

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.290/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16

Shri Mukesh Kumar Choudhary V.P: Mundiya Khurd, The: Chaksu Jaipur	बनाम Vs.	The ITO Ward 7(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKAPC 2047 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Yogesh Kumar Sharma, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Chaudhary Addl. CIT

सुनवाई की तारीख / Date of Hearing : 09/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 28 /05/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 06-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2015-16 raising the ground of appeal in Form No. 36.

2.1 At the outset of the hearing, the Bench noted that the Id. CIT(A) dismissed the appeal of the assessee by passing an ex-parte order as under:-

“5.2.4. In view of the above judicial pronouncements the basic principle emerges that the delay should be bonafide and there should not be any negligence on the part of the appellant. However, in the appeal under consideration, no sufficient cause of delay was shown by the appellant. The behavior of the assessee could be termed as personified inaction and negligence which would not constitute reasonable cause. In view of the above discussion, the request for condonation of delay is rejected. Accordingly, the appeal of the appellant is not maintainable in view of the provisions of the sections 249(2) of the IT Act.

5.3. Further, the appellant has filed 10 grounds of appeal. The ground no.1 to 9 are interconnected to the common issue i.e. levy of penalty of Rs. 20,000/- u/s 271(1)(b) of the Income Tax Act, 1961, therefore, for the sake of convenience all these grounds of appeal are adjudicated together.

5.3.1. The contention of the appellant that the Ld. Assessing Officer has erred on facts and in law in imposing penalty of Rs.20,000/- under section 271(1)(b) of the Act without giving any ample opportunity of hearing and considering the fact that the assessee could have replied to all the notices if the notices were received by him. In this context, it is submitted that the Hon'ble Supreme Court in the judgment dated 01.03.2017 in the case of N Paraeswaran Unni Vs. G. Kannan and Another [Criminal Appeal No.455 of 2006] has held "that when a notice is sent by registered post and is returned with postal endorsement 'refused' or 'house locked' or 'shop closed or 'addressee not in station', due service has to be presumed"Hence the conditions to consider service of notice have been clearly fulfilled in instant case. Further, during the course of appellate proceedings, the appellant has not furnished reasonable cause for non-compliance of notice u/s. 142(1) of the I.T. Act. During the appellate proceedings, it is observed that the appellant has filed appeal after due date of filing of appeal and filed application for condonation of delay which is discussed in details in the proceedings paras. Also, the appellant submitted that he was not aware that notice had been issued and hence there was no scope of compliance.

5.3.2. From the perusal of order u/s. 271(1)(b) dated 22.08.2023, it is clear that the appellant has not complied with the notices served as per prescribed legal procedure. I am convinced that the appellant has committed non-compliance to more than one notices and that is the result that the order u/s.147 r.w.s.144 r.w.s. 144B of the Act was passed by the . The penalty has been properly initiated. The AO has imposed penalty u/s. 271(1)(b) of the Act for non-compliance of two notices [Notices u/s. 142(1) of the I.T. Act dated 18.10.2022 and dated 05.01.2023]. Therefore, no fault could be found with the order of the AO given the circumstances in which he was placed. Ground Nos. 1 to 9 of appeal are dismissed.

5.4. In Ground No. 10, it is stated that the appellant craves leave to add, amend, or delete any ground/s of appeal on or before the final hearing. This ground of appeal is academic in nature and no decision is required in respect of this ground of appeal. For the statistical purpose, this should be taken to be dismissed grounds of appeal.

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

2.2 In this appeal, it is noted that the assessee had late filed the appeal before the Id. CIT(A) for which the assessee could not substantiate the sufficient reason as to how 21 days delay was made by him in filing the appeal and such delay was not condoned by the Id. CIT(A) and thus rejected the condonation application of the assessee.

2.3 To this effect, the Id. AR of the assessee has filed a petition praying therein to condone the delay on the ground that the assessee is a rural man, he is a milk man only and living at Mundriya Khurd Chaksu, Jaipur. He also submitted that the assessee has no basic knowledge or intelligence regarding income tax matter.

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A)

2.5 After hearing both the parties and perusing the materials available on record, it is noted from the order of the ld. CIT(A) that the assessee could not substantiate the reason to why delay of 21 days made in filing the appeal before him. However, the Bench considers the petition only to the extent of condoning the delay in filing the appeal before the ld. CIT(A) for the reason that the assessee is illiterate person, working as milkman and he has no knowledge of income tax matter. In this situation and as a peculiar facts of the case, the delay is condoned with the direction to the assessee to contest the case before the AO and submit the necessary documents before the AO. Since, for lethargic and negligent action on the part of the assessee, therefore a cost of Rs.2,000/- is imposed upon the assessee and the same shall be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the assessee is restored to the file of the AO 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. Thus the appeal of the assessee is allowed for statistical purposes.

2.3 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the AO shall in no way be construed as having any

reflection or expression on the merits of the dispute, which shall be adjudicated by AO 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 28 /05/2024.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/05/2024

*Mishra

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

1. The Appellant- Shri Mukesh Kumar Choudhary, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward -7 (1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.290/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar