

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 668/JPR/2023

Yuwak Sangh Rajaldesar Tehsil, Ratangarh, Churu.	बनाम Vs.	CIT(Exemption), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATY0105C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 17/01/2024
उदघोषणा की तारीख / Date of Pronouncement: 09/04/2024

आदेश / ORDER

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

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income (Exemption), Jaipur [herein after referred to as "Id.CIT(E)"] dated 23.02.2023.

2.1 At the outset of hearing, the Bench observed that there is delay of 193 days in filing of the appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay with following prayers.

"1. in this connection it is submitted that the applicant is Trust/Society. The assessee has filed application before CIT(Exemption), Jaipur for registration u/ 12AB on 22.09.2022. The Id. CIT(E) rejected the application of the assessee on dt. 23.02.2023 on the reason

assessee not registered under the RPT Act 1959 and incomplete form. The order was placed on portal on dt. 23.02.2023, which was not served upon the assessee physical. However as per date of order the appeal was to be filed on or before 24.04.2023 but the same is being filed on by 24.10.2022 i.e. by delay of about 6 months. Although actually there is no delay if following facts are being considered.

2. The reason of late filing was that the assessee was under impression that he will receive any communication from the department either by registered post or on his registered email id but no communication was received by him by the both channels. The assessee was not aware of any order issued by the department in this regard.

However just some days before while preparing the audit and return, the assessee has asked to the counsel about the status of 12A registration, then counsel has stated that you would have been received the notices or order has uploaded on income tax portal, then the assessee checked and come to know about the above order.

That after seeing the order on the portal assessee show this rejection order to the counsel. Then the advocates advised to file the appeal against the rejection order being the strong case in favour and there is merit in the case.

3. That thereafter our counsel has started to prepare the appeal and the appeal has been prepared on 19.10.2023 and sent to us for sign.

4. Thus there was no negligence's of either assessee nor the counsels. Thus due to the above the appeal could not be filed within time. In support of these contention an affidavit of the trustee/JS 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 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Anothers 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 and time taking a various process which were bonafide and was a sufficient cause and there was no melafide intention.

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

2.2 The ld. AR of the assessee appearing in this appeal submitted that the assessee was under impression that he will receive any communication from the department either by Regd.Post or on his registered E-Mail but he did not get any

communication. . Thus, there was delay in filing of appeal. Considering the various judicial precedents wherein the courts has considered and ignored the delay. Even the Hon'ble Apex Court in the case of Collector, Land & Acquisition Vs. Mst. Katiji& Others 167 ITR 471(SC) directed the other courts to consider the liberal 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.

2.3 On the other hand Id. DR representing the revenue submitted that the reasons advanced by the counsel of the assessee are not sufficient to condone the delay however, he left the matter to the wisdom of the Bench.

2.4 We have heard the rival contentions and perused the petition advanced for condonation of delay. We feel that since, the reasons advanced are sufficient to condone the delay and respectfully following the finding of the Hon'ble Apex Court in the case of Collector, Land & Acquisition vsMst. Katiji & Others 167 ITR 471 and settled principles as laid down that in the interest of the justice a liberal approach is taken and we find merits in the reasons advanced before us by the assessee in the condonation petition. Therefore, in the facts and circumstances of the case, we condone the delay in filling the appeal by the assessee.

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

“1. The Impugned order u/s 12AB of the Act dated 23.02.2023 is bad in law and on facts, without providing adequate & reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.

2. The Ld. CIT(E) erred in law as well as on the facts of the case in rejecting the application for grant Registration/approval u/s 12AB and in not granting Registration/approval. The rejection so made and refusal to grant Registration/approval u/s 12AB is contrary to the provisions of law and facts of the case. The same kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time and also on fact and hence may kindly be quashed. The Id. CIT(E) be directed to grant Registration/approval from the dated of application.

4. 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.”

4. Brief facts of the case are that the application in Form No. 10AB seeking registration u/s 12AB of the Income Tax Act, 1961 was filed by the assessee online on 22.09.2022. A letter/notice No. ITBA/EXM/F/EXM43/2022-23/1048217392(1) dated 24.12.2022 was issued at the e- mail/address provided in the application requiring the assessee to submit certain documents/explanations by 09.01.2023, but no compliance was made by the assessee. Thereafter, a reminder letter was issued vide this office DIN & Notice No. ITBA/EXM/F/EXM43/2022-

23/1048623883(1) dated 11.01.2023 to submit certain documents/explanations by 25.01.2023. However, again no compliance was made by the assessee. In view of principle of natural justice, one more opportunity was provided to the assessee vide Letter No. ITBA/EXM/F/EXM43/2022-23/1049466327(1) dated 06.02.2023 as final opportunity through which date of submission was fixed as 20.02.2023. But this time also, on given date, no reply was filed by the assessee. Since it is a limitation matter, therefore, the case is decided on the basis of material filed by the assessee along with its application in Form no. 10AB. It is noted that the Id.CIT(E) rejected the assessee's claim for registration u/s 12AB of the Act on the following grounds:-

- * Incomplete form 10AB
- * Non registration with RPT Act, 1959.
- * Genuineness of activities.

6. Aggrieved from the order of the Id. CIT(E), the assessee preferred an appeal before us taking the ground as raised in para 3 above.

7. During the course of hearing, the Id. AR of the assessee submitted that 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(E) in the interest of equity and justice.

7. Per contra, the ld. DR relied on the orders of the ld. CIT(E).

8. After hearing both the parties and perusing the materials available on record, it is noted that the application filed by the assessee for seeking registration u/s 12AA of the Act was rejected by the ld. CIT(E) on the following grounds.

Incomplete form 10AB

Non registration with RPT Act, 1959.

Genuineness of activities.

Keeping in view the submissions of the ld. AR of the assessee that he may provided one more chance to advance the above documents as desired by the ld. CIT(E) and argue the case to settle the issue in question. Hence, in this view of the matter, we restore the matter back to the file of the ld.CIT(E) to decide it afresh by providing one more opportunity of being heard to the assessee. The assessee is directed to produce all the relevant papers concerning the issue in question before the ld.CIT(E). Thus the appeal of the assessee is allowed for statistical purpose.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. CIT(E) shall in no way be construed as having any

reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. CIT(E) independently in accordance with law.

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

Order pronounced in the open court on 09/04/2024.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 09/04/2024

*Santosh

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

1. The Appellant- Yuwak Sangh, Churu.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 668/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar