

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

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

आयकर अपील सं./ITA. No. 362/JPR/2024
निर्धारण वर्ष/Assessment Year : 2012-13

Shri Chirangi Lal 496, Rohit Nagar, 1 st Keshav Vidhyapeeth Road, Jaishinghpura Khor, Jaipur.	बनाम Vs.	ITO, Ward-7(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADWPL4412E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओरसे /Assessee by : Shri Ashish Khandelwal (C.A.)
राजस्व की ओरसे /Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख /Date of Hearing :25/06/2024
उदघोषणा की तारीख /Date of Pronouncement: 26/06/2024

आदेश /ORDER

PER: NARINDER KUMAR, Judicial Member

Assessee- Shri Chirangi Lal, filed an appeal before Learned CIT(A)/NFAC, challenging order dated 27.12.2017, passed by the Assessing Officer. Vide impugned order, Learned CIT(A) has dismissed the appeal.

The Assessing Officer had assessed income of the assessee, due to unexplained cash credit, u/s 68 of the Income Tax Act, 1961 Act (hereinafter referred to as the "Act"), at Rs. 75,43,400/-.

Appeal has been dismissed, while observing that the assessee-applicant was found not interested in prosecuting the appeal. He so observed as the assessee did not respond to any of the notices issued u/s 250 of the Act, during the period from 2020 to 2023.

2. As noticed above, impugned order is dated 14.07.2023. The assessee filed present appeal after 190 days. Therefore, the appeal is accompanied by an application seeking condonation of delay.

3. Arguments heard. File perused.

4. On the point of condonation of delay, Id. AR for the assessee-appellant-applicant has referred to his own affidavit dated 26.03.2024, already submitted, and copies of certain documents submitted today in the course of arguments.

The submission of Id. AR for the assessee is that initially the assessee had furnished e-mail ID/ address as manishjain4321@gmail.com i.e. of the counsel, who used to see the work pertaining of return of the assessee; that subsequently, on 14.06.2023, the assessee furnished fresh e-mail address i.e. kvassociates0921@gmail.com, but the notices issued

by CIT(A),NFAC, at the previous e-mail address could not be responded to or complied with by the previous counsel dealing with work pertaining to filing of return.

Ld. AR has further submitted that the impugned order might have been served on the email ID i.e. kvassociates0921@ gmail.com, but the same could not be noticed, as the counsel dealing with work pertaining to filing of return, due to oversight/negligence could not communicate the receipt of the impugned order to the applicant-applicant or to him (Ld. AR representing the applicant here in this matter.)

Therefore, the contention is that the delay in filing of the appeal may be condoned and further, that even the impugned order passed by Learned CIT(A) deserves to be set aside, on the ground that the assessee could not get reasonable opportunity, of being heard.

5. Ld. DR for the department has submitted that in Form 35, the assessee furnished e-mail ID for correspondence as ashishkhandelwalca@gmail.com i.e. of the AR representing the applicant before this Appellate Tribunal, and that the applicant has not placed on record any material to suggest as to on which email ID, the impugned order was served, and as such, it cannot be said that the applicant had any

sufficient cause in not filing of appeal within the prescribed period of limitation.

As regards the earlier three notices placed on record by the applicant, Learned DR submits that the assessee has not furnished any explanation for not having responded to the same, even though same were served at the correct e-mail Id. i.e. manishjain4321@gmail.com, and copies of three notices dt. 10.2.2022, 11.1.2022 and 11.1.2023 were also forwarded at the e-mail ID of ashishkhandelwalca@gmail.com i.e. the AR representing the applicant before this Appellate Tribunal, and as such the application, seeking condonation of delay deserves to be dismissed.

6. Admittedly, while furnishing Form 35, appellant furnished e-mail address i.e. ashishkhandelwalca@gmail.com i.e. of the Ld. AR, representing the applicant-assessee before this Appellate Tribunal.

As per record, after filing of the appeal on 14.06.2023, the assessee uploaded on the portal of the department fresh e-mail address kvassociates0921@gmail.com.

When in the year 2018, the appeal was presented before Learned CIT(A), through Shri Ashish Khandelwal CA, and he continued to represent the appellant there, and furthermore, his email ID was provided for communication, it remains unexplained as to why his email ID was

replaced by or on behalf of the assessee with the email ID kvassociates0921@gmail.com. Shri Ashish Khandelwal CA has also not furnished any reason in this regard either in his affidavit or in the course of arguments. Ld. AR-CA has not apprised us as to why and who changed the email ID on the portal on 14.6.2023, by which three notices had already been issued by NFAC to the assessee after filing of the appeal with his assistance.

No affidavit of the applicant-assessee has been furnished to support the averments put forth in the application seeking condonation of delay. There is no explanation in this regard as well.

Be that as it may, in the given situation, the impugned order was required to be served at the latest e-mail address furnished uploaded by the assessee on the portal. The Id. AR for the assessee-applicant stated at Bar that from the portal, it cannot be made out as to on which e-mail address the impugned order was served.

As per affidavit of Shri Ashish Khandelwal, CA, the latest email ID uploaded on 14.6.2023 on the portal is of the counsel who deals with work pertaining to filing of returns. In this situation, affidavit of said counsel, who allegedly used to deal with work pertinent to filing of returns, was required

to be filed as regards receipt or non receipt of the impugned order on his email ID. But, no such affidavit has been filed.

7. In view of what has been recorded above, we find that applicant has not filed his affidavit in support of his application as to why & by whom there was change of email ID from that of Shri Ashish Khandelwal, who was dealing with the appeal before Ld. CIT(A), to that of the previous counsel, dealing with filing of return-work. We also find that it has not been proved by any supporting or convincing evidence that after the impugned order was sent to the counsel, dealing with work pertaining to filing of return, at his email ID, he did not inform Shri Khandelwal about its receipt.

In the given facts and circumstances, in the interest of justice, we deem it a fit case to condone delay in filing of the appeal, but subject to cost of Rs. 1,000/-. Cost to be deposited by the applicant in National Prime Minister Relief Fund.

8. On merits, as noticed above, Learned CIT(A) has dismissed the appeal due to no response from the side of the assessee despite service of notices.

Ld. AR for the assessee has submitted that once remand report was called, Learned CIT(A) should have considered the same so as to provide reasonable opportunity, of being heard to the assessee, for the purpose of

effective adjudication of the appeal on merits. Since, remand report was not considered at all, the submission of Id. AR for the assessee is that the impugned order deserves to be set aside and matter deserves to be remanded for decision afresh.

9. Ld. DR for the department does not dispute that Learned CIT(A) called for remand report in view of additional evidence submitted by the assessee there.

10. In the given situation, when the remand report dated 18.04.2019 was called and received from the Assessing Officer, Learned CIT(A) should have considered the same.

Surprisingly, in the impugned order, there is no reference to any remand report, what to say of any discussion thereon.

Even otherwise, sub-section (6) of Section 250 of the Act provides that Learned CIT(A) is required to state in the order the points for determination, give reasons and decide the appeal.

As noticed above, Learned CIT(A)/NFAC dismissed the appeal simply because there was no response from the side of the assessee. In other words, Learned CIT(A) has dismissed the appeal for non prosecution, and not on merits.

Therefore, this is a case of non compliance of the provisions of Sub-section (6) of Section 250 of the Act, as well.

Result

11. In view of the above discussion, this appeal is hereby disposed off for statistical purposes. While setting aside the impugned order, the appeal is restored to the files of Learned CIT(A) with the direction to provide to the assessee a reasonable opportunity of being heard, and then to decide the appeal afresh, in accordance with law.

Assessee-appellant to furnish receipt in proof of deposit of costs of Rs.1,000/-and Ld. CIT(A) to commence the proceedings on production of said receipt.

Order pronounced in the open court on 26/06/2024.

Sd/-

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

दिनांक / Dated:- 26/06/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Chirangi Lal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(3), Jaipur.
3. आयकरआयुक्त / The Id CIT

Sd/-

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

4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 362/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar