

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" 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. 581/JPR/2023
निर्धारण वर्ष / Assessment Years : 2015-16

Rudrax Shine Logistic Private Limited 62, Charakwara House, Gate No. 3 Rajast Grah Colony, Nainwa Raod, Bundi.	बनाम Vs.	ITO, Ward, Bundi.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAECR 7538 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 31/10/2023
उदघोषणा की तारीख / Date of Pronouncement : 20/12/2023

आदेश / ORDER

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

This appeal is filed by the assessee against the order of Id. CIT(A) dated 15.05.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2015-16.

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

"1.1 The impugned order u/s 143(3) of the I.T. Act, 1961 dated 20.12.2017 as well as the notices and proceedings or action so taken by the Id. AO are illegal, bad in law, barred by limitation, without jurisdiction, and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed,

1.2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in passing the Exparty order and confirming the order of the Id. AO without providing adequate and reasonable opportunity of being heard and not considering the material on record in the gross breach of natural justice. Hence the same entire addition may kindly be deleted and the assessment order may kindly be quashed.

2. Rs.1,78,05,667/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 1,78,05,667/- made by the Id. AO on account of alleged Unexplained Liabilities (reserve and Surplus) u/s 68. The Id. AO also erred in making the additions without invoking the provisions of Sec. 145(3) or without rejecting the books of accounts. The Ld. CIT(A) and AO have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

3. Rs.2,24,944/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.2,24,944/- made by the Id. AO on account of disallowance of various expenses at the rate of percentage of Rs.11.24,719/-. The Id. AO also erred in making the additions without invoking the provisions of Sec. 145(3) or without rejecting the books of accounts. The Ld. CIT(A) and AO have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO is also being contrary to the real facts of the

case and not according to the provision of law, hence the same may kindly be deleted in full.

4. Rs.94,512/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.94,512/- made by the Id. AO u/s 40(a)(ia) on account of non deduction of TDS for some payments of various expenses. The Id. AO also erred in making the additions without invoking the provisions of Sec. 145(3) or without rejecting the books of accounts. The Ld. CIT(A) and AO have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

5. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

6. 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 63 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. In this case the assessment for A.Y. 2015-16 was completed u/s 143(3) by the ITO Ward Bundi on dt. 0.12.2017 by making the addition of Rs.1.81.25,123/-. Against which the assessee has

filed the appeal before the CIT(A)-Kota, which later transferred to NFAC. The NFAC has passed the Exparty order on dt. 15.05.2023. The order was received on portal on dt. 15.05.2023, which was not served upon the assessee physical. However as per date of order the appeal was to be filed on or before 14.07.2023 but the same is being filed on by 11.09.2022 ie by delay of about 1 month 27 days. Although actually there is no delay if following facts are being considered.

2. The reason of late filing was that the assessee company has engaged the counsel at Kota for IT work and appellate works. The order was received on email of counsel also. The Directors or accountant has also send the order to the counsel for necessary further action/proceedings/appeal. The counsel has stated that there is two months time for filling the appeal. Hence the director of assessee has left the same for counsel. However the counsel has not filed the appeal within the time for the reasons best known to him. Recently some days before when the director/accountant contact to the counsel for some audit discussion and asked about the appeal, then the counsel has stated that he forgot to file the appeal or could not file the appeal, then the assessee company asked the reasons for the same, then he could not replied satisfactory. Thereafter assessee contacted to theother counsel or advocates at Jaipur at and show him this order and reasons for delay. Then the advocates advised to file the appeal against the being the strong case in favour and there is no default of assessee.

3. That thereafter our counsel at Jaipur has started to prepare the appeal and the appeal has been prepared on 07.09.2023 and sent to us for singe.

4. Thus there was no negligence's of either assessee. Thus due to negligence of other counsel the appeal could not be filed within time. In support of these contention an affidavit of the Director of assessee Company is enclosed.

5. 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.

6. 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 30BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Another 118 ITR 507.

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.

7. 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 Holigans, 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 mala fide intention of the assessee.

8. 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'ble court 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 was serious on the duties and the delay of 63 days is on account of the assessee company has engaged the counsel at Kota for IT work and appellate works. 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 63 days has merit and we concur with the submission of the assessee. Thus the delay of 63 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 return of income for the assessment year 2015-16 was e-filed on 31.03.2016 at total income of Rs. 4,02,730/-. The case was selected for complete scrutiny through CASS. Notice u/s 143(2) dated 16.08.2016 and notice u/s 142(1) dated 03.01.2017 were issued and duly served on the assessee. The assessment was completed on 20.12.2017 u/s 143(3) at total income of Rs. 1,85,27,853/-.

5. 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 15.01.2021, 11.04.2022 and 04.05.2023 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), he has dismissed the appeal of the assessee as ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“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. Total non-compliance on the part of the appellant leaves me with no option other than deciding the appeal ex-parte, on merits of the case.

3.6 This appeal has been filed by the assessee against assessment order u/s 143(3) claiming that the action of the Assessing Officer is not supported by facts and laws and that it is unjust. In such a situation, it is for the appellant to furnish the submissions with relevant evidence(s), case laws, if any, to support its claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed in terms, the initial onus is on the assessing officer to prove that it is taxable. Where, however, the appellant claims exemption, the burden is on the appellant to prove it to be exempt. Same is the position in cases of all allowances, deductions, claims or loss, etc. since an appeal is nothing but the claim of the appellant to prove its claim. The appellant has not availed any opportunity to do so.

3.7 Since the appellant has not presented any arguments or submissions or any paper filed in support of its claim, the appeal is decided judiciously based on materials available on record.

3.8 I have perused the impugned assessment order u/s 143(3). The appellant has not furnished any submissions in support of the grounds of appeal during the appellate proceedings. Taking into account the entire conspectus of this case, I see no reason to disturb the categorical findings of the assessing officer regarding assessment of the total income of the appellant at Rs. 1,85,27,853/-.

In the end result, the appeal is dismissed. Order passed under section 250 read with section 251 of the Act.”

6. During the course of hearing, the ld. AR for the assessee prayed that the Id. 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. CIT(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 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) as mentioned in his 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 Id. CIT(A).

9. 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.

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

Order pronounced in the open court on 20/12/2023.

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

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

दिनांक / Dated:- 20/12/2023

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Rudrax Shine Logistic Private Limited, Bundi.
2. प्रत्यर्थी / The Respondent- ITO, Ward, Bundi.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 581/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar