

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 160/Jodh/2019
(ASSESSMENT YEAR- 2009-10)**

Seema Pandi Dhundhai, Mount Abu-307501.	Vs	Income Tax Officer, Ward, Mount Abu.
(Appellant)		(Respondent)
PAN NO. AZAPP 5719 N		

(Virtual hearing)

Assessee By	Shri T.P. Gupta-Adv.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	14/07/2023
Date of Pronouncement	17 /07/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax-1, Jodhpur [herein after “Ld.CIT(A)”] dated 29.09.2017 for the assessment year 2009-10.

2. At the outset of hearing, the Bench observed that there is delay of 208 days in filing of the appeal by the assessee for which the ld. AR of the

assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

“ 1. The applicant was served appellate order dated 29.9.2017 of the CIT (A)-1, Jodhpur, for A.Y. 2009-10 on 7.8.2018. There were mistakes apparent from the records in the appellate order, therefore, as per advice of his counsel, the applicant filed application u/s 154 before the CIT(A) to rectify the order. The CIT(A) has rejected the application u/s 154 vide order dated 29.3.2019 and served the order on the assessee on 19.4.2019. After rejection of his application u/s 154, the assessee has immediately filed this appeal before the Hon'ble Tribunal..

2. If the CIT(A) had accepted his application u/s 154, there would have been no need to file the appeal. Therefore, to avoid, duplicity, the assessee waited for the outcome of his application filed u/s 154.

3. The assessee was under bonafide belief that his application u/s 154 will be accepted and there will be no need to file appeal before the Tribunal. 4. Therefore, the delay in filing the appeal is bonafide. The assessee did not take any benefit in delaying the filing of the appeal.

5. In this case non-interference of the Hon'ble tribunal would cause grave injustice to the assessee. Further, the condonation of delay is not going to prejudicially affect the rights and claims of the opposite party.

It is therefore, humbly prayed that the matter may kindly be considered sympathetically and delay may be condoned in filing appeal.”

3. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

4 We have heard the contention of both the parties and perused the materials available on record. The prayer as mentioned above by the assessee

for condonation of delay of 208 days has merit for the reason that there was complete lockdown in Jaipur on account of COVID-19 and all the offices including the office of assessee's consultant were closed and we concur with the submission of the assessee. Thus the delay of 208 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. The assessee has raised the following grounds of appeal:-

"i). That the CIT(A) dismissed the appeal in limine due to non appearance of the assessee without deciding the appeal on merits. As per section 250(6) of the Income-tax Act "The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision." Thus under the provisions of the Act, the CIT (A) cannot dismiss the appeal in limine and without deciding the appeal on merits.

ii). That the ITAT Kolkata in decision dated 5.5.2016, [2016] 75 taxmann.com 118 in Partha Mitra VS ITO has relied on the Supreme Court decision in the case of CIT v. 5. Chenniappa Mudaliar [1969] 74 ITR 41 which has held that "dismissal of an appeal can only be done by giving a decision on merits on question of facts and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear: Admittedly, the cases relied upon by the CIT(A) of Multiplan India (P) Ltd and M.P. High Court decision in Estate of late Tukoji Rao Holker Vs CWT 223 ITR 480 and ITAT

Jodhpur order dated 8.10.2012 in Suresh Kabra do not hold the field as the decisions were without considering the binding decision of the Supreme Court. Further, the High Court of Gauhati in the case of Rajendra Prasad Borah v. ITAT [2008] 302 ITR 243/174 Taxman 568 has categorically held Rule 24 of the ITAT Rules 1963 as it stands, per se does not empower the Tribunal to dismiss an appeal for default in the absence of the appellant.

iii). That considering the provisions of section 250(6) as upheld by the Supreme Court decision in CIT v. S. Chenniappa Mudaliar [1969] 74 ITR 41 the order of the CIT(A) is illegal and not tenable. It is therefore, requested to kindly set aside the order of the CIT(A).

6. Brief facts of the case are that the assessee is an individual derives income from salary and commission income. She filed the Return of Income for AY. 2009-10 on 18-09-2009 admitting the total income at Rs. 1,12,850/- The case was selected for scrutiny under CASS. During the course of assessment proceedings, the AO issued various statutory notices requiring her to explain the source of cash/cheque deposits appearing in her saving bank account. The details of notices issued by the AO are given in chart below:-

S. No.	Section under which notice issued	Date of issuance	Remarks
1.	142(1)/143(2)	18-08-2010	None attended
2.	142(1)/143(2)	20-08-2010	None attended

3.	142(1)/143(2)	07-01-2011	None attended
4.	142(1)/143(2)	31-01-2011	None attended
5.	142(1)/143(2)	21-04-2011	None attended
6.	142(1)/143(2)	23-05-2011	None attended
7.	142(1)/143(2)	11-07-2011	None attended
8.	142(1)/143(2)	01-08-2011	None attended
9.	142(1)/143(2)	01-08-2011	None attended
10.	144	01-09-2011	Adjournment sought, case fixed for 10-10-2011
11.	Case fixed for hearing on 10-10-2011	Non-compliance

From the above chart, it is clear that the AO had accorded as many as 11 opportunities to the assessee to explain cash deposits appearing in her saving bank account but the assessee failed to comply with all these notices. Under these circumstance, the AO was left with no option but to complete the assessment ex-parte within the meaning of sec. 144 of the Act. In the assessment order, the AO noted that the assessee derived income from salary and also from insurance commission. The AO further noted that the assessee had filed two different returns for her income showing salary income and commission income which according to the AO was not legally admissible. The AO further noted that the assessee had

deposited/transacted in various dates and total deposits of Rs. 24,41,882/- was appearing in her saving bank account maintained with Axis Bank, Ajmer Branch and SBI Mount Abu. The details of deposits are duly given at page no. 3 of the assessment order. The AO specifically mentioned that he allowed more than sufficient opportunities to explain the source and the nature of these bank deposits vide query letter dated 01-08-2011 and 01-09-2011 but the assessee did not even care to respond to these specific query letters issued by the AO. Thus, the AO held that the assessee had nothing to offer in her defense and she was fully in agreement with proposed addition as specified in AO's query letter dated 01-09-2011. Accordingly, the AO treated these deposits of Rs. 24,41,882/- as unexplained deposits out of undisclosed sources and added the same to the total income and assessed the assessee's total income at Rs. 27,20,923/-.

7. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) observed that 15 notices were issued requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied

with the notices issued by the ld. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the ld. CIT(A) is reproduced as under:-

“As mentioned above the appellant failed to furnish any oral or written submission in support of the grounds taken in appeal. The AO has discussed the reasons for making the addition but no explanation has been submitted by the appellant to controvert the finding of the AO. Even in the statement of facts, no separate discussion of facts has been made to dispute the action of the AO in making this addition. It seems that the present appellant is not interested in pursuing this appeal. It is clear from the above that the appellant is not desirous of pursuing the grounds of appeal though more than adequate opportunities were provided. No written submissions have been filed. Under the circumstances, I have no other alternative but to dismiss the appeal following the ratio of the decision of the Hon'ble ITAT, Delhi Bench in the case of CIT VS. Multiplan India Limited reported in 38 ITD 320 and also the decision of Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holkar Vs CWT reported in 223 ITR 480 The law assists those that are vigilant with their rights and not those that sleep there upon. In the case of Suresh Chand Karbra, the Hon'ble ITAT, Jodhpur Bench, Jodhpur vide their order dated 08.10.2012, under the facts and circumstances, dismissed the appeal after observing that the assessee was not interest to pursue the matter. Following this principle as embodied in the well know dictum “vigilantibus non dormientibus, jura subveniunt”, all the grounds raised in the appeal are dismissed.”
.”

8. As the assessee not received any favour from the appeal filed before ld. CIT(A). The present appeal filed against the said order of the ld. CIT(A) dated 29.09.2017 before this tribunal on the grounds as reiterated in para 5

above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:-

“May it please this Hon'ble Tribunal,

1. Delay in filing appeal:

There is delay in filing appeal before the Hon'ble ITAT. Against the appellate order dated 29.9.2017, served on the assessee on 7.8.2018, of the CIT(A), on the advice of her counsel, on 7.8.2018 the assessee filed application u/s 154 before the CIT(A) and waited for the outcome of the same. The CIT(A) in order dated 29.3.2019, served on the assessee on 19.4.2019, dismissed the application filed u/s 154. Thereafter, the assessee immediately filed present appeal. The assessee was pursuing application filed u/s 154 before the CIT(A), therefore, there was bonafide ground not to file appeal in time. The assessee has filed separate application for condonation of delay alongwith affidavit. It is therefore, humbly requested kindly to condone the delay of about 7 months in filing appeal.

2. The CIT (A) erred in dismissing the original appeal of the assessee in order dated 29.9.2017 served on 7.8.2018 on the ground of delay as well as on the ground of non-prosecution of the appeal.

(i). The assessee had filed application for condonation of delay before the CIT(A) on the ground of illness of her husband and bad condition faced by her family.

(ii). As the assessee could not attend the hearing before the CIT(A), the CIT(A) dismissed the appeal on the ground of delay as well as for non- prosecution.

(iii). The assessee is a primary school teacher posted in remote village in Sirohi district. She is a God fearing lady. Her husband is doing nothing and mostly remains ill from high BP and diabetes.

(iv). The assessee named Seema Gharoo is continuously filing her return of income from income from salary with the ITO Mt. Abu, in her PAN-AGGPG9100M. For AY 2009-10 she filed her ITR-1 on 31.7.2009 declaring gross salary income of Rs. 1,82,742/- and net income of Rs. 1,65,921/-.

(v). On 18.9.2009 one more return in ITR-4 was filed with the ITO Mt. Abu, in the name of Seema Pandit, with PAN- AZAPP5719N, by some unknown person, declaring business income of Rs. 1,12,850/-.

(vi). The present assessee Seema Gharoo never obtained PAN- AZAPP5719N nor filed any ITR under this PAN, including the ITR filed on 18.9.2009.

(vii). The ITO, Mt. Abu. selected the return with PAN-AZAPP5719N, under scrutiny and issued notices to the assessee, The ITO called the assessee Seema Gharoo and her husband and threatened that they will go to jail for filing two ITRS in one name. The assessee ignorant of the situation got scared and never attended the ITO office due to their ignorance and fear. The ITO completed ex-

parte assessment u/s 144 on 14.10.2011 making: addition of Rs. 1,12,850/- declared in ITR filed on 18.9.2009, Rs. 1,65,921/- declared in ITR filed on 31.7.2009 and further addition of Rs. 24,41,882/- on account of amount of Rs. 21,56,250/- deposited in Axis Bank Ajmer of Seema Pandit and Rs. 2,85,632/- deposited in SBI, Mt. Abu bank account of Seema Gharoo and raised a demand of Rs. 9,81,634/-. In SBI account amount was deposited by transfer of house loan taken from employer/Govt of Rajasthan.

(viii). The account in Axis Bank Ajmer was also not opened by the assessee Seema Gharoo. It seems that the person who obtained duplicate PAN- AZAPP5719N in the name of the assessee, opened account in Axis Bank Ajmer and made transactions in that account. As per assessment records, this account was opened only on 3.1.2009 and all the transactions were made within 3 months, between 3.1.2009 to 31.3.2009, with peak credit of Rs. 7,16,654/- on 6.3.2009.

(ix). The assessee did not find proper legal help in the matter and was scared. She filed appeal before the CIT(A) through some ITP and could not pursue the appeal. The appeal was dismissed on the ground of delay as well as for non-prosecution.

(x). The ITO started recovery proceedings. As the assessee had no proper legal advice and was under immense fear, could not defend herself. The ITO attached her salary and recovered an amount of Rs. 2,64,764/- from her monthly salary, by May, 2019.

(xi). Thereafter, the assessee engaged an Advocate for legal advice and help. Through her counsel she filed application u/s 154 before the CIT(A) and the appeal before the Hon'ble ITAT. She obtained copy of relevant documents from the ITO and explained true picture to the ITO in letter dated 4.4.2019. She also requested the ITO to obtain account opening form and documents from Axis Bank Ajmer and documents regarding obtaining duplicate PAN. She also wrote letters to the Axis Bank, Ajmer and Mt. Abu to obtain copy of account opening documents to prove that account was not opened or operated by her.

(xii). To verify the relevant facts regarding duplicate PAN, the ITO also issued summons and letters to the Headmaster of the School of assessee teacher. Copy of the applications/ letters is enclosed herewith for ready reference.

(xiii). The ITO also imposed penalty u/s 271(1)(b), 2728(1) and 271(1)(c) in this case.

3. Looking to the facts and circumstances of the case it is humbly requested that the assessment order dated 14.10.2011 passed by the ITO may kindly be set-aside for making fresh assessment after making necessary inquiry regarding true ownership of the PAN- AZAPP5719N and the Bank Account with Axis Bank. Aimer

Pass any other order in favour of the applicant as deemed fit.”

9. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) and the AO has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO in the interest of equity and justice.

10. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

11. We have heard both the parties and perused the materials available on record. The Bench observed that the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the ld. CIT(A) and ld.AO as mentioned in his order. The facts is that the assessee is a primary school teacher posted in remote village, District- Sirohi. We observed that the assessee is continuously filing her return of income from income from salary at Mount Abu, PAN No. AGGPG9100M. For AY

2009-10 she filed her ITR-1 on 31.7.2009 declaring gross salary income of Rs. 1,82,742/- and net income of Rs. 1,65,921/-. It is noticed that on 18.9.2009 one more return in ITR-4 was filed with the ITO Mt. Abu, in the name of Seema Pandit, with PAN-AZAPP5719N, by some unknown person, declaring business income of Rs. 1,12,850/-. The ld. AO has selected the assessee's case with return of income with PAN under scrutiny and several notices issued to the assessee. The assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessee completed ex-parte assessment u/s 144 of the Act on 14.10.2011 . making addition of Rs. 1,12,850/- declaring in ITR filed on 18.09.2009 Rs. 1,65,921/- declaring in ITR filed on 31.07.2009 and further addition of Rs. 24,41,882/- on account of amount of Rs. 21,56,250/- deposited in Axis Bank Ajmer of Seema Pandit and Rs. 2,85,632/- deposited in SBI, Mt. Abu bank account of Seema Gharoo and raised a demand of Rs. 9,81,634/-. In SBI account amount was deposited by transfer of house loan taken from employer/Govt of Rajasthan. Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of 15 notices it is evident in the ld. CIT(A) order in page 4 and 5

at para 6. It is observed that the ld. CIT(A) has supported her finding with the decision of ITAT, Delhi Bench in the case of CIT vs. Multiplan India Limited reported in 38 ITD 320 and also the decision of Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holder vs. CWT reported in 223 ITR 480/-. We observed that the assessment order dated 14.10.2011 passed by the Assessing Officer may set aside for making fresh assessment after making necessary requirement i.e. PAN and Bank Account. Before us, ld. AR for the assessee submitted evidence to support her claim. However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the lower authorities and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question. In this view of the matter, the appeal of the assessee is restored to the file of the ld. AO to verify the relevant facts regarding duplicate PAN, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

12. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

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

Order pronounced in the open court on 17/07/2023.

SD/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 17/07/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench