

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 381/JPR/2023
निर्धारण वर्ष / Assessment Years : 2010-11

Momina Sheikh 374, Kamla Nehru Nagar, Hasanpur C, Jaipur.	बनाम Vs.	ITO, Ward-3(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: KUBPS 7227 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Ashish Khandelwal (C.A.)
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 08/09/2023

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/Id. CIT(A)"] dated 28.04.2023 for the assessment year 2010-11.

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

"1. That the Id. CIT(A) has erred in law as well in facts of the case in dismissing the appeal solely on account of delay in filing of appeal beyond

statutory time limit of 30 days overlooking compelling circumstances which prevented time filing of appeal.

2. That the Id. CIT(A) has erred in law as well in facts in not disposing appeal on merits & acting in haste overlooking the adjournment request filed on 27.04.2023.

3. That the Id. CIT(A) as well as AO grossly erred in law in not appreciating that notice u/s 148 as well as assessment u/s 147 was issued/completed in the name of deceased and therefore same was nullity in eyes of law.

4. That the Id. AO has erred in law as well in fact of the case in assuming jurisdiction u/s 148 of the Act. 5. That the Id. AO has erred in law as well in facts of the case in making addition of Rs. 8540550/- as long term capital gain."

3. Brief facts of the case are that the assessee did not file his return of income. The case was reopened u/s 147 of the I.T. Act on the basis of information that during the year under consideration, the assessee and others have sold their share being 6.77% in the immovable property situated at Khasra No. 10 & 11 at Badodia, Opp. Hotel Rajputana Sheraton, Station Road, Jaipur. While registering the above transaction the Sub-Registrar V, Jaipur has determined the value of transaction for Rs. 2,28,27,608/- and the share of the assessee in the said transaction comes to 40%. Accordingly, the AO issued notice u/s 148 of the I.T Act on 31.03.2017 and duly served upon the assessee. However, there was no compliance from the assessee. Thereafter the AO issued various notices u/s 142(1) show cause letters to

the assessee. However, the assessee failed to comply to all the notices issued by the AO. As the assessee failed to comply to all the statutory notices issued, the AO after considering the facts and circumstances of the case, completed the assessment u/s 148/144 of the IT Act on 16.12.2017 determining the total income of Rs. 85,40,550/- after making an addition of Long Term Capital Gain of Rs. 85,40,550/-

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that notices were issued on 18.03.2021, 17.04.2023 and 24.04.2023 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 Id. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“5.1 I have duly considered the facts of the case, the order of AO and the grounds uploaded by the appellant. The grounds of appeal raised by the appellant are adjudicated in the subsequent paras.

5.2 The facts of the case and the grounds raised by the appellant have been considered carefully. It is noticed there has been a delay of 117days in filing of this appeal by the assessee. The appeal is to be filed within 30 days of the date of the service of the order. During the appellate proceedings, it is found from the Form No. 35, the appellant filed the appeal on 04/02/2019 whereas the date of order u/s 148/144 of the IT is 16/12/2017 and date of service is 10/09/2018. As per the dates given in Form 35 it appears that the appeal is filed beyond the prescribed due date by 30 days. The appellant has explained the reasons for the delay in filing of appeal. The relevant portion in this respect is being reproduced as under:

"The delay of 118 days in filing the appeal is unintentional, bonafide and beyond the control of the appellant. The appellant i.e Shri Sharafat Hussain died even before the commencement of 148 proceedings without possessing PAN. Therefore, PAN of the spouse as a Legal heir of deceased appellant was applied but too add to misfortune the PAN was allotted in individual capacity of spouse. The L/H of appellant tried best efforts so as to file appeal through e-mail but on failure of same, decided to file in manual mode. The delay in filing the appeal may kindly be condoned considering the compelling circumstances of the case and oblige."

5.3 The arguments of the appellant cannot be accepted. There is a lapse on the part of the assessee regarding filing of the appeal within stipulated time. This shows that there is a delay of filing of the appeal in terms of section 249 (2) of the Act. In such a situation section 249(2) of the Act envisages that there should be sufficient cause for not prosecuting the appeal within the period prescribed.

5.4 From the factual position which emerges it appears that a conscious and considered decision was taken by the assessee at the relevant point of time for not filing of appeal against the impugned order. It is well-settled law that a distinction must be made between a case where the delay is inordinate and where the delay is of few days only. The inordinate delay in the instant case clearly demonstrates that these appeals were not prosecuted with due care.

5.5 On the issue of a routine delay and an inordinate delay, the Hon'ble Supreme Court in the case of Vedabhai alias Vaijayantabai Baburao Patil VS. Shantaram Baburao Patil [2002] reported in 122 Taxman 114, has made a distinction between delays that are trivial and cases where inordinately large delays had occurred. The Hon'ble Supreme Court further held that the cases of trivial delays have to be liberally considered, however the cases of inordinate delays have to be approached cautiously. The relevant portion of the order of the Hon'ble Supreme Court is reproduced as under: -

"In exercising discretion, under section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard."

5.6 In view of the above detailed discussion, it is held that the appellant has no "sufficient cause" in terms of section 249(3) of the Act, for not presenting the appeal within the prescribed period. It is well-settled law that an appellant is not entitled to the condonation as a matter of right.

5.7 For an appellant to succeed, the existence of sufficient cause is sine qua non and a condition precedent. It is manifestly evident that this ingredient is woefully lacking in this belated appeal filed by the appellant. Thus, the delay in filing the appeal by the appellant, is not considered. Accordingly, the appeal is dismissed without any discussion on merits or on any other aspect.

6. In the result, the present appeal fails since the delay in filing of appeal. Accordingly, the appeal of the assessee is treated as dismissed u/s. 250 r.w.s. 251 of the Act without considering the merits of the appeal filed.”

5. During the course of hearing, the Id. AR for the assessee prayed that the Id. 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 Id. AO in the interest of equity and justice.

6. Per contra, the Id. 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 her case and thus the order passed by the Id. CIT(A) should be sustained.

7. 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 her case in spite of providing various opportunities by the Id. CIT(A) and Id. AO as mentioned in his order. The assessee did not appear or filed any reply to the notices which were issued by the Id. AO during the assessment proceedings, finally the assessee completed ex-parte assessment u/s 144 of the Act on 16.12.2017. Further, we observed that the assessee or her legal representative did not appear even in appellate proceedings in spite of several notices as it is evident from the Id. CIT(A) order. Before us, Ld. AR for the assessee submitted evidence to support her claim, that the assessee has filed adjournment application on 27.04.2023 for the notice issued on 24.04.2023 for collection of necessary documents and attached Form 35 and the assessment though e proceedings response acknowledgment, but the Id. CIT(A) has not considered the adjournment application, passed order on 28.04.2023. The relevant portion in e proceedings response acknowledgement which is reproduced as under:-

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
PAN/TAN	KUBPS7227E			
Name	MOMINA SHEIKH			
Financial Year	2009-10			
Assessment Year	2010-11			
Proceeding Name	First Appeal Proceedings			
Notice/Communication Reference ID	100061467386			
Notice Section	250			
Description	[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.			
Notice Issue Date	24-Apr-2023			
Due Date for Submission	27-Apr-2023			
Communication Sent date				
Document Reference ID	ITBA/NFAC/F/APL_1/2023-24/1052293959(1)			
RESPONSE SUBMITTED				
Remarks	Respected Sir/Madam, Due to preoccupation of appellant in EID festival, the documents could not be collected, kindly adjourn hearing for 7 days. We regret for Inconvenience. However, some of information as desired in as under:- 1. The appellant has expired and L/H is contesting appeal on behalf of deceased. 2. No Tax is payable as Income is below maximum amount not chargeable to tax. 3. The submission shall be furnished in 7 days along with application for admissions of additional evidence. 4. There is no order of assessment or appeal. 5. The same shall be furnished with appeal submission. 6. The copy of form 35 & Assessment Order is enclosed. The detailed submission will be furnished in 7 days. Thanking You.			
Hash * Value Of Remarks	08948416d49fa7e45db2ef5d11567d33d10e21f40917f59ec2d908eddc795f25			
SI No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	Form 35.pdf	Form 35	972234	58e69ad10d6d9bcf51573eaaea8b4573bbbd9153504c59ee4a18a5b647bf6b6f
2	Assessment	Assessment Order	1902506	341e215215bdc2f0

However, the Bench feels that the assessee because of any reasons could not advance her 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, 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.

8. 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 purposed.

Order pronounced in the open court on 08/09/2023.

Sd/-

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

दिनांक / Dated:- 08/09/2023

*Santosh

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

1. The Appellant- Momina Sheikh, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(2), Jaipur.

Sd/-

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

3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 381/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar