

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

डॉ. 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. 598/JPR/2023
निर्धारण वर्ष / Assessment Years : 2008-09

Bunty Manhas S-1, KPG Pride, Sector-2, Chitrakoot, Jaipur.	बनाम Vs.	ITO, Ward-1(5), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ALUPM 9369 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Deepak Sharma (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing 02/11/2023
उदघोषणा की तारीख / Date of Pronouncement : 19/01/2024

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of the Ld. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC"], dated 26.07.2023 for the assessment year 2008-09.

2.1 At the outset of hearing, the Bench observed that there is delay of 2 days in filing the appeal by the assessee for which the ld. AR submitted

that to arrange all the papers concerning the issue in question, the delay took place which was not intentional and thus the delay of small 2 days may kindly be condoned.

2.2 During the course of hearing, the ld. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

2.3 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 02 days has merit and we concur with the submission of the assessee. Thus the delay of 02 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.

3. The assessee has raised the following grounds:-

"1. The very action taken u/s 147 r/w section 148 and 144 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 147/144 of the act dated 08-02-2016 also kindly be quashed.

2. The impugned assessment order u/s 147 of the act dated 08-02-2016 is bad in law and on the facts of the case for want of jurisdiction and various other reasons and hence the same kindly be quashed.

3. Ld.CIT(A) erred in law as well as on the facts of the case in not admitting the condonation of delay by holding that the appellant did not have sufficient cause for delay in filing of appeal. The said action is contrary to the law as well fact and kindly be quashed.

4. The Ld.CIT(A) erred in law as well as on the facts of the case in confirming addition made by the AO on account of alleged unexplained deposit in the bank account of Rs.10,86,100/- u/s 69A of the Act. The addition so made and confirmed by Ld.CIT(A) being contrary to the provisions of the provisions of law and facts kindly be deleted in full.

5. The assessee prays your Honours indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

4. In support of ground No. 3 so raised by the ld. AR of the assessee respectively submitted that the assessee has explained the delay before the ld. CIT(A) by filing petition for condonation of delay wherein he has stated that the appeal was filed belatedly with delay of 1288 days (approximately 3 and ½ years). The reasons for such delay that the assessee communicated late regarding the order so passed by the Ld. Assessing Officer and this resulted delay in filing the appeal against the order of the ld. CIT(A). The order of the ld. AO was ex-parte and notices were affixed. The assessment was reopened on account of issue of notice u/s 148 of the Act. The ld. Assessing Officer submitted that the assessee

is a small contractor, and the notices were not even served upon the assessee therefore, there is a valid and genuine reasons for filing the appeal belatedly with a delay of 1288 days. Therefore, considering that facets of the matter the ld. CIT(A) should have considered the delay in the interest of justice.

5. Per contra, the ld. DR appearing on behalf of the Revenue submitted that the assessee is a lethargic and not serious in pursuing his case. Though he has change the address, not communicated to the ld. Assessing Officer, notices were not served and therefore, there is no substance in the reasons advanced for the condonation of delay petition filed before the ld. CIT(A). Therefore, based on this argument the ld. DR supported the orders of the lower authorities.

6. We have heard both the parties and perused the materials available on record. The Bench noted that the assessment was reopened u/s 147 of the Act. The assessee has not filed the return of income in response to this notice and as it is evident from the assessment order that the notice issued u/s 148 of the Act on 17.03.2015 return back without service of notice. Ultimately ld. AO made affixture of the notices by the Inspector of the

Assessing Officer on the last address available on record. Subsequently, notices were also issued but was not served and return back with remark "LEFT". Based on these facts the assessment was completed ex parte. Against the said assessment order the assessee preferred an appeal before the Ld. CIT(A) which was delayed on 1288 days. The assessee fairly submitted that the delay is on account of non receipt of order in time and even the notices were not served to the assessee. Considering that material fact on record even notice issued u/s 148 of the Act were not served and subsequent to that notices u/s 142(1) was also not served to the assessee. The assessment order has been passed ex-parte. Considering that non disputed fact available on record, the Bench feels that the assessee deprive of the substantial justice as none of the notices were served and the order has been passed against the principles of natural justice. Therefore, considering the peculiar fact available on record, we condone the delay of 1288 days in filing the appeal before the ld. CIT(A). However, since the order of the assessment is ex-parte and even there is no representation on merit before the ld. CIT(A), we feel that in the interest of justice the issue be set aside before the Assessing Officer who will decide the case of the assessee in accordance with the law. We order accordingly. The assessee is also directed to ensure participation in

the hearing fixed by the ld. AO and do not seek unnecessary adjournments. Thus, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 19/01/2024.

Sd/-

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur
दिनांक / Dated:- 19/01/2024.

***Santosh**

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

1. अपीलार्थी / The Appellant- Buntty Manhas, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(5), Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 598/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar