

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. 316/JPR/2022
निर्धारणवर्ष/Assessment Year :2012-13

Sarabuild Homes Private Limited Matra Chaya, Near State Bank of India, Arya Nagar, Alwar	बनाम Vs.	Income Tax officer Ward-1(1), Alwar.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAQCS 3612 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Saurav Harsh (Adv.)
राजस्व की ओरसे/ Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/Date of Hearing :21/06/2023
उदघोषणा की तारीख/Date of Pronouncement: 27/06/2023

आदेश/ORDER

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

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/Ld.CIT(A)"] dated 21.06.2022 for the assessment year 2013-14, which in turn arises from the order passed by the ITO, Ward-1(1), Alwar passed under Section 143(3)r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 04.12.2019.

2. The grounds of appeal raised by the assessee in its appeal are as under:-

- “ 1. That on the law and in the facts and in the circumstances of the case, the ld. Lower Authorities grossly erred in dismissing the appeal on delay in filing of appeal and not considering the submission on merits filed during the appellate proceeding.*
- 2. That the ld. Lower Authorities grossly erred in considering the submission filed as final and complete submission when it was filed as "Partial Submission"*
- 3. That the Id. Lower Authorities grossly erred in not allowing the application filed to raise additional ground of appeal filed during the appellate proceeding.*
- 4. That the Id. Lower Authorities grossly erred in issuing and confirming the notice issued U/s 148 and passing assessment proceeding u/s 143(3) r.w.s.147 against non-existing company and the proceedings initiated in consequence thereto are void-ab-initio, a nullity and is bad in law*
- 5. That the Id. Lower Authorities grossly erred in confirming the addition of Rs. 3601060 made u/s 68 of the Act.*
- 6. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”*

3. At the outset of the hearing, the Bench observed that there is delay of 142 days in filing the appeal by the assessee before the ld. CIT(A) for which the ld. AR of the assessee filed a condonation application dated 20.06.2023 praying therein as under:-

“The humble assessee appellant applicant respectfully prays for the condonation of delay in the filling of Appeal before the Commissioner of Income tax (Appeals) for the following reason:

1. That the Id. Assessing officer passed his order on 04.12.2019 which was served upon the assessee appellant applicant 06.12.2019 and due date of filing of appeal as provided under the act is 05.01.2020.
2. That erstwhile Director of the assessee company Shri Sandeep Sharma was earlier residing at Alwar, Rajasthan and subsequently migrated to Gurugram, Haryana.

3. That erstwhile director Shri Sandeep Sharma during the limitation period of filing of appeal is travelling out of the city for his business purpose and since he is currently residing at Gurugram the passing of order is not in the knowledge of the assessee.

4. That during the end of the month of March the erstwhile director Shri Sandeep Sharma returned to the Alwar and there he finds the order dated 04.12.2019 passed u/s 147 of the Act.

5. That subsequently due to the rise in the COVID-19 Pandemic in the entire country and for precautionary measure the Government had declare the strict Lock down and assessee could not meet his counsel for further remedy.

6. That as soon as the restriction of lock down release by the Government, assessee without any further delay meet his counsel for further remedy and appeal was filed on 26.05.2020 with the delay of 142 days.

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and due to unavoidable circumstances.”

That in these circumstances we request your honour's to kindly condone the delay and oblige. Affidavit in support of Application is also enclosed.

4. It is noted that the ld. CIT(A) had not condoned the delay and dismissed the appeal of the assessee by observing as under:-

“ 2.1 From the perusal of record, it is seen that the appellant has filed appeal on 26.05.2020 whereas the order u/s 143(3) r.w.s. 147 is dated 04.12.2019. In Form No.35, for filing of appeal before CIT(A), the appellant has itself mentioned the date of service of the order u/s 143(3) r.w.s. 147 as 06.12.2019. The appeal should have been filed within 30 days i.e. 05.01.2020 from service of Order as per Section 249(2) of the Act. Therefore, prima facie the appeal is late by 142 days. In column no. 14 of Form No. 35, the appellant has accepted that there is delay in filing appeal, however, in Column No. 15 the appellant has mentioned that "the reason for delay shall be filed separately. No document is attached alongwith Form No. 35 requesting for condonation of delay. Even notices u/s 250 dated 21.03.2022, 02.06.2022 & 13.06.2022 specifically asking the appellant for submitting the reason for delay in filing appeal and request

letter for condonation has not been complied by the appellant. The query raised vide notice dated 13.06.2022 is as follows:-

"From the perusal of your appeal memo, it is seen that the appeal has been filed on 26.05.2020 whereas the assessment order was served on 06.12.2019. Thus, there is obvious delay in filing the appeal for AY 2012-13. However, in column No. 14 you have mentioned that the reason for delay shall be filed separately. In view of the above, you are hereby requested to submit the reasons along with condonation petition for late filing of the appeal by 20.06.2022 so that the issue under consideration can be examined on merits.

2.2 Considering all the facts on record, it is apparent that the appellant has failed to file appeal within the stipulated time limit prescribed under the Act. There is an nordinate delay of 142 days and no reason for delay in filing the appeal submitted in Form No. 35 and even after giving opportunities, the appellant did not bother to respond to the request vide notices u/s 250 of the Act. Under the given facts and circumstances, since the appellant has failed to advance any reasonable cause for condonation of delay, the appeal is devoid of any merit to warrant its admission. Therefore, the appeal is treated as dismissed as not admitted."

5. Aggrieved by the order of the Id. CIT(A) who did not condone the delay and dismissed the appeal, the assessee filed the present appeal before us with the prayer to grant condonation of delay by filing an affidavit mentioning therein reason for such delay made by the assessee.

" I, Sandeep Sharma son of Shri Babu Lal Sharma aged about 46 Years R/o Flat No.1401 B, Bayerly park 2, MG Road Metro station do hereby affirm as under:-

1. That I was the erstwhile director in the above-named appellant.
2. That I was earlier residing at Alwar, Rajasthan and subsequentlymigrated to Gurugram, Haryana.
3. That during the limitation period of filing of appeal I was travelling out of city for my business purpose and since I currently residing at Gurugram the passing of order not came to my knowledge.

4. That when I went to the Alwar in the end of the month of March there I finds the order dated 04.12.2019 passed u/s 147 of the Act.

5. That subsequently due to the rise in the COVID-19 Pandemic in the entire country and for precautionary measure the State Government had declare the strict Lock down in the state and I could not meet his counsel for further remedy.

6. That as soon as the restriction of lock down release by the Government, without any further delay I filed an appeal through my counsel.

7. That I shall remain vigilant in future with reference to proceeding of this appeal.”

6. On the other hand, the ld. DR supported the order of ld. CIT(A).

7. We have heard both the parties and perused the materials 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.

“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.”

Thus 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. 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), the application of the assessee for condonation of delay in filing the appeal is allowed and restore the matter to the file of the ld. CIT(A) decide it afresh by providing reasonable opportunity of being heard to the assessee. The Ld. DR does not have any objection but prays to direct the assessee to represent his case before Ld. CIT(A) and do not seek unnecessary adjournments. In view of such pleadings by parties and also having regard to the principle of natural

justice and fair play, we deem it fit and appropriate to remand this matter back to the file of Ld. CIT(A) for a proper adjudication after giving opportunity of hearing to the assessee, uninfluenced by his earlier decision. We order accordingly. The assessee is also directed to ensure participation in the hearings fixed by Ld. CIT(A) and do not seek unnecessary adjournments. Thus, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 27/06/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 27/06/2023

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sarabuild Homes Private Limited, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward1(1), Alwar.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 316/JPR/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar