

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,

आयकर अपील सं./ITA Nos. 184 & 185/JP/2022
निर्धारण वर्ष/Assessment Years : 2009-10

Gobind Chhangomal Sajnani Plot No. 159 Kanwar Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward-1(1), Jaipur/ Income Tax Officer, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BXBPS 3852 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vedant Agrawal (CA)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 13/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 05/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals filed relates to the above named assessee for the A. Y. 2009-10. ITA no. 184/JP/2022 relates to the quantum proceedings and ITA no. 185/JP/2022 relates to the penalty levied u/s. 271(1)(c) of the Act. The Commissioner of Income Tax, Appeal, Delhi-42 vide order dated 03/03/2022 [here in after Id. CIT(A)] dismissed both the appeals filed by the assessee. The first appeal filed relates to the assessment order passed u/s. 144/147 of the Act by the Income Tax Officer, Ward 1(1), Jaipur dated

19.12.2016 and consequent thereupon the levy of penalty order was also passed on 22.06.2017.

2. At the outset of hearing, the Bench observed that both these appeals are filed with the delay of 8 days. To support the cause of the delay the Id. AR of the assessee filed an application stating the reasons for delay and prayed for condonation of delay, the content of the application reads as under :-

“Sub: Delay condonation application in appeal no ITA 185/JPR/2022 in the case of Gobind Chhangomal Sajnani.

Respected Members,

In the aforementioned matter, it transpires that a delay of 8 days has been marked in filing of appeal in the instant case.

Ld. CIT(A) had passed the order against the Assessee on 03.03.2022. Moreover, as per sub section (3) of Section 253 of the Income Tax Act, 1961 the Assessee was having 60 days time to file an appeal before the Hon'ble Income Tax Appellate Tribunal against the order of the Ld. CIT(A). It is hereby submitted that the Assessee filed an appeal through the online portal of the ITAT on 28.04.2022, which is within the said timeline.

Right after filing of such appeal, the Assessee received an e-mail from the e-filing team of Hon'ble ITAT Mumbai, where it was categorically mentioned that the Assessee can file a physical appeal before Hon'ble ITAT Jaipur on or before 28.05.2022. Copy of the e-mail is attached herewith and marked as Annexure-1.

Therefore, the Assessee was of the opinion that he could file the copy prior to 28.05.2022 and the same would not be treated as barred by limitation.

However, we humbly request to you to kindly condone the delay in the instant case.

Prayer

In view of the above submissions, it is humbly prayed that the appeal may kindly be accepted.”

3. The Id. DR fairly does not controvert the facts mentioned in the condonation petition and submitted that the bench may decide the application as deem fit in the interest of justice.

4. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 08 days is that the assessee has filed the appeal online which is within the time but they have received the email to file it in the physical mode. Thus, in fact we it considered the appeal filed online there is no delay as such. Therefore, we concur with the submission of the assessee. Thus the delay of 08 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 and therefore, we admit this appeal.

5. First, we take up the appeal of the assessee **ITA No. 184-JP-2022 for A.Y 2009-10**. In this appeal, the assessee has raised the following grounds:

“1. On the facts and circumstances of the case Ld. A.O. grossly erred in initiating reassessment proceedings U/s 147 of the Act.

2. On the facts and circumstances of the case and in law also Ld. A.O. grossly erred in assuming jurisdiction without serving notice u/s 148 on the appellant assessee as notice issued u/s 148 was not served on the appellant. Therefore resuming jurisdiction is unlawful.

3. On the facts and circumstances of the case and in law also Ld. A.O. grossly erred in invoking the provision of section 147 on the mechanical approval of superior authority, hence the entire proceeding are abinitio void.

4. On the facts and circumstances of the case and in law, the Ld. AO grossly erred in initiating reassessment proceedings without having any reason of belief of escapement of income chargeable to tax. Kindly peruse the alleged reasons from where it is clear that the alleged information is general in nature, and no specific escapement of income has been proved.

5. On the facts and circumstances of the case and in law, the Ld. AO grossly erred in initiating reassessment proceedings on the borrowed satisfaction and without applying his independent mind.

6. On the facts and circumstances of the case Ld. CIT (A) grossly erred in rejecting appeal on account of delay filing, without considering the facts of the case that assessee has explained the delay & the certified copy of order & demand notice was received on 18-03-2019.

7. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in passing the exparte order u/s 144 without serving any notice U/s 142(1) or U / s * 143(2) or U/s 144 or U/s 156 on the assessee. Procedure of service of notice was not at all followed.

8. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in making and confirming addition of Rs 1,15,00,000/- treating the investment in mutual fund as unexplained investment u/s 69A of the

Act ignoring the submission of assessee filed before Ld CIT(A) that the investment was made out of NRE account.

9. That addition of Rs 9810/- U/s 194A of the Act is also unlawful.

10. On the facts and circumstances of the case and in law also Ld. CIT(A) grossly erred in not accepting the additional evidences filed by the assessee, action of Ld. CIT(A) is against the principal of natural justice.”

6. Succinctly, the fact as culled out from the records is that the assessee is an NRI for last more than 20 years. The investments made in MF were treated as undisclosed Income by the Id. AO. The notices were not served upon the assessee as no one lives in the house, the fact has been mentioned in the order that the notice was affixed on the house of assessee. The assessee has not filed his original return of income for A.Y 2009-10. Later on as per information available with the department. the assessee made investment in purchase of mutual fund units amounting to Rs. 1,15,00,000/- during the F.Y 2008-09. Further, it was noticed that the assessee has received interest of Rs. 9,810/- u/s 194A of the IT Act, 1961. Accordingly, notice u/s 148 of the IT Act, 1961 was issued on 18.03.2016 after recording proper reasons and satisfaction of competent authority which stands duly served upon the assessee. The assessee had not filed any return of income, therefore, notice u/s 148 was issued and duly served

after recording proper reasons and satisfaction of the competent authority. Various notices were issued and served upon the assessee which were not complied. Thereafter, a detailed show cause notice was issued to the assessee which has been reproduced by the AO in para 3 of the assessment order. However, the appellant did not respond to the show cause notice. Left with no option, the AO finalised the assessment u/s 144 r.w.s. 147 of the Act. The investment in mutual fund was found as unexplained which was added to the total income. Interest of Rs. 9,810/- received by the assessee was also added to the total income. The assessment was finalised at the total income of Rs. 1,15,09,810/-.

7. Aggrieved from the order of the assessing officer in the quantum proceeding the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

4. It is observed from Form 35 that the impugned order is dated 19.12.2016. However, the appeal has been filed on 23.04.2019. The appellant has submitted in Form 35 as follows:

"The assessee received the Certified copy of the Order on (18/3) / 2019 as there was no one to receive the notice/order at the address of the assessee, as he is an NRI for last more than 20 years."

4.1 There has been delay of over 26 months in filing of appeal. No affidavit or other evidence has been submitted in support of the reasons for delay at the time

of filing of appeal or thereafter when the appellant was afforded multiple opportunities for the same. The appellant has only claimed that no one was available at the given address as the appellant is an NRI for more than 20 years.

4.2 It is trite that the delay can be condoned only if there is no gross negligence or deliberate inaction or lack of bona fide. Secondly, the appellant should furnish acceptable and cogent reasons sufficient to condone delay.

4.3 The date of order is 19.12.2016. The appellant has claimed to have received certified copy on 18.03.2019. The date of service on the appellant as claimed is not proven. In routine course, the assessment order must have been served on the address given by the appellant latest within a week of order. The appellant has not denied that the order was not served at the given address at the time of assessment. The appellant has only contended that he did not receive it as he is an NRI. Just because, the appellant is an NRI does not establish that he was not in communication with any of his relatives or family members living at the given address. Merely because, the appellant has obtained a certified copy subsequently does not per se prove that the order was not served in routine course. No affidavit has been filed in this regard. The appellant is a man of means living in UAE. The appellant maintains multiple bank accounts and has made huge investments in mutual funds in India. He is not an ignorant or illiterate person. The appellant is advised by a CA firm in Jaipur. The appellant has not disclosed as to how he came to know of the assessment order. In normal course, the NRI's living abroad make necessary arrangements for keeping them aware of important notices etc. The family members / friends do inform their NRI relative by e-mail or telephone about such a communication from Government. The appellant has not claimed that he did not visit India since December, 2016. No copy of passport etc. has been filed.

4.4 The appellant has remained non-compliant even during the assessment proceedings. The appellant has been reckless and has failed to prove his bonafide in filing belated appeal. No sufficient cause has been shown for explaining inordinate delay in filing appeal.

4.5 Hon'ble ITAT Mumbai in Prashant Projects Ltd. v. DC/T[2013] 37 taxmann.com 137 (Mumbai - Trib.) has enumerated various general principles for condonation of delay as under:

1. If sufficient cause for excusing delay is shown, discretion is available to the Commissioner (Appeals) to condone the delay and admit the appeal.
2. The expression 'sufficient cause' is not defined in the Act, but it means a cause which is beyond the control of an assessee. For invoking the aid of the section any cause which prevents a person approaching the Commissioner (Appeals) within time is considered sufficient cause. In doing so, it is the test of reasonable man in normal circumstances which

has to be applied. The test whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. In other words, whether it is bona fide cause. What may be sufficient cause in one case may be otherwise in another. What is of essence is whether it was an act of prudent or reasonable man.

3. Section 249(3) is discretionary in nature and the assessee cannot seek condonation of delay under this provision as a matter of right, but has to satisfy the Commissioner (Appeals) by explaining the sufficient cause for the delay.

4. Just because there is merit in the appeal filed by the assessee, any amount of delay, however, negligently caused, cannot be condoned.

5. In the case of J.B. Advani & Co. (P.) Ltd. v. R.D. Shah, CIT [1969] 72 ITR 395, the Supreme Court had held that explanation of delay for the entire period is necessary. What is expected of the appellant in such matters is to show that delay was occasioned due to some sufficient cause. The cause pleaded must fit in the facts and circumstances of the given case and the explanation offered regarding the delay occasioned by such cause should appeal to reasons so as to get judicial approval.

4.6 Adopting a liberal view in condoning delay is one of the guiding principles in the realm of belated appeals, but liberal approach cannot be equated with a licence to file appeals at will disregarding the time limits fixed by the statutes.

4.7 In view of the discussion made above, no sufficient cause has been shown for explaining inordinate delay in filing appeal. The condonation of huge delay of over 26 months cannot be granted in this case. The appeal deserves to be dismissed being non maintainable.

5. In the interest of natural justice, the matter is examined on merits as well.

6. The written submission of the appellant filed electronically on e-filing portal is re- produced below:

"Mr. Gobind C Sajnani is a NRI since last 40 years, he did not know the process of filing the ITR, hence he did not filed his ITR. The total investments of Rs. 11500000 in the year 2008-09 in MF were made out of NRE ac. Total 4 transactions were made out of which 3 was on account of joint holders and 1 was the single holding. All were made from NRE ac. Also the TDS on the redemption of MF was duly deducted, hence he was not mandatorily required to file his ITR. The investments were made as below 1. Kotak MF-2000000 was invested from Standard Chartered NRE ac-statement enclosed 2. ICICI Prudential-5000000 was invested from ICICI bank NRE ac statement enclosed 3. SBI MF-3000000 was invested

from SBI NRE ac-statement enclosed 4. SBI MF-1500000 was invested from SBI NRE ac- statement enclosed. Sir as all the investments were made out of NRE ac, TDS was deducted on MF redemption, ITR was not filed because of ignorance, there is no escape of income. Any penalties, recoveries initiated would be undue hard ship on the assessee. You are therefore requested to kindly look into and drop the recovery proceedings as around 4 years has been elapsed."

7. The appellant has enclosed statement of bank accounts of ICICI Bank, SBI, and Standard Chartered Bank. The appellant has also uploaded account statement of mutual funds. From the mutual fund statements, it is observed that the appellant has made following investments in the mutual fund:

Kotak Mutual Fund	Rs. 20,00,000/-	Joint with Wife Smt. Varsha Sanjnani
SBI Mutual Fund (Debt fund: Dividend)	Rs. 15,00,000/-	Joint with Wife Smt. Varsha Sanjnani
SBI Mutual Fund (Debt Fund : Growth)	Rs. 30,00,000/-	Joint with Wife Smt. Varsha Sanjnani
ICICI Prudential Mutual Fund	Rs. 50,00,000/-	Single Holding

7.1 It is observed that the AO had separately taken up assessment of the wife of the appellant Smt. Varsha Sajnani. The addition of Rs. 65,00,000/- jointly invested has been added in the assessment of Smt. Varsha Sajnani also vide order dated 19.12.2016. The appellant has submitted that due to joint holding, the transactions were shown in 26AS of both i.e. Mr. Gobind Sajnani and Mrs. Varsha Gobind Sajnani. It has been clarified that all the investments in the Mutual funds by Mr. Gobind Sajnani were made out of NRE Accounts of Mr. Gobind Sajnani. Therefore, the investments are considered in the hands of the appellant.

8. It is observed that all these are additional evidences. However, the appellant has never made any application under Rule 46A of the Income Tax Rules, 1962 for admission of additional evidences. The appellant is advised by a CA firm in Jaipur. The AR is well aware of the legal procedure. The appellant / AR has not shown any reason as to how the provisions of Rule 46A can be invoked in this case. Therefore, the additional evidences cannot be admitted at this stage without any application in this regard and without showing that this was a case where Rule 46A is attracted. Moreover, prima facie look at the evidences show that the investment have been made from the NRE bank accounts but the source of funds in the said accounts is not proven. The copy of corresponding foreign bank accounts from which funds have been transferred to Indian bank accounts have not been filed. Further, no proof of earning of income has been filed. The explanation is not acceptable at this stage. In view of these facts, the ground of appeal is dismissed on merits as well.

9. The appeal is dismissed both being non-maintainable as well as on merits.”

8. As it is evident that the appeal filed by the assessee was filed with a delay of 26 months. The Id. CIT(A) noted that the assessee has not proved the bonafide in filling the belated appeal. No sufficient case shown for explaining the inordinate delay in filling the appeal and therefore, he dismissed the appeal considering it as non-maintainable. Since, the assessee has also filed the written submission the same has been dealt by the Id. CIT(A) while dealing with the appeal of the assessee even on merits too, wherein the Id. CIT(A) contended that the assessee is advised by CA firm in Jaipur. The AR of the appellant has not filed the application under rule 46A, and the additional evidence submitted by the assessee was not admitted. The Id. CIT(A) also noted that the funds have been transferred to Indian Bank accounts and the details thereof have not been filed.

9. The Id. AR of the assessee candidly admitted that before the Id. CIT(A) the assessee has not filed an affidavit as the assessee was out of India. The assessee submitted the same before us and that too on a plan paper to confirm the fact that the order appealed before the Id. CIT(A) was received by the assessee on 18.03.2019 and immediately the appeal was

filed on 23.04.2019. Thus, the Id. AR of the assessee prayed that the appeal has incorrectly decided and that too without appreciation of the facts already on record and thus, the order of the Id. CIT(A) violates the principles of natural justice and the assessee be provided on more opportunity because he is an NRI.

10. Per contra, the Id. DR submitted that appeal is not required to be admitted. Even the Id. CIT(A) has decided the merit of the case also. Alternatively, if admitted the cost be imposed as the assessee has not complied with the law.

11. We have heard the rival contentions and also persuaded the material available on record. The bench clearly shows that the assessee is an NRI. The address mentioned is vacant most of the time due to the fact that the assessee is a foreign working person. As a result, the assessment order not served in effect to the assessee. The assessee on 18.03.2019 applied for the copy of the assessment order and consequently filed the appeal immediately therefore, this aspect of the matter has not been appreciated merely on the reason that assessee has not filed these facts on an affidavit.

As regards the additional evidence filed, the same has not been sent to the Id. AO, as the same effect on the tax liability fastened on the assessee. Because the assessee is NRI, notice or orders have not been served upon the assessee, order of the assessment is passed u/s. 144 of the Act and Id. CIT(A) has not admitted the appeal considering it as barred by limitation and the decision given by him based on the written submission is in violation of principles of nature justice. Considering these peculiar facts made available by the assessee we are of the considered view that the assessee is deprived on the principles of natural justice. Thus, we consider it deem to restore the issue to the file of the Id. AO with a direction to consider the facts of the issue raised in accordance with law and that too after allowing reasonable opportunity of being heard to the assessee. Thus, with grounds so raised by the assessee, we set aside the issue to the file of the Id. AO who will decide the issue afresh by providing one more opportunity of hearing to the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the Id. AO.

12. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having

any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

13. The appeal of the assessee in **ITA No. 185-JP-2022 for A.Y 2009-10** challenges the order passed u/s. 271(1)(c) of the Act being the penalty on the assessed income. Since we have set aside the order of the assessment to reframed the consequential issue of levy of penalty also be decided based on the outcomes of the quantum proceedings. Thus, the appeal of the assessee in ITA no. 185/JP/2022 becomes infructuous at this stage and Id. AO while considering the quantum proceeding may also form the view about the chargeability of the penalty on the assessee or not. In terms of these observations the appeal filed by the assessee is allowed for statistical purposes.

In the result, both the appeal of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 05/06/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/06/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Gobind Chhangomal Sajnani, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-1(1), Jaipur/ ITO, 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. गार्ड फाईल / Guard File (ITA Nos. 184 & 185/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar