

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. 361/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2012-13

Akash Promoters Developer Private Limited 2385, Akashdeep Complex, Bapu Bazar, jaipur.	बनाम Vs.	ITO, Ward-1(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAFCA 7928 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Anoop Bhatiya (C.A.)  
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 16/08/2023  
उदघोषणा की तारीख / Date of Pronouncement: 23/08/2023

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 29.03.2023 for the assessment year 2012-13.

2.1 At the outset of hearing, the Bench observed that there is delay of 2 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 :-

“In the aforesaid context, it is humbly submitted that, the appellant has filed an appeal before your honours in the offline mode on 30.05.2023 against the order dated passed by Ld. CIT(A)- NFAC Delhi u/s 250 of the I. T. Act, 1961. Such order passed by Ld.CIT(A) was served on the appellant on 29.03.2023, thus the appeal against the said order was supposed to have been filed by the appellant by 28.05.2023, however though the appeal was instituted on time through the online mode, submission of appeal in the offline mode got delayed by 2 days, as the appeal physically has been filed on 30.05.2023 for the reasons as explained below:

1. That, the said memorandum of appeal in the physical mode was sent to the director of the appellant company for his signature, who inadvertently could not send back the same on time, as the same got dumped under other papers on his desk.
2. Thus, it is submitted that the delay in filing the appeal is solely attributable to inadvertent mistake on part of the director of appellant company and is absolutely unintentional and has occurred due to circumstances beyond the control of appellant.
3. That, the appellant always has acted bonafide and the delay is of only 2 days.
4. An affidavit signed by the director of assessee company deposing the above facts is enclosed herewith.

In the circumstances of the matter it is humbly prayed to the Hon'ble Bench to please direct the condonation of delay which is merely of 2 days and to be kind enough to direct the listing of the appeal for disposal on the merits.

Your kindness would go a long way to depart effective justice to the ignorant litigants.”

To this effect, the assessee has filed an affidavit as to the condonation of delay in filing the appeal.

2.2. 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.

2.3 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 2 days has merit for the reason that there was complete lockdown in Jaipur on account of COVIND-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 2 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.

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

*"1. Under the facts and circumstances of the case and in law the Learned CIT(A) has grossly erred in deciding the case ex-parte without providing adequate opportunity of hearing to the assessee.*

*2. Under the facts and circumstances of the case and in law learned CIT(A) has grossly erred in confirming the penalty under section 271(1)(c) of the Income Tax Act 1961 as in the assessment order passed by Learned AO u/s 143(3) and in notice issued under section 274 read with section 271(1)(c) of the Income Tax Act it was not specifically pointed out whether penalty proceedings are for concealment of income or for furnishing inaccurate*

*particulars of income. In the absence of specific charges, levy of penalty may please be treated as bad in law.*

*3. Under the facts and circumstances of the case and in law, CIT(A) has erred in confirming the provisions of section 271(1)(c) applied by Learned AO by levying penalty of Rs. 61,800/- on the assessee by treating the same as unexplained receipt.*

*4. The appellant reserves the right to add, amend, modify, or alter any ground or grounds of appeal.”*

4. Brief facts of the case are that the assessee company is engaged in the business of real Estate Developers. The return of income declaring total income at Rs. 64,030/- was e-filed on 06.02.2013, which was processed u/s 143(1) of the IT Act, 1961. The case was selected for scrutiny under CASS. Notice u/s 143(2) of the Act was issued on 19.08.2013, which was duly served upon the assessee. Further, no change of incumbent, notices 143(2) and 142(1) along with questionnaire were issued on 01.08.2014 requiring certain details/information. In the compliance of these notices, the ld. AR for the assessee attended from time to time and filed required details. An assessment order in the case of assessee mad u/s 143(3) by making addition u/s 68 of the Act of Rs. 6,83,000/- the assessee challenged the same before the ld. CIT(A) who restricted the addition to Rs.

2,00,000/-. Thereafter ld. AO levied the penalty on such balance addition of Rs. 2,00,000/- u/s 271(1(c) of the Act.

5. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) observed that notices were issued on 14.01.2021, 01.02.2023, and 10.03.2023 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:-

“4.4 The decision of the Hon’ble High Court of Mumbai in the case of M/s Chemipol v/s Union of India [Central Excise Appeal No. 62 of 2009] clearly states, that every court judicial body or authority, which has a duty to decide a matter between two parties, inherently possesses the power to dismiss the case in default. For the sake of reference, the relevant extract of the judicial pronouncement rendered by the Hon'ble High Court of Mumbai quoting decision of Hon'ble Supreme Court in case of Nandramdas Dwarkadas, AIR 1958 MP 260, is reproduced below:

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses."

4.5 The principle that every court that is to decide on a matter of dispute, inherently possesses the power to dismiss the case for default, has been upheld by the Hon'ble Supreme Court in case of Dr. P. Nalla Thampy Vs. Shankar (1984 (Supp) SCC 63 and the case of New India Assurance vs. Srinivasan (2000) 3 SCC 242. In the latter case, the Apex Court has held as under:-

"That every court or judicial body or authority, which has a duty to decide a list between two parties, inherently possesses the power to dismiss a case in default. Where a case is

called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi judicial body. In the absence of the complainant, therefore, the court will be will without its jurisdiction to dismiss the complaint for non prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non appearance of the complainant.”

4.6 The Hon'ble Bombay High Court has also laid down the proposition that where the appellant in spite of notice is persistently absent and the Tribunal on facts of the case is of the view that the appellant is not interested in prosecuting the appeal, it can in exercise its inherent power to dismiss the appeal for non prosecution. In the case of CIT VS. B. N. Bhattacharya reported at 118 ITR 461, it was held that appeal does not mean merely filing of appeal but effectively pursuing it.

4.7 The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dt.19.12.2001) in the case of Whirlpool of India Ltd. v. DCIT had dismissed appeal for non attendance at hearings, inferring that assessee was not interested in prosecuting of appeal.

4.8 In the case of Chadha Finlease Ltd. V. ACIT (ITA No.3013/ Del/2011 date of order 20.12.2011) the Hon'ble ITAT Delhi had dismissed the appeal for nonattendance at hearings.

4.9 In its decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. on 02.09.2011 (ITA No.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the assessee for his negligence. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence as it would expose falsity and non genuineness.

4.10 In view of the facts and legal position discussed above, it is presumed that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised. Hence, I have no reason to interfere in the penalty order which stands confirmed.

5. In the result, the appeal is dismissed.”

6. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) 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. IT(A) in the interest of equity and justice.

7. 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 this the order passed by the ld. CIT(A) should be sustained.

8. We have heard the rival contentions and perused material available on record. The Bench observed that the impugned order passed by the Ld. CIT(A) particularly in para-4 wherein it is recorded that notices dated 14.01.2021, 01.02.2023, and 10.03.2023 were issued but assessee has not preferred to file the submission and proceeded to decide the appeal for want of non-prosecution. The Ld. CIT(A) has failed to bring on record if alleged notices stated to have been issued to the assessee were ever served upon him nor the mode of issuance of notice has been given. However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the

ld. CIT(A) 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. CIT(A), 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. CIT(A). Thus the appeal of the assessee is allowed for statistical purposes.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. CIT(A) 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. CIT(A) 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 23/08/2023.

Sd/-  
(राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

Sd/-  
(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 23/08/2023

\*Santosh

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

1. The Appellant- Akash Promoters Developer Private Limited, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 361/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar