

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" 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. 117/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Natthi Singh Vill Visatipura Post Karimpur, Dholpur	बनाम Vs.	ITO Ward-4, Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CWMPS 1220 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Smt. Madhvi Joshi , Proxy
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 26/04/2023
उदघोषणा की तारीख / Date of Pronouncement: 03/05/2023

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 30/05/2022 [here in after (NFAC/CIT(A))] for assessment year 2011-12, which in turn arise from the order of the ITO, Ward- 4, Bharatpur dated 15.11.2018 passed under section 144 r.w.s. 147 of the Income Tax Act [here in after referred as "Act"]

2. In this appeal, the assessee has raised following grounds: -

“1. The appellant craves leave to add, to alter, amend or modify all or any of the grounds either before or at the time of hearing.

2. On facts and in the circumstances of the case Ld. CIT(A) has grossly erred in disposing the appeal ex-parte without affording adequate opportunity to the assessee. Appellant prays that since the hearing notices sent to the A/R's email were received directly in this SPAM folder, non-appearance before Id. CIT(A) deserves to be condoned.

3. On the facts and in the circumstances of the case Ld. CIT(A) has erred in confirming the addition of Rs. 8,21,000/- being cash deposited into the bank account of the appellant, by treating the same as from undisclosed sources. Appellant prays that the source of cash deposits being fully explainable, addition made deserves to be deleted.

4. On facts and in the circumstances Ld. CIT(A) has grossly erred in confirming the addition of Rs. 1369/- being the interest earned on saving bank account, by treating the same as undisclosed income. Appellant prays that the interest from saving account being a petite amount and also fully allowable as deduction u/s VI-A of the Act, addition so made deserves to be deleted.”

3. At the outset of the hearing the registry pointed out that the assessee has filed this appeal with a delay of 223 days. The assessee in his prayer for condonation of delay prayed that the impugned order of the Id. CIT(A) was received directly into the SPAM folder of the AR of the assessee. On being aware the assessee has filed this appeal with the reasons as supported by the affidavit of his AR also. The content of the affidavit of the Id. AR is also placed on record and the same is reproduced here in below:

IN SUPPORT OF APPLICATION FOR CONDONATION OF DELAY

1. Vishal Goyal, aged about 29 years S/o Shri Rakesh Kumar Goyal R/o Nawab Sahab Ka Bara, Bajariya Road, Dholpur-328001 do hereby solemnly affirm on oath as under:

1. That I am the authorised representative of the appellant, and was duly authorised to appear for the appellant before Ld. CIT(A) for the first appellate proceedings.

2. That appellate order u/s 250 for A.Y 2011-12 was passed by Ld.CIT(A)- NFAC on 30.05.2022 in the case of appellant against the assessment order passed u/s 144/147 of the Income Tax Act.

3. That, the impugned order of Ld. CIT(A) was received directly into my SPAM folder, and thus was not noticed by me.

4. That, it was only by chance that the said order was noticed lying in the SPAM folder on 26.01.2023

5. That, on noticing the impugned order the same was sent immediately to the present counsel for requisite action.

6. That, the delay of 200 days occurred in filing appeal was due to bona-fide reason, which was a technical glitch and beyond my control.

7. That the appellant has submitted an application seeking condonation of delay and this affidavit is being submitted in confirmation to the facts narrated in the application seeking condonation of delay.

Based on the above contention the Id. AR of the assessee prayed to take a lenient view of the matter.

3.1 Per contra, the Id. DR representing the revenue submitted that the assessment order was ex-party, the appeal before the Id. CIT(A) was also delayed and again this appeal before the tribunal is delayed. Therefore, the assessee cannot by pass the lower authority and seek justice directly from

the higher courts. Considering that aspect of the case the Id. DR submitted that the appeal of the assessee based on merits may be decided but the assessee should also pay cost on causal and cavalier approach of not attending before the lower authority.

3.2 We have heard both the parties and have considered the submission of the Id. AR as well as the arguments of the Id. DR on the issue. Based on the materials available on record the bench noted that the assessee prayed for condonation of delay of 223 days. The reasons placed on record has merit and we concur with the submission of the assessee. Thus the delay of 223 days in filing the appeal by the assessee is condoned in view of the decision of the apex court decision in case of Collector, Land Acquisition vs MST Katiji, wherein the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to subserve the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when

delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Another principle laid down by the Hon'ble Supreme Court is that 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 vested right in injustice being done because of a non-deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that the assessee has all along acted diligently in safeguarding his legal rights and availing the remedies available to him and has acted and taken action but has sufficient reasons so as to bring this appeal. Considering the facts of the case and considering the interest of justice the delay of 223 days in bringing this appeal is condoned and the appeal is hereby admitted for adjudication on merits.

4. Succinctly, the fact as culled out from the records is that on the basis of the information available in NMS data, it is noticed that no return of income for A.Y 2011-12 was filed by the assessee. Accordingly, notice u/s

148 of the I.T. Act, 1961 was issued on 28.03.2018 after getting prior approval of the Pr. CIT, Alwar on the ground that the assessee had deposited aggregating of Rs. 5,71,000/- in cash BOB Bank and time deposit of Rs. 2,50,000/- besides, the assessee had an income from interest of Rs. 1,369/- during the F.Y 2010-11. Despite notices issued u/s. 142(1) neither the assessee nor his authorized representative attended nor any reply in compliance to the notices so issued and therefore, the Id. AO passed an order ex-party determining the income of the assessee at Rs. 8,22,369/- [cash deposit of Rs. 5,71,000/- plus investment in time deposit of Rs. 2,50,000/- plus interest of Rs. 1,369/-] considering it as undisclosed income.

5. Being aggrieved from the order of the assessment the assessee carried the matter in appeal before the Id. CIT(A). The appeal of the assessee was delayed by 43 days which was condoned and the appeal of the assessee was decided on merits by the Id. CIT(A). The relevant finding of the Id. CIT(A) is as under:

“5.1 Now coming over to the merits of the addition. The appellant has not made any written submission only provided copy of the assessment order, grounds of appeal and statement of facts in Form No. 35. The matter has been considered.

6. Ground Nos. 1 & 4:- These grounds of appeal are general in nature.

7. Ground No. 2:- By this ground appellant is contesting the addition of Rs. 8,22,369/- as income from undisclosed sources.

7.1 The matter has been examined. As per assessment order, AO was in possession of information that the assessee had deposited cash to the tune of Rs. 5,71,000/- in Bank of Baroda and time deposit of Rs. 2,50,000/- and also earned interest of Rs. 1,369/- during financial year 2010-11. The assessee has not filed any return of income and the AO received information through NMS Data. The case of the assessee was reopened u/s 147 of the Act and notice u/s 148 was issued. Notices u/s 148 of the Act and subsequent notices u/s 142(1) remained uncomplied with. Finally, in absence of any response from assessee, the AO made addition of Rs. 8,22,369/- (Rs. 5,71,000/- + Rs. 2,50,000/- + Rs. 1,369/-) treating the same as income from undisclosed sources and made addition under the head 'Income from Other Sources.

7.2 During the appellate proceedings, the appellant was provided many opportunities as enumerated above. The appellant, for the reasons best known to him has remained non-compliant. No material facts have been brought on record to rebut the finding of the AO. There remains no doubt that statute has cast upon the appellant duty to explain the nature and source of cash deposits and others for the assessment year under consideration but in the instant case appellant has failed to discharge the above onus.

7.3 Considering the above factual matrix of the case I am of the considered view despite being given ample opportunities during assessment and appellate proceedings, failed to offer any, explanation about the nature and source of the cash deposit and others amounting to Rs. 8,22,369/- in bank account. Accordingly, the addition of Rs. 8,22,369/- is confirmed. Hence, this ground of appeal taken by the appellant is dismissed.”

6. The bench noted from the submission of the assessee the notice issued for hearing before the Id. CIT(A) were went in the SPAM folder of the Id. AR of the assessee. To that effect the Id. AR of the assessee also filed an affidavit on oath confirming the fact stated by the assessee. Thus he has not received justice from the lower authority.

7. Per contra, the Id. DR is heard who has relied on the findings of the lower authorities and submitted that the assessee is playing hid and seek and is not appearing before the lower authority.

8. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessment proceeding were not attended by the Id. AR of the assessee and the appeal of the assessee was presented by the same AR of the assessee for which notices were sent in the SPAM folder of the Id. AR of the assessee's email account and therefore, the assessee did not get a fair chance to represent the merits of his case before the Id. CIT(A). Thus, it is evident that the assessee is represented / assisted by an expert in the field and therefore, the assessee may have acted upon the advise of that expert in the field and was dependent on the advise of his counsel. Not being an expert he had engaged a professional who was supposed to take care of the statutory requirements. The delay if any was caused due to the inabilities being faced by his tax consultant. The appellant was not going to gain any benefit because of the delayed filing and his conduct was not contumacious. The bench noted that the appellant was serious and interested in prosecuting the appeal in as much as he had already engaged tax consultant and also

made the payment of the filling of fees of appeal before the first appellate authority. We also find that while filling appeal before the Id. CIT(A) the Id. AR of the assessee also filed a condonation petition before the Id. CIT(A) but the Id. CIT(A) has summarily dismissed the appeal. The Id. AR of the assessee appearing in this appeal has relied upon the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. It is settled principles as laid down by the apex court as well as other courts on the facts of the present case, we find that the assessee has explained sufficient cause of delay by filling a detailed affidavit and also reasons for not appearing before the Id. CIT(A). Therefore, in the facts and circumstances of the case, we remand back the matter to the record of the Id. CIT(A) for deciding the appeal afresh on merits after giving an opportunity of being heard to the assessee. 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 purpose.

Order pronounced in the open court on 03/05/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/05/2023

*Ganesh Kumar

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

1. The Appellant- Natthi Singh, Dholpur
2. प्रत्यर्धी / The Respondent- ITO, Ward-04, Bharatpur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 117/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar