

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीप गोसाई,न्यायिक सदस्य एव श्रीराठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 682/JP/2023  
निर्धारणवर्ष/AssessmentYear : 2015-16

Dignity of Girl Child Foundation E-34, Durga Marg, Bani Park Jaipur	बनाम Vs.	The ITO Ward -1 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABTD 9427 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Sharma, Adv.  
राजस्व की ओर से / Revenue by: Shri Dinesh Badgujar, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 04/01/2024  
उदघोषणा की तारीख / Date of Pronouncement: 26 /03/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The Assessee has filed an appeal against the order of the Addl. Id. CIT(A)-6, Mumbai dated 13-09-2023, for the assessment year 2015 16 wherein the assessee has raised following ground of appeal.

“1. The appellate authority has grossly erred in rejecting the appeal of the assessee

2. The appellate authority has grossly erred in rejecting the application for condonation of delay and thereby rendering/treating the appeal of the assessee as infructuous.”

2.1 Apropos Ground No. 1 of the assessee, the facts as emerges from the order of the ld. Addl. CIT(A) emerges as under:-

“5. Decision

5.1 I have gone through the petition filed by the appellant for condonation of delay but the same is not acceptable. Appellant in its petition accepted that the intimation u/s 143(1) was received on 26-10-2016 for which appeal ought to have filed on or before 25-11-2016. The appellant stated that the main reason for delay is as follows:- After receiving the order assessee has consulted his counsel and stated that we shall file the revised return and we write an application to AO to rectify the above mistake and counsel file online rectification which has been rejected on 02-12-2016 and on the advice of the counsel we again filed the rectification in Aug 2018 which has been rejected on 09-08-2018 by CPC on line which has come to our notice in last week of August 2018 and we told about the same to the counsel who give assurance to get the matter correct from the Jurisdiction Officer who may get the mistake rectify and get the rectification right from CPC.” For justification of its claim assessee has referred different judgements vide letter dated 10-12-2021.

5.2 As per assessee they are following the matter with the counsel for rectification order with AO and they are in touch with the CPC and after that suddenly they have stopped to consult counsel. This is not sufficient reason for not filing an appeal in stipulated time. As a responsible and law abiding citizen, it is the duty of the assessee

to follow up the filing of appeal with its counsel but the Trust failed to file the appeal in time. Alternatively, the assessee would have filed the condonation letter for filing revised return to the concerned PCIT and after getting approval assessee assessee could file the revised return but the assessee failed to do so. The case laws referred by the assessee vide letter dated 10-12-2021 is not relevant in the context of this appeal.

5.3 Keeping in view of the above, application for condonation of delay of the assessee is rejected and accordingly the grounds of appeal filed by the appellant are dismissed as infructuous.

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

2.2 During the course of hearing, the Id. AR of the assessee submitted that the assessee could not get appropriate advice from the then consultant as to filing of the appeal before the Id. CIT(A) which made delay in filing the appeal and he further submitted that such inordinate delay may kindly be condoned keeping in view the decision of Hon'ble Supreme Court in the case of Senior Bhosale Estate (HUF) vs ACIT 429 ITR 732 and Hon'ble High Court of Karnataka in the case of Mrs.Premlatha Pagaria vs Income Tax Officer, Wared 9(2), Bengaluru [2021] 130 taxman,com.403 (Karnataka).

2.3 On the other hand, the Id.DR supported the order of the Id.CIT(A).

2.4 We have heard both the parties and perused the materials available on

record. It is noted that the AO passed the order in the case of the assessee on 11-10-2016 and the Id.CIT(A) passed the order on 13-09-2023 dismissing the appeal of the assessee on the ground of not condoning the delay being inordinate delay in filing the appeal by the assessee. The Bench noted that there was negligence on the part of the assessee, not pursuing the appeal deliberately and also not contacting the Id. Counsel for not keeping the track of the proceedings of the appeal pending before the Id CIT(A). We also take into consideration of the following judgements wherein the **Hon'ble Courts** have expressed their views as under:-

Senior Bhosale Estate (HUF) vs ACIT 429 ITR 732 (SC) :-

Section 260A of the Income-tax Act, 1961 High Court, appeal to (Condonation of delay). Assessee sought condonation of delay of 1754 days in filing appeals against order, dated 29-12-2003, passed by Tribunal Assessee pleaded that it had no knowledge about passing of Tribunal's order, until it was confronted with auction notices in June, 2008, issued by competent authority, immediately upon which, assessee filed appeal with High Court High Court by impugned order dismissed appeals, holding that these were not fit cases in which inordinate delay of 1754 days in filing appeals deserved to be condoned However, it was found that respondent revenue did not expressly refute stand taken by assessee that they had no knowledge about passing of order, dated 29-12-2003, until June, 2008- Whether unless that fact was to be refuted, question of disbelieving stand taken by assessee on affidavit, could not arise and for which reason, High Court should have shown indulgence to assessee by condoning delay in filing concerned appeal(s) Held, yes Whether said aspect having been glossed over by High Court, impugned order of High Court was to be set aside Held, yes [Paras 5 and 6] [In favour of assessee/matter remanded]”

Mrs. Premlatha Pagaria vs Income Tax Officer, Wared 9(2), Bengaluru [2021] 130 taxman.com.403 (Karnataka).

Section 253, read with section 154, of the Income-tax Act, 1961 and section 5 of the Limitation Act, 1963 Appellate Tribunal - Appeals to (Condonation of delay) - Assessment year 2009-10 Impugned order dated 3-9-2015 passed by Commissioner (Appeals) was delivered to assessee some time in September, 2015 and immediately after receipt of said order, assessee supplied said order to office of her Chartered Accountant for taking action for filing of an appeal - It was case of assessee that aforesaid order was not brought to notice of Chartered Accountant by his staff, and same remained in his office files without any action On 7-10-2016 assessee made an enquiry and learnt that appeal had not been filed She then took action to contact another Chartered Accountant and filed appeal thereon Whether assessee, in facts and circumstances of case, should not suffer on account of inadvertence on part of her Chartered Accountant Held, yes Whether assessee had made out sufficient cause to condone delay of 310 days In filling appeal before Tribunal Held, yes [Paras 12 and 13] [in favour of assessee)

The Bench feels that in order to keep the scale balance, we deem it appropriate to award cost of Rs.2,000/- upon the assessee being lethargic attitude to file the appeal timely before the Id. CIT(A) and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the Id. CIT(A) for proof and thus the delay in filing the appeal late is condoned and the appeal of the assessee is restored to the file of the Id. CIT(A) to decide it afresh at the earliest 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. Thus the appeal of the assessee is allowed for statistical purposes.

2.5 Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. 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 ld. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 26 / 03/2024.

Sd/-

(राठोडकमलेशजयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26 /03/2024

\*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Dignity of Girl Child Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Jaipur
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.682/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar