

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO.474/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Raghibir Singh 830, Ashmont Lane, Boiling Springs, SC, USA	बनाम	The DCIT, Circle-1, Int, Chandigarh
स्थायी लेखा सं. / PAN NO: CUKPS1298C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Parmod Singal, C.A
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08/07/2024
उद्घोषणा की तारीख / Date of Pronouncement : 09/07/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-43, New Delhi dt. 30/11/2022 pertaining to Assessment Year 2017-18.

2. In the present appeal, Assessee has raised the following grounds of appeal:

"1. The Ld. AO and the Ld. CIT(A) have erred in fact, in law and circumstances of the case in making an addition of INR 10,44,000/- based on wrong interpretation and application of the relevant provisions of the law and out of fixtures and surmises, therefore, the order of the Ld. AO and the Ld. CIT(A) is bad in law and needs to be annulled.

2. The Ld. AO and the Ld. CIT(A) have erred in fact, in law and circumstances of the case in treating cash deposits during demonetisation period as unexplained income, without considering the cash withdrawals made by the Appellant just 2-3 days prior to the demonetisation period.

3. The Ld. AO and the Ld. CIT(A) have erred in fact, in law and circumstances of the case by issuing ex-parte orders without giving the Appellant sufficient

opportunity of being heard, merely on ground of non-appearance by the Appellant, and not adjudicating the assessment and appeal proceedings on merit with the material already available on record with them, which was sufficient for verification by the Ld. AO and the Ld. CIT(A).

4. The Appellant craves leave to submit such further grounds at or before the hearing of the appeal."

3. At the outset, it is noticed that there is delay in filing the present appeal by 176 Days as pointed out by the Registry. In this regard, during the course of hearing, the Ld. AR drawn our reference to the affidavit submitted by the assessee and the contents thereof read as under:

"I, Raghbir Singh, aged 76, S/o Sant Ram. R/o 830, Ashmont Lane, Boiling Springs SC. USA, identified by Indian PAN CUKPS1298C do hereby solemnly affirm and state on oath as under:

1. That I am the Appellant in the matter of the appeal proceedings before the Hon'ble Income Tax Appellate Tribunal ("ITAT") for the Assessment Year ("AY") 2017-18.

2. That I engaged the professional services of a tax consultant in India to represent me in the aforementioned appeal proceedings before the Ld. Commissioner of Income Tax (Appeals) [CIT(A)]. All relevant details and documentation were duly furnished to the said tax consultant.

3. That regrettably, despite having engaged the services of the tax consultant, no action was taken by them towards proper representation, and they failed to appear before the Ld CIT(A) on my behalf Consequently, an ex-parte order was passed against me on 30.11. 2022.

4. That it has come to my knowledge that the ex-parte order of the Ld CIT(A) was served at my old Indian address, even though my current US address was clearly mentioned in my Income Tax Return (ITR 1) and Form 35 along with my email address and that of the tax consultant.

5. That considering the date of the Ld CIT(A) order as 30.11. 2022, the appeal before the Hon'ble ITAT is delayed by 176 days.

6. That I respectfully assert that there was no malafide intention or deliberate delay in filing the present appeal. As a 76-year-old individual with chronic ailments, I am not well-versed with modern technology and did not actively check my emails. Furthermore, my tax consultant failed to notify me about the proceedings or the ex-parte order.

7. That it was only in June 2023 when I approached another tax consultant [the authorized representative ("Ld. AR") on record in the present appeal] in India

for assistance in filing my return of income for the AY 2023-24 that I became aware of the lapses on the part of my previous tax consultant and the ex-parte order passed by the Ld. CIT(A).

8. That based on the advice of the new tax consultant (Ld AR), I am now filing this appeal before the Income Tax Appellate Tribunal (ITAT) to seek redressal in the matter, but the appeal has already become barred by time limitation. Nevertheless the appeal was filed before this Hon'ble ITAT on 24.07.2023 accompanied by an application for condonation of delay as provided under section 5 of the Limitation Act, 1963.

9. That in this way there is a delay of 176 days for which an application under Section 5 of the Limitation Act has been filed along with the memorandum of appeal.

10. That I had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal."

3.1 Further, our reference was drawn to the condonation application so filed by the assessee and it was submitted that the assessee is a 76 years old individual with chronic ailments and currently living in USA and since he has entrusted his tax matters to a tax consultant who failed to take appropriate steps in terms of attending to the appellate proceedings before the Ld. CIT(A) which has resulted in passing of the ex-parte order and delay in filing the present appeal. It was accordingly submitted that there was no malafide intention or deliberate delay in filing the present appeal, hence the same may be condoned and the appeal of the assessee be admitted.

4. The Ld. DR is heard who has submitted that there is a substantial period of delay of 176 days in filing the present appeal, hence the delay should not be condoned.

5. We have heard the rival contentions and perused the material available on record. The contents of the affidavit so submitted by the assessee have not been disputed by the Revenue. Apparently, the order passed by the Ld CIT(A) was not served on the assessee at his US address as mentioned in Form 35 or electronically on his email address and even there is laxity on part of the

Counsel in terms of not attending to the proceedings and timely informing about the passing of the order by the Id CIT(A) and later on, as soon as the assessee was ceased of the matter, necessary steps were taken in terms of filing the present appeal. We therefore find that there was reasonable cause for the delayed filing of the present appeal and the delay so happened is hereby condoned and the appeal of the assessee is admitted.

6. Further, given that there is lack of representation before the Id CIT(A) resulting in an ex-parte order on account of non-prosecution, the matter is set-aside to the file of the Id CIT(A) to decide the same afresh as per law after providing reasonable opportunity to the assessee. Needless to say, the assessee shall attend to the proceedings and ensure in timely completion of such proceedings and file necessary documentation as so called for and as advised. All contentions on merits have been left open and the assessee is at liberty to raise the same before the Id CIT(A) who shall consider the same as per law.

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

Order pronounced in the open Court on 09/07/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar