT(A) in deciding the appeal on merits and without sufficient reason, not to take further adjournments. Before parting, we may make It clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having an reflection or expression on merits of the dispute, which shall be adjudicated by the learned Commissioner of Income Tax, (Appeals) independently in accordance with the law.

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

Order pronounced in the open Court on 25/04/2023

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/04/2023

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Swastic Oil Industries, Tonk
2. प्रत्यर्थी / The Respondent- ACIT, Circle-07, 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. 33/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar