

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 559/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2017-18

Rastogi Segma Furnitech Private Ltd. G-3, Anukampa Mansion First, M.I. Road, Jaipur.	बनाम Vs.	ITO, Ward-1(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAECR 9553 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Shrawan Kumar Gupta (Adv.)  
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 12/10/2023  
उदघोषणा की तारीख / Date of Pronouncement: 18/12/2023

आदेश / ORDER

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

This appeal is filed by the assessee against the order of Id. CIT(A) dated 31.03.2022, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/Id.CIT(A)"] for the assessment year 2017-18.

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

*"1. The impugned order u/s 143(1) dated 24.09.2018 issued is illegal, abd in law and on the facts of the case for want of jurisdiction, barred by limitation*

*and various other reasons (grounds), against the provisions and procedure as per law and further contrary to the real facts of the case hence all the proceedings invalid, illegal and bad in law hence liable to be quashed.*

*2. The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the order of Ld. AO/CPC ex-parte in gross breach of law without providing adequate and reasonable opportunity of being heard to the appellant. Hence, the appellate order so made may kindly be set aside.*

*3. The ld. CIT(a) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 4,02,430/- made by the Ld. CPC on account of alleged disallowed amount u/s 37 by taking the view that penalty levied by VAT department as expenditure the same is not allowable expenditure, and also erred without bringing any cogent material in support of his contention and without considering the materials and explanations available on records in their true perspective and sense. Hence, the addition so made by Ld. AO/CPC and confirmed by the Ld. CIT(A) is being contrary to the provisions of the law and facts of the case therefore the same may kindly be deleted in toto.*

*4. That the appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”*

3. At the outset of hearing, the Bench observed that there is delay of 91 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. In this connection it is submitted that the applicant is a Private Limited Company incorporated on 28/10/2010 and an Auditable case was managed by an Accountant and qualified professional persons as the directors are not much acquainted with the Information Technology so far. The applicant is filing his Income Tax Return regularly and timely from last many years. Being an unacquainted with the Information Technology the promoters were not keeping in touch with Income tax Department directly but through his accountant and counsel.

2. In this case an intimation u/s 143(1)(a) was issued for AY- 2017-18 on dated 24/09/2018 after making an addition of Rs.4,02,427/- by the DCIT, CPC Bangalore. Against which assessee had

filed an appeal before the Id. NFAC, Delhi. The Id. NFAC has passed the order of appeal on dt.31/03/2022 by dismissing it without hearing the assessee side (ex party), which was not served upon the assessee physically.

3. However as per date of order the appeal was to be filed on or before 30/05/2022 but the same is being filed on by 23/08/2023 ie by delay of about 450 days. Although actually there is no delay if following facts are being considered.

4. The reason of late filing was that the order was not served/communicated physically as well as online to the assessee. The same was come across to him when concern counsel was visiting the Income Tax Portal to know the status of the appeal.

5. Although an E-mail ID of the accountant of the assessee (Mr. Sanjay Patni) has been communicated to the Income Tax department i.e. sanjaypatni0401@gmail.com Mr. Sanjay Patni had already left the Job from Assessee much before passing the order under appeal and he did not communicate the same to the assessee.

6. That after coming to knowledge about dismissal of Appeal by Ld. NFAC, Delhi i.e. 31/07/2023 the counsel of the appellant prepared the appeal and being filed it by 23/08/2023.

7. That the assessee was not in habit to check email and e- filling portal rather dependent upon his Accountant or counsel, similarly was under impression that both were would have been much aware about all facts. As they had engaged a counsel for the CIT(A) appeal proceedings. Thus there was also no negligence's of either assessee nor the counsel, it was only proper communication gap, otherwise appeal could have been filed before honourable ITAT. Thus there was bonfide mistake of assessee. Due to all this reason the appeal could not be filed within time. In support of these contention an affidavit of the assessee is enclosed.

8. It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji& Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto. 9. The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy (1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Another 118 ITR 507.

10. That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(All), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

11. The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt.Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Hologans, particularly when on the similar points in the earlier four years, the appeals were filed in time.

In the instant case also, the appeal could not be filed in time because of the above reasons which were bonafide and was a sufficient cause and there was no melafide intention of assessee.

12. Recent Decision of Apex Court: in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'blecourt have also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC). Prayer In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned."

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

3.1 The ld. AR of the assessee appearing in this appeals submitted that the assessee is serious on the duties and the delay of 91days is on account of the technical glitches resulted delay with a hope that the assessee had already left the job from the assessee much before passing the order under appeal and he did not

communicate the same to the assessee. Considering the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

3.2. 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.

3.3 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 91 days has merit and we concur with the submission of the assessee. Thus the delay of 91 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.

4. Brief facts of the case are that the assessee filed its return of income for the assessment year 2017-18 on 25.10.2017 declaring total income at Rs. 2,88,230/-. The ITR was processed u/s 143(1) of the Act dated 24.09.2018 wherein

disallowance of Rs. 4,02,430/- was made u/s 37 of the Income Tax Act on account of penalty levied by VAT department and consequently demand of Rs. 1,53,710/- was raised.

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 24.12.2020, 18.08.2021, 24.10.2021, 05.11.2021, 02.12.2021, 19.01.2022, & 24.03.2022 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 ld. CIT(A) is reproduced as under:-

“5. Decision on the ground of appeal:

5.1 During the course of appellate proceedings, multiple opportunities were given to the appellant as mentioned in paragraph 2 above. However, the appellant for reasons best known to it, chose not to furnish any submissions/evidence in support of the ground/contention. Therefore, the appeal is decided on the basis of information available on record.

5.2 The main issue involved is with regard to addition of Rs. 4,02,430/- added by the Assessing Officer on account of penalty levied by VAT department. In this regard, the Section 37 reads as under:-

“Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or professions”.

Explanation- for the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.”

5.3 From the above, it is clear that if the amounts paid were penal in nature, then deduction cannot be allowed. The only information available on record as submitted by the appellant in form 35 is that Rs. 4,02,430/- was added by the Assessing Officer on account of penalty levied by VAT department. There is nothing on the record to say that the payment was not penal in nature. No submission whatsoever was received from the appellant in support of the contention. Since the appellant claimed the penalty levied by VAT department as expenditure, the same is not allowable expenditure. Hence, the ground of appeal raised by the appellant is rejected.

6. In effect, the appeal is dismissed.”

6. During the course of hearing, the ld. 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 ld. AO 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 thus the order passed by the ld. CIT(A) should be sustained.

8. 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 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 order. Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of several notices it is evident in the ld. CIT(A) order. Before us, ld. AR for the assessee submitted evidence to support his 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, 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.

9. 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 Id. 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 18/12/2023.

Sd/-  
(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 18/12/2023

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

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Rastogi SegmaFurnitech Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2),Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 559/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar