

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 146/JPR/2024
निर्धारण वर्ष/Assessment Years : 2016-17

Prem Devi Baid B-114, Dayanand Marg Tilak Nagar, Jaipur	बनाम Vs.	ACIT, Circle-06, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACGPB 5002 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Dheeraj Borad (CA)
राजस्व की ओरसे / Revenue by: Shri Rajesh Kumar Meena (Adl.CIT)

सुनवाई की तारीख / Date of Hearing : 04/06/2024
उदघोषणा की तारीख / Date of Pronouncement : 06/06/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

Assessee is the appellant-applicant. As regards the Assessment Year 2016-17, she filed ITR on 5.8.2016 declaring total income of Rs.15,45,510/-. But, the department selected her case for complete scrutiny through CASS. Requisite notice under section 143(2) of Income Tax Act (hereinafter referred to as the "Act") was served upon her. She responded the same with requisite information from time to time.

Making of Assessment Order

On 17.12.2018, Learned Assessing Officer assessed her income at Rs. 23,01,400/-, while making additions under section 69A and 57 of the Act. At the same time, proceedings under section 271(1)(c) of the Act were initiated separately on the ground that she had furnished inaccurate particulars as regards her income.

Assessee challenges the Assessment Order

2. Assessee felt dissatisfied. She raised the matter before Learned CIT(Appeal) by way of appeal presented on 7.1.2019. That is how, the assessment order was challenged.

Dismissal of appeal by Learned CIT(A)

3. The appeal preferred was not decided on merits. It appears to have been dismissed on the ground that the assessee had opted to avail of the benefits of Vivad Se Vishwas Scheme and was reported to have deposited Rs.10,000/-in terms of Form No.5 dated 15.2.2021.

Before this Appellate Tribunal

4. Dismissal of the appeal, in the manner indicated above, brings the assessee before this Appellate Tribunal.

The impugned order is dated 24.06.2022. Appeal came to be presented on 12.02.2024. Registry reported that it came to be filed after a delay of 538 days.

Column No.11 of Form No.36, meant for filing of appeal before Appellate Tribunal pertains to delay in filing of appeal. It is lying blank. Registry was required to issue deficiency notice to the appellant in this regard. But, it appears to have not been issued.

Be that as it may, appellant knew about delay in filing of the appeal. That is how, she of her own filed an application seeking condonation of delay in filing the appeal.

The application is accompanied by an affidavit of the applicant-appellant.

5. Arguments heard. File perused.

Condonation of delay in filing of appeal

6. The application seeking condonation of delay in filing the appeal is taken up first. It involves the question as to whether there is any sufficient cause in filing of the appeal beyond the prescribed period of limitation.

7. Significant to note that in Form No.36 submitted before this Appellate Tribunal, the applicant admits that the copy of the impugned

order was served on 24.6.2022 i.e. the day it was passed by Learned CIT(A). So, it was for the applicant to prove as to what prevented her from filing of appeal within the prescribed period of limitation.

Learned AR for the applicant has referred to what has been claimed in the application and the supporting affidavit, and urged that as there was sufficient cause in non filing of the appeal within the prescribed period of limitation, application seeking condonation of delay in filing of the appeal deserves to be allowed.

As claimed by the applicant, she is a widow of about 74 years of age, and not well educated. She has also displayed ignorance as to how operate an email.

Learned DR for the department has rightly submitted that in Form No.35 meant for filing of appeal before Learned CIT(A), particularly, in column No.17, email address of the applicant-appellant furnished by the appellant stands recorded as : accounts@life.in, but the applicant has not brought on record any material to suggest that it was her email account.

Had it been the case of the applicant that she had furnished her email account while filing appeal before Learned CIT(A), but she could not operate the same, for one reason or the other, it would have been

a different matter. As noticed above, this is not the claim of the applicant.

Therefore, the contention on behalf of the department that the claim of applicant that she did not know as to how to operate an email does not come to her aid, has merit.

As regards the abovesaid email address, it was for the applicant to allege, and then prove, she did not receive any information from the person, whose email address was provided while filing the appeal. But, this is not claim of the applicant.

As per averment in the application and the affidavit of the applicant, coincidentally she recollected in the last week of August, 2023 that she had filed appeal challenging the assessment order, and as such, her enquiry revealed that the appeal stood dismissed on 24.6.2022 by CIT(Appeal), without issuing to her statutory notice.

While hearing the matter, we found that two significant facts i.e. as to when and from whom the applicant enquired about the outcome or pendency of her appeal, and as to who told her about the outcome, are missing in the application and her affidavit.

Applicant was firstly required to specifically allege the same in her application, and then to testify about the same in her affidavit.

Omission of these significant facts led the Bench to raise query from Learned AR for the applicant.

The fact remains that as per her own claim in the application, for the first time the applicant recollected about the appeal only in the last week of August, 2023.

The appeal was filed in the year 2019. From the grounds of appeal, it can be gathered that the applicant availed of assistance in drafting and filing of appeal before Learned CIT(A).

It is well settled that even when a party has the assistance of any Advocate or representative for the purposes of some litigation or filing of an appeal, it is expected that the party remains in constant touch with the Advocate or representative so as to know about the progress in the case or appeal or follow or persue the same.

This is a case, where, as per claim of the applicant, after filing of the appeal before learned CIT(A), she did not remain in touch with the representative to have information about pendency or disposal of the appeal. She admits to have recollected about the appeal only in the last week of August, 2023.

Obviously, she has not furnished any explanation as to why she did not contact her representative after filing of the appeal to know the progress or the fate of the appeal.

8. As regards column meant for mode of communication of notices by way of email, available at the top of Form No.35, somehow, the appellant expressed "No". In column No.17, she herself expressed for communication of the notices at the abovesiad email address.

As noticed above, the applicant admits that the copy of the impugned order was served on 24.6.2022 i.e. the day it was passed by Learned CIT(A). It is not her case that her representative never apprised her of the passing of the impugned order.

Had she been diligent enough, she would have challenged the impugned order within the prescribed period of limitation.

9. As a result, we find that the applicant was not vigilant enough in pursuing her appeal presented before Learned CIT(A), through her representative.

Rather, it is her negligence which prevented her from filing the appeal before this Appellate Tribunal within the prescribed period of limitation. In the interest of justice, we deem it to be a fit case where the delay in filing of appeal before this Appellate Tribunal deserves to

be condoned, but subject to costs. Consequently, we condone the delay in filing of the appeal. Applicant is burdened with costs of Rs.5,000/- to be deposited in Prime Minister's National Relief Fund.

Discussion in the appeal- on merits

10. On merits, as noticed above, Learned CIT(A) dismissed the appeal, not on merits, but on the ground that the assessee had opted to avail of the benefits of Vivad Se Vishwas Scheme and was reported to have deposited Rs.10,000/-in terms of Form No.5 dated 15.2.2021.

11. We have enquired from Learned AR for the assessee if the assessee had so availed of benefits of said scheme and deposited said amount towards tax.

Thereupon, learned AR for the assessee has pointed out that actually concession of said scheme was availed of by the assessee as regards the penalty imposed on her, and not as regards tax i.e. the quantum proceedings or the assessment order assessing her income.

Learned DR for the department has not disputed said submission raised on behalf of the assessee.

12. Even otherwise, copies of relevant documents available at page 17 and 18 of the Paper Book submitted on behalf of the assessee would reveal that the assessee had availed of benefit of the said Scheme, only

as regards the penalty imposed under section 271(1)(b) of the Act, relating to the Assessment Year 2016-17, and as a result on 15.2.2021 she deposited Rs.2,500/-only as against the full amount of Rs.10,000/- towards penalty.

13. In view of said record made available to us, and the candid admission on behalf of the department that assessee availed of benefit of the Scheme only as regards the penalty, we find that Learned CIT(A) fell in error in suo moto dismissing the appeal filed, being of the view that the same had become infructuous. Actually, the appeal challenging the assessment order dated 17.12.2018 had not become infructuous.

Conclusion

14. In the given situation, the impugned order passed by Learned CIT(A) inadvertantly dismissing the appeal as having become infructuous, deserves to be set aside.

Result

15. As a result, we allow this appeal for statistical purposes, and set aside the impugned order passed by Learned CIT(A) dismissing the appeal relating to the AY 2016-17. Consequently, the appeal is restored to the files of Learned CIT(A) to its original number. Learned CIT(A) to

decide the appeal afresh on merits, after providing to the assessee a reasonable opportunity of being heard in accordance with law.

Appellant shall produce, before Learned CIT(A), the receipt in proof of deposit of costs imposed here.

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

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

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/06/2024

*Mishra Ji

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Prem Devi Baid, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-06, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 146/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar