

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 566/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Rohit Saxena 134 Indira Colony, Bani Park, Jaipur	बनाम Vs.	Income Tax Officer Ward- 4(5), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AQGPS 1996 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rahul Sinha (CA)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 18/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 09/11/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 12/09/2022 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2011-12 which in turn arise from the order dated 09.12.2018 passed under section 144 r.w.s 147 of the Income Tax Act, by ITO, Ward-4(5), Jaipur.

2. At the outset of hearing, the Bench observed that there is delay of 295 days in filing the appeal by the assessee for which the Id. AR of the assessee submitted that notice were received in the mail id of the old consultant. The fact the assessee is serious in pursuing the appeal is evident from the first para of the Id. CIT(A) order where in the submission filed by the assessee were sent to the Id. AO for remand report as the order was exparte. Even the Id. AO has not sent any report and the consultant has not responded to the notices. In support of the contention the assessee filed an affidavit stating these reasons for delay as well as non-compliance before the Id. CIT(A). Based on this prayer the Id. AR of the assessee prayed to condone the delay in bringing this appeal and also prayed to set aside the matter to the file of the Id. AO in the interest of justice.

3. On this issue during the hearing of the appeal the Id. DR objected to assessee's application for condonation of delay stating that the serving of the notice at the registered email is sufficient. The assessee was given five opportunity to plead the merits of the case but the assessee did not complied any of the notices. Therefore, based on this argument the Id. DR relied on the orders of the lower authority.

4. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 295 days is that the assessee is serious in persuasion of the appeal and that is why his submission were placed on record of the Id. CIT(A) who has forwarded the same to the file of the Id. AO. The Id. AO did not file any submission on it and in the meanwhile five notices on the email id of the consultant were issued which remain noncompiled. Thus, based on these averments so made the bench feel that there were sufficient reasons to remain non complied before the Id. CIT(A) and filling this appeal belated. Therefore, we concur with the submission of the assessee. Thus the delay of 295 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 and therefore, we admit this appeal.

5. In this appeal, the assessee has raised following grounds: -

"1. Ground for appeal is that not giving opportunity of being heard gave by CIT appeal, no physical copy to us and intimation on old email id not which is mentioned on form 35."

6. Succinctly, the fact as culled out from the records is that the assessee is a resident individual and during the year the assessee has made cash deposits of Rs. 16,55,620/- in his bank accounts. The assessee has not filed his return of income for the A.Y 2011-12. Based on the information available on record, the case was re-opened by issuing notice u/s 148 dated 27.03.2018 after approval of the competent authority and the assessment was completed u/s. 144 of the Act assessing the income of the assessee at Rs. 18,19,021/-. The assessee contended that the cash deposited into the bank account is of the third party money deposited in his account with ICICI Bank. Same were deposited by the assessee for the insurance purpose which were also shown in the same days transaction in the ICICI bank account. As per bank statement and 26AS our was only Rs. 3,02,078/- and Rs. 2,15,067 loan amount which was taken from relatives and friends for the payment of housing loan and payment of credit card settlement. No other income to be chargeable to tax in the hands of the assessee.

7. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds

so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4.1 In view of the above, it appears that the non-appearance to notices is deliberate as all the notices have been duly served upon the appellant on the till date It is reasonable to infer from the continued non-compliance that the appellant is not serious to pursue his appeal.

4.2 Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and Another, 118 ITR 461 (SC) observed that preferring an appeal means more than formally filing it but effectively prosecuting it. Hon'ble M.P. High Court in the case of Estate of Late Tukoji Rao Holkar vs. CWT, (1997) (223 ITR 480) (M.P.) dismissed the reference in default and for not taking necessary steps Similar view has been taken by I.T.A.T. Delhi Bench in the case of CIT Vs. Multiplan India (P) Ltd. (1991) (38 ITD 320). Considering the above, it appears that the appellant is not interested in prosecuting its appeal. Therefore, the appeal filed by the appellant is dismissed for non-prosecution.

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

8. As the assessee did not find any favour from the appeal so filed with the Id. CIT(A) the present appeal is filed with sole ground on the fact that the assessee was not provided sufficient opportunity of being heard the notices were not sent on the email id shown in the form no. 35.

9. Per contra, the Id. DR objected to the prayer of the assessee and heavily relied upon the finding of lower authority and prayed that the assessee has not complied to the five notices and his prayer to set aside the case does not require any merits.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee is a resident individual. Though the Id. DR objected to the prayer of the assessee but looking to the fact of the case that assessee being small person working privately as self employed. The cash deposited is on account of the insurance money of the party used to pay the premium and the same evident as debit from the bank account of the assessee. We find force in the arguments of the Id. AR of the assessee that if the arguments placed if tested and verified by the Id. AO then in that case the cash deposited of Rs. 16,55,620/- and credited amount in 26AS of Rs. 1,63,401/- on account of unexplained cash deposit during the year under consideration can be considered on its merits. Therefore, bench feels that the assessee should be heard on merit rather than to dismiss the appeal on the technical reasons. Considering that prayer of the assessee, we find force in the arguments advanced by the Id. AR of the assessee and considering the totality of the facts we consider deem fit to remand back the matter before the Id. AO to decide afresh on merit. Therefore, considering that contentions and ongoing through the orders of the lower authorities we are of the considered view that the assessing officer should hear the assessee's submission on merits after affording proper opportunity of being heard and pass speaking order in the

matter in accordance with the law. At the same time assessee is directed to represent and present all the facts before the assessing officer and should not ask for the adjournment on frivols grounds.

At this stage we remand back the issues raised without commenting upon the merits of the case and the Id. AO is directed to complete the assessment as per law.

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

Order pronounced in the open court on 09/11/2023.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/11/2023

*Ganesh Kumar, PS

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

1. The Appellant- Rohit Saxena, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward- 4(5), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 566/JP/2023)

आदेशानुसार / By order,
सहायक पंजीकार / Asst. Registrar