

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 558/JPR/2023
निर्धारण वर्ष / Assessment Years : 2009-10

Kishan Lal Meena 4573, Surajpole Bazar, Galta Road, Jaipur.	बनाम Vs.	ITO, Ward-1(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AFYPM 9496 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Anoop Bhatia (C.A.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2023
उद्घोषणा 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 the Id. CIT(A) dated 30.06.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2009-10.

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

"1. On facts and in the circumstances Ld. CIT(A) has erred in dismissing the appeal ex-parte and confirming the penalty imposed u/s 271(1)(c) of the Act. Appellant prays that in view of natural justice the appeal of the assessee may allowed to be decided on merits.

2. On facts and in the circumstances Ld. CIT(A) has erred in confirming penalty of Rs. 4,27,938/- imposed u/s 271(1)(c) of the Act. Assessee prayed that since the addition mad u/s 69C of the Act was fully explainable, there was no concealment. The penalty confirmed deserves to be deleted.

3. The appellant reserves the right to add, amend, modify, or alter any ground or grounds of appeal.”

3. The brief facts of the case are that the notice u/s 148 of the Income Tax Act, 1961 issued on 19.03.2016 after recording reasons and prior approve of Pr. CIT-1, Jaipur u/s 151(1) of the act dated 08.03.2016. The assessee has not filed the return of income for the assessment year under consideration as such notice u/s 148 of the Act was issued on 19.03.2016 & issued & served to the assessee by postal authorities on 22.03.2016. Due to change in incumbent, a fresh notice u/s 142(1) alongwith questionnaire issued to the assessee on 23.05.2016 which is returned back marked refused. Again a fresh notice u/s 142(1) along with show cause letter issued to the assessee on 01.07.2016 and served through service by affixture through Smt. Adarsh Bala Parashar, Inspector on 05.07.2016 fixing the case for hearing on 08.07.2016. In response to the notice neither assessee filed any reply nor sought any adjournment, even return of income in response to notice u/s 148 of the Act was not filed by the assessee till date. During the relevant assessment year the ld. AO imposed a penalty of Rs. 4,27,938/- u/s 271(1)(c) of the Act on the assessee

without going into the details of the case. Conclusively, the AO made addition in the hands of the assessee by holding as under:-

“ Hence, source of expenditure of Rs. 15,75,677/- are found unexplained expenditure on A/c of u/s 69C of the Income Tax Act, 1961. No submission or evidence has been received in reply to the show cause issued therefore it is presumed that the assessee has nothing to say, and the assessment being time barring no further opportunities can be provided to the assessee and the assessment is being completed ex- parte on the basis of best judgement and made an addition of Rs. 15,75,677/- to the total income of the assessee under the head unexplained money on a/c of u/s 69C of the Income tax Act, 1961. As the assessee has concealed the income he is also liable to penalty u/s 271(1)(c) of the Income tax Act, 1961. The assessee has non compliance of various notices issued, therefore, penalty u/s 271(1)(b) of the Income Tax Act, 1961 is separately initiated. Penalty u/s 271F of the Income tax Act, 1961 is also initiated for failure to furnish of return in compliance of under sub-section(1) of section 139 of the Income tax Act.

The assessee has furnished inaccurate particulars and has concealed income, therefore penalty proceedings u/s 271(1)(c) of the Income tax Act, 1961 are being initiated.”

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“2.12. The Courts in the above mentioned cases, highlighted upon the importance introducing the concept of "reasonableness" while giving the clause "sufficient cause a liberal interpretation. In furtherance of the same, the Courts has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the

other party. In such cases, where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties.

2.13 The Division bench of the Hon'ble Bombay HC in *Ornate Traders Private Limited v. The Income Tax Officer, Mumbai* emphasized the need for reasonableness and hence, the actions which can be condoned by the court should fall within the scope of normal human conduct or normal conduct of a litigant. The Hon'ble Bombay HC further observed that while Section 5 of the Limitation Act is being interpreted liberally, it cannot be so liberally that it is without any justification, since condonation of delay in a mechanical or routine manner will jeopardize the legislative intent behind Section 5.

2.14 The Hon'ble SC in the case of *Shiv Dass v. Union of India (UOI) and Ors.*, AIR 2007 SC 1330 held that the High Courts, while exercising their discretionary powers under Article 226, should consider delay or laches and, refuse to invoke its extraordinary powers if it is found that the applicant had neglected/omitted to assert its rights in a timely manner, however, this discretion has to be exercised judicially and reasonably.

2.145 in a recent judgment in the case of *University of Delhi Vs Union of India & Ors.* In Civil Appeal No. 9488 of 2019 vide Order dated 17/12/2019, the Hon'ble Supreme Court has refused to condone delay by holding that,

"the entire explanation as noted above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal

In the matter of condonation of delay and laches, the well accepted position is also that the accrued right of the opposite party cannot be lightly dealt with."

2.16. From the above decisions it becomes clear that in the case of condonation of delay where the appeal was filed beyond the limitation of period, the courts are

empowered to condone the delay, provided that the Appellant can prove his claim of inability to file appeal within the prescribed period. Litigant must be able to demonstrate that there was "sufficient cause" which obstructed his action to file Appeal beyond the prescribed time limit.

2.17 The law of limitation is found upon the maxims "Interest Reipublicae Ut Sit FinisLitium" that litigation must come to an end in the interest of society as a whole, and "vigilantibus non dormientibus Jura subveniunt" that the law assists those that are vigilant with their rights, and not those that sleep thereupon. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant.

2.18 The Single Judge bench of the Hon'ble Madras HC, while exercising writ jurisdiction in Kathiravan Pipes Pvt. Ltd., v. CESTAT, 2007 [5] STR 9 (Mad.) has observed that the period of limitation prescribed is not for destruction of a statutory right but only to give finality without protracting the matter endlessly.

2.19 From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s 249(2). Thus, this clearly is a case of laches and is directly the result of deliberate inaction on the part of the appellant.

2.20 In view of these facts and on the strength of the judicial decisions referred on the pre pages the delay in filing the appeal does not merit condonation and the appeal is treated to be filed late with reference to the provisions of section 249(3) of the Act for the appellant's failure to file the appeal within the prescribed period of limitation u/s.249(2) of the Income Tax Act, 1961 r.w.s. 5 of Limitation Act and hence the appeal sought to be instituted belatedly is hereby rejected.

2.21 The same is accordingly dismissed without going into the merits of the case.

3. Resultantly, the appeal of the appellant is Dismissed.”

5. During the course of hearing, the ld. AR for the assessee prayed that the ld. 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.

6. Per contra, the ld. DR has no objection to remand back to ld. CIT(A) but insisted that cost may allowed.

7. We have heard both the parties and perused the materials available on record. The ld. AR for the assessee submitted that it is an ex-parte order before ld. CIT(A) and further submitted that the quantum appeal is pending before ld. CIT(A) and the ld. CIT(A) has simply decided the penalty appeal. The bench noted that the appeal of the assessee dismissed without affording the opportunity of being heard to the assessee. On the other hand, we found that the ld. DR did not raise any specific objection to the prayer of the assessee and not disputed the contentions so raised. Therefore, we are of the considered view that the assessee is deprived of justice. Based on these set of facts we are inclined to accept the request of the ld. AR of the assessee to set aside the case to the file of the ld. CIT(A), to decide the case of the assessee after giving proper opportunity of being heard to the assessee.

At the same time, the assessee is directed to represent and present all the facts before the Id. CIT(A) and should not ask for adjournment of trifling grounds. At this stage, we remand back the matter without commenting upon the merits of the case and Id. CIT(A) is directed to pass an appropriate order in accordance with law.

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

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

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

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

जयपुर / Jaipur

दिनांक / Dated:- 20/12/2023

*Ganesh Kumar, PS

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

1. The Appellant- Kishan Lal Meena, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(3), 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. गार्डफाईल / Guard File ITA No. 558/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar