

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, 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. 195/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Kalyan Sahai Gurjar S/o Surja Ram Gurjar Bhojera, Virat Nagar, Jaipur	बनाम Vs.	CIT(A) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ALMPG 1989 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Prajapat (C.A.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 16/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 23/05/2023

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 31/01/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2011-12 which in turn arise from the order dated 12.12.2018 passed under section 147 r.w.s. 144 of the Income Tax Act, by ITO, Ward-5(3), Jaipur.

2. At the outset of the hearing of the appeal it is noted that the appeal of the assessee is filed delayed by 2 days. The Id. AR of

the assessee relied upon the petition for condonation of delay as reproduced here in below:

“Subject-Regarding defective in Appeal to ITAT, Jaipur Benches.

Respected Sir,

I would like to bring your kind notice that we have filed the appeal to ITAT vide Appeal No. ITA 195/JPR/2023. Later on, dated 11-04-2023 we received an email reading defect in the appeal. There were two defects in the appeal according to the email received namely -

1. Appeal is time-barred by 2 days
2. Respondent's Personal Information column is wrongly filled and/or incomplete.

Appeal is time-barred by 2 days -

A. Delay in Delivering of Appeal Document

We have filled the appeal on dated 30-03-2023 at E-Filling Portal. We have post the Physical Documents of the Appeal on Dated 30-03-2022. The Post was derived on dated 03-04-2023 as per tracking record of the post. Last date of submitting physical documents was 01-04-2023. We have Post the physical documents on dated 30-03- 2022. Delay in delivering the physical document was on the part of service Provider. So please admit the Appeal and condone the delay in filling of appeal.

B. Technical Issue at Portal –

I faced technical glitch while filling the appeal. While filling the appeal one time password was not delivered or delay in delivering was occurred. So, we were late on filling the appeal. Further when after login we were not able to see drafted or saved Form-36.

Considering the above reason please condone the delay of filling of appeal. We have filled appeal electronically on dated 30-03-2023. There was delay in delivering of physical document at your office. If appeal not admit, it will be prejudice to me.

Respondent's Personal Information column is wrongly filled and/or incomplete.

Name and Designation of the Respondent	Savita Bundas CIT (Appeals)-Jaipur-2
PAN	Not Available
TAN	Not Available
Complete Address for sending notice	NCR Building, Bhagwan Dass Road, C-Scheme, Ashok Nagar, Statue Circle, Jaipur, Rajasthan 302005
State	Rajasthan

Pin code	302005
Phone No	9969233940
Email Address	jaipur.cit2.appeal.unit@incometax.gov.in. jaipur.cit1.appeal.unit@incometax.gov.in jaipur.cit3.appeal.unit@incometax.gov.in

In the order of CIT(Appeal), address of the authority who passed the order is not mentioned. At the filling of appeal, we have left blank address, Phone No and Email Address of the respondent.

The above details have been taken from the document issued by CBDT. We have attached the relevant page of the document. These details are nowhere mentioned at the CIT Appeal Order passed.

So, looking to the facts above, we request you to please rectify the above defect in the ITAT Appeal.”

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

2.1 Per contra, the Id. DR representing the revenue did not raise any objections to the contentions raised by the assessee and left the decision to the bench.

2.2 We have heard both the parties and have considered the content of the application for condonation of delay 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 2 days. The reasons placed on record have merit and we concur with the submission of the assessee. Thus the

delay of 2 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 sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. 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 their 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 2 days in bringing this appeal is condoned and the appeal is hereby admitted for adjudication on merits.

3. Before moving towards the facts of the case we would like to mention that the assessee has marched this appeal on the following grounds:-

“1. Source of cash deposit was the proceeds of selling buffalos and calf thereof, money accumulated out of household expenses by my wife, saving from my salary income and agriculture income. That time I was also engaged in the growing and selling vegetables food grains. Buffalos was rearing by us for the requirement of my family. Hence it does not constitute business income. Selling of buffalos does not attract capital gain due to personal use for my family. Hence Rs. 4,50,000/- is not income chargeable to tax. Assessing Officer is not justified by addition of income of Rs. 4,50,000/-.

2. I received Gross Salary in the previous year 2010-11 of Rs. 2,46,110/-. My taxable income from salary was Rs. 1,57,506/- after giving effect of HRA Exemption Rs. 15,292/- and deduction under section 80C Rs. 73,312/-. TDS was already deducted 2,439/- on my taxable income. Hence imposing tax and interest under Section 234A/B/C is not correct.

3. I have total income Rs. 1,57,506/- form salary only. I did not carry and business in the previous year 2011-12. So income consider from Non Speculative business is not correct. I, appellant pray that I may amend, alter, add or delete all or any of the above grounds of appeal.”

4. The fact as culled out from the records is that as per ITS detail available with the Department, it was found that the assessee had deposited cash of Rs. 4,50,000/- in his saving bank a/c maintained with Jaipur Thar Gramin Bank, Virat Nagar, Jaipur. The assessee has also received the income under the head salary. The assessee has not filed his return of income for the year under

consideration. The taxability of the above transactions could not be verified/ascertained. Thus, these transactions remained unverified. Therefore, after recording the valid reasons in writing to the satisfaction and belief of the Assessing Officer that the assessee's income to the extent of Rs. 4,69,949/- chargeable to tax has escaped assessment and after obtaining approval u/s 151(1) from the Pr. Commissioner of Income Tax-02, Jaipur, the case of the assessee was re-opened by issue of notice u/s 148 on 27.03.2018. Notice u/s 148 was issued on 27.03.2018 and served to the assessee by speed post. Notice u/s 142(1) was issued on 27.08.2018 & 12.09.2018. Further, notice u/s 142(1) was issued on 14.07.2018 and served by speed post, requiring to furnish return of income in compliance to notice issued on 27.03.2018 u/s 148 of the I.T. Act. No return of income has been filed in response to notice issued u/s 148 and no information has been furnished in response to notice u/s 142(1) of the I.T. Act. Since, no compliance was made by the assessee, a final show cause notice u/s. 144 dated 20.11.2018 was issued to the assessee and served to the assessee by mail ID as well as speed post. No reply of the show cause letter filed by the assessee. As in the year under consideration the assessee has deposited cash of an amount of

Rs. 4,50,000/- in his bank account maintained with Jaipur Thar Gramin Bank and salary income of Rs. 19,949/- was added by the AO.

5. Feeling dissatisfied with the order of the assessment the assessee has preferred an appeal before the Id. CIT(A). A propose to the grounds so raised the finding of the Id. CIT(A) is as under :

“3.1 Ground no. 1: This ground is related to the cash deposits of Rs.4,50,000/- in the bank accounts of the appellant. It was held in the Assessment Order under consideration that the assessee has deposited cash amount of Rs. 4,50,000/- in his bank account maintained with Jaipur Thar Gramin Bank. It is further held by the AO that despite various opportunities of being heard provided to the appellant during the assessment proceedings, he failed to provide any response, consequent to which, the addition of the said amount of Rs.4,50,000/- was made to the income of the appellant.

3.2 In its ground of appeal, the appellant has submitted that the source of the cash deposits were sale proceeds from the sale of buffalos and calf, money accumulated out of household expenses, and savings from salary and agriculture income. It has also submitted that selling of buffalos does not attract capital gain due to personal use for his family. However, no documentary evidence to corroborate its claim has been provided by the appellant.

3.3 Notices u/s 250 of the Act were issued to the appellant during the appellate proceedings to provide it opportunities to furnish relevant documentary evidence in support of its grounds of appeal. However, no response has been furnished by the appellant. The claim of the appellant regarding the source of the cash deposits could not be verified at the appellate stage.

4.1 Ground no. 2: It was held in the Assessment Order under consideration that the assessee had received a salary income of Rs.19,949/-. The appellant in its grounds of appeal has submitted that his

taxable salary income was Rs.1,57,506/- after deduction u/s 80C of the Act and HRA exemption. It has also stated that a TDS of Rs. 2,439/- had also been deducted on the said salary income.

4.2 Notices u/s 250 of the Act were issued to the appellant during the appellate proceedings to provide it opportunities to furnish relevant documentary evidence in support of its grounds of appeal. However, no response has been furnished by the appellant. The appellant has failed to provide any documentary evidence in support of the said salary income, in absence of which, the claim of the appellant could not be verified at the appellate stage.

5.1 Hon'ble Supreme Court in the case of B.N. Bhattacharjee & other 118 ITR 461 [SC] held that the appeal does not mean merely filling of the appeal but effectively pursuing the same.

5.2 The aforesaid circumstances show that the appellant is not interested in pursuing its appeal. The maxim 'vigilantibus non-dormientibus jura subvenunt' i.e.. the law assists those who are vigilant and not those who sleep over their rights, is applicable in this case..

5.3 It is settled law that where the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee as held in Kale Khan Mohammad Hanif v CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC). This onus on the taxpayer has neither been discharged at the assessment stage nor at the appellate stage.

5.4 Therefore, in view of the above, the grounds no. 1 & 2 of appellant are dismissed.

6. Ground no. 3 raised by the appellant is related to total addition of Rs.4,69,950/- shown as Income from non-speculative business in the Income Tax computation form. However, this has already been discussed in the above two grounds, therefore, this ground does not require and specific adjudication.

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

6. As the assessee not satisfied with the finding of the Id. CIT(A), has preferred this second appeal before the tribunal on the grounds as reiterated here in above. In support of the appeal the Id. AR of the assessee fairly admitted that though the salary income of the assessee is much more then what is assessed he has contended this fact were placed before the Id. CIT(A) but there is no clear finding of the Id. CIT(A) as to chargeability of salary income and as regards the cash deposit also assessee was not given fair chance to represent the case and finding is also not clear even though there is submission made by the assessee. Therefore, he prayed that he may be given a chance to represent his case before the Id. AO.

7. Per contra, the Id. DR objected that the contention of the assessee cannot be entertained at this stage as the assessee did not appear and file the details before the Id. CIT(A) even the assessee has not come with the clean hand that her income from the salary is not taxed correctly. But considering the aspect that that there is no clear finding of Id. CIT(A) about the chargeability of salary income and cash deposit the matter may be restore to the file of the assessing officer.

8. We have heard the rival contentions and perused the material placed on record. It is not in dispute that the assessee is a teacher having regular income under the head salary. The assessee also contended before lower authorities that the proceed deposited into bank account on the account of sale of buffalos has not been considered as the appeal of the assessee decided without giving proper opportunity to the assessee. We have also perused the record and find that while assessing the income of the assessee, the income determined under head salary is also not correct. Based these observations, the Bench is of the view that the contentions raised by the assessee for deposit of cash into bank account be verified by the AO and at the same time the correct income to be taxed under the head salary after considering deductions/exemptions claimed by the assessee and finally determined the taxable income of the assessee after giving proper opportunity of being heard to the assessee and at the same time assessee is also directed to comply the notices and provide the details as may be called for. Considering these facts and circumstances of the case, we set aside the issue to the file of the Assessing Officer to be decided on the merits of the case.

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

Order pronounced in the open Court on 23/05/2023

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:- 23/05/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Kalyan Sahai Gurjar, Jaipur
2. प्रत्यर्थी / The Respondent- CIT(A), 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. 195/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar