

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC " JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 570/JP/2023
निर्धारणवर्ष / AssessmentYear :2016-17

Shri Alok Maheshwari 4-179, Raj Housing Board Colony Malviya Nagar, Jaipur	बनाम Vs.	The ITO Ward 1(3) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AETPM 3610 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Ashish Sharma, Advocate
राजस्व की ओरसे / Revenue by : Shri A.S. Nehra, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 19/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 31 /10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 31-03-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2020-21 in matter of Section 271B of the Act, wherein the assessee has raised the following grounds of appeal.

‘1. That the ld. CIT(A) has grossly erred in dismissing the appeal in confirming the levy of penalty by the AO u/s 271B.

2. That the counsel of the assessee was suffering from life threatening disease called carcinoma left breast and had not been able to attend her office till July, 2023 and therefore the notice etc. were not responded.

3. That the assessee came to know about dismissal of his appeal on 08-08-2023 when he visited the portal.

4. That the ld. CIT(A) has grossly erred in confirming the penalty of Rs.1.50 lacs u/s 271B without considering the fact and turnover was only Rs.49,03,810.05.

5. That the authorities below ld. CIT(A) and AO had failed to appreciate the fact of assessee doing F&O trading only through broker. The assessee was working as a salaried person only and not a businessman.”

2.1 At the outset of the hearing of the case, the Bench observed that there is inordinate delay of 831 days in filing the appeal by the assessee for which assessee filed an application dated 30-08-2023 for condonation of delay with the prayer mentioned as under:-

‘1. That the impugned order dated 31-03-2021 was uploaded on the portal on 31-03-2021. However, the portal was not checked by the Chartered Accountant as she was suffering from life threatening disease called ‘‘CARCINOMA LEFT BREAST’’

2. That the assessee had himself visited the portal for checking his refund status for A.Y. 2018-19 when he came to know about ex-parte dismissal of appeal by ld. CIT(A).

3. That the assessee thereafter immediately engaged new Counsel and has filed this appeal through so engaged new Counsel.

4. That there was no malafide intention of the assessee in the delay in filing the appeal and the passing of the impugned order was not in knowledge of assessee till 08-08-2023 when he visited the portal.

5. That irreparable loss will be caused to the assessee if delay is not condoned and appeal is not admitted.

It is therefore prayed to condone the delay and admit the appeal.’’

To this effect the assessee has filed an affidavit deposing the facts as narrated in the condonation application.

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 crux of delay in filing the appeal by the assessee is that his Chartered Accountant who was attending the case of the assessee, was suffering from life threatening disease called ‘‘CARCINOMA LEFT BREAST’’ and she because of serious illness could not check the impugned order dated 31-03-2021 passed by the ld. CIT(A) which was uploaded on the portal. The present ld. AR of the assessee also submitted that unfortunately earlier counsel of the assessee left heavenly abode. Thus, in this view of the matter, the assessee engaged another counsel to look into the matter who subsequently filed an appeal in ITAT, Jaipur Bench, Jaipur, after the delay of 831 days. The Bench noted that the prayer as mentioned above by the assessee for condonation of delay of 831 has merit and

we concur with the submissions of the assessee. Thus the delay occurred of 831 days in filing 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.

3.1 Now we come to the main issue that the appeal of the assessee was dismissed by the Id. CIT(A), NFAC, Delhi by observing as under:-

“DECISION:

1. During the course of appellate proceedings, the appellant has failed to show that any efforts have been made to make compliance to the notice or to demonstrate any such unavoidable circumstances which were beyond his control which led to failure of compliance to notice which further justifies the AO's action of levy of penalty for non-compliance. Infact no compliance has been made by the assessee to the two notices dated 14.01.2021 & 12.03.2021, issued by the Appellate authority. This conclusively proves that the assessee had no cogent reason or unavoidable circumstances which led to failure to comply with the notices issued by the AO and appellate authority.

1. Further, the ITAT's Decision in the case Anahaita Nalin Shah v. Deputy Commissioner of Income-tax in 43 taxmann.com 206 (2014), it was held as under:

"the assessee had entered in to speculative business of the shares, that the transactions entered in to by her were more than the prescribed monetary limit as envisaged by the provisions of section 44AB of the Act, that no bonafide reasons was furnished by the assessee, for not getting the books of account audited, before the AO or the FAA. We are of the opinion that words total turnover indicate the aggregate price of the commodities received by an assessee during the course of his trading or business activities. It does not differentiate between commodities sold under the head speculative business/normal business. Transfer of immovable or movable property by way of investment is not included by the provisions of the section 44AB of the Act. Provisions of the Act are clear that all revenue receipts are covered by the words turnover, wherever capital receipts are not to be considered a part of the turnover for the purposes of the said section. In other words, receipts which are not relatable to business and may fall under the expression income to be subjected to tax as income from sources' do not form part of total turnover. Considering the principles governing the imposition of penalty u/s.

271B and the facts of the case we are of the opinion that AO was justified in levying penalty for not her books of accounts audited. We find that the cases relied upon by the AR are not relevant to decide the issue as the facts of the case are totally different. Secondly, while deciding the case at that point of time Tribunal did not have the benefit of the decision of the Hon'ble High court of Rajasthan delivered in the case of Bajarang Oil Mills (supra). So, confirming the order of the FAA, we decide the effective ground of appeal against the assessee"

1. Therefore, due to lack of any explanation the undersigned confirms the levy of penalty by the AO u/s 271B and dismiss the appeal filed by the assessee.

1. In result the appeal is FULLY CONFIRMED. ‘

3.2 During the course of hearing, the ld. AR of the assessee prayed that one more chance may be given to the assessee to resubmit the documents and concerning papers on the issue as raised by the AO in the penalty order imposing penalty of Rs.1.50 lacs u/s 271B of the Act and to this effect, the ld. CIT(A) passed the ex parte order dated 31-03-2021 confirming the penalty of Rs.1.50 lacs u/s 271B of the Act without providing adequate opportunity of being heard to the assessee.

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

2.10 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee had filed his e-return of income on 22-12-2016 vide acknowledgement No. 569070150221216 declaring total

income of Rs.6,06,950/-. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued through ITBA online on 18-09-2017 which was duly served upon the assessee. Due to change of incumbent officer, notice u/s 142(1) along with query letter were issued on 15-09-2018 for seeking details for which the assessee filed the written reply on ITBA portal and the same was examined by the AO. The AO while making assessment in the case of the assessee noted that the assessee had shown income under the head salary, other sources and he is engaged in trading & securities during the year under consideration. He conclusively observed that assessee was legally under the obligation to maintain books of accounts and get the same audited by the Chartered Accountant and furnish /upload the same as prescribed under the I.T. Act. However, the assessee was in default by not getting audited within the time stipulated period as prescribed u/s 44 of the Act. Therefore, the AO vide his order dated 27-11-2018 initiated the penalty proceedings u/s 271B of the Act for non-auditing the books of account. In this case, the AO under section 271B of the Act vide his order dated 03-05-2019 imposed the penalty by observing as under:-

'I am satisfied that it is a fit case for levy of penalty u/s 271B as it is established that the assessee has violated the provisions of Section 44B of the I.T. Act, 1961.

Therefore, I impose a penalty of Rs,1,50,000/- u/s 271B of the I.T. Act, 1961 for not getting audited the accounts. Issue demand Notice, Challan and other statutory forms.

In first appeal, the Id. CIT(A) has confirmed the action of the AO as to imposition of penalty u/s 271B of the Act by passing an ex-parte order whose details are mentioned hereinabove. The Bench does not want to go into merit of the case but it is imperative that the assessee must be provided adequate opportunity of being heard by the Id. CIT(A). In this view of the matter, the Bench feels that the assessee should be given one more chance to contest the case before the Id. CIT(A) and the Id. AR of the assessee is directed to produce all the relevant papers concerning the issue before the Id. CIT(A) to settle the dispute of penalty as made by the AO hereinabove

3.6 Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. 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 Id. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 31/10/2023.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिकसदस्य / Judicial Member

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

जयपुर / Jaipur
दिनांक / Dated:- 31/10/2023.

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Alok Maheshwari, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(3), Jaipur
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 570/JP/2023}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar