

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 360 & 361/JPR/2024  
निर्धारण वर्ष / Assessment Years : 2015-16

Sh. Phool Chand Meena K-13, 4 <sup>th</sup> Floor BRIJ Anukampa Tower, Ashok Marg, C-Scheme, Jaipur.	बनाम Vs.	RJN W-(106)(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BTNPM8669J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Ashish Khandelwal (C.A.)  
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 29/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 19/07/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against two separate order of the National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/ld.CIT(A)"] both dated 29.01.2024 & 06.03.2024 for the assessment years 2015-16 respectively.

2.1 The assessee in ITA No. 361/JPR/2024 has raised the following grounds of appeal:-

*“1. That ld. CIT(A) has erred in law as well in fact of the case in dismissing the appeal of appellant owing to delayed filing of from 35 without appreciating the completing circumstances which prevented timely filing of appeal.*

*2. That ld. CIT(A) has erred in law as well in fact of the case in not adjudicated the ground agitated by the appellant & thereby did not dealt with merit of the case.*

*3. That ld. CIT(A) has erred in law as well in fact of the case innot holding the proceedings u/s 148 to be without jurisdiction and void-ab-initio.*

*4. That ld. CIT(A) has erred in law as well in fact of the case innot holding that cash deposit & FDR investment to the tune of Rs. 3609000 & 750000 respectively was explained within meaning of section 69.*

*5. That the appellant reserves his right to add, amend, alter or withdraw any ground of appeal on or before hearing of this appeal.”*

2.2. The assessee in ITA No. 360/JPR/2024has raised the following grounds of appeal:-

*“1. That ld. CIT(A)-NFAC has erred in law as well in fact of the case in upholding the penalty u/s 271(1)(b) to the tune of Rs. 40,000/- imposed by AO without appreciating that appellant was prevented from making compliance of notice due to improper service of notice.*

*2. That ld. CIT(A) has erred in law as well in fact of the case in not appreciating the geography of the case in true perspective.*

*3. That the appellant reserves his right to add, amend alter or withdraw any ground of appeal on or before hearing of this appeal.”*

3. First, we take up the assessee appeal in ITA No. 361/JPR/2024. Apropos to this appeal the relevant fact as emerges from the order of the ld. CIT(A) is that the ld. CIT(A) has dismissed the appeal of the assessee on the ground that the assessee failed to furnish sufficient and reasonable cause explaining the delay of 101 days in

filing the appeal before the First Appellate Authority that the appeal arise because of an order passed u/s 147 r.w.s. 144 of the Act.

4. The ld. AR for the assessee submitted that the delay was beyond the control of the assessee as there was a change in the e-mail ID in the profile of the assessee return for the subsequent year contains e-mail ID as [nareshkjain000@gmail.com](mailto:nareshkjain000@gmail.com) and Form No. 35 filed before the ld. CIT(A) contents e-mail ID as [rkmeen.advocate@gmail.com](mailto:rkmeen.advocate@gmail.com). The reasons for the delay in filing that appeal before the Ld. CIT(A) was thus explained by the assessee and the reasons advanced as reads in the order of the ld. CIT(A) is reproduced herein below:-

“3. Condonation of delay:

There is delay of 101 days in filing the appeal which is solely due to the fact that none of statutory notice as well as assessment order was served upon the appellant. All the notices were issued at non existing PAN Address of CA without appreciating that appellant was regularly filing return at different address i.e. permanent address and even same was contained in bank statement. The mobile No. as well as e-mail address pertained to old counsel. The appellant came to know of proceeding only when return for A.Y. 2023-24 was to be filed and portal was logged on by CA. The delay is bonafide and beyond control of the appellant therefore kindly condone the same.”

5. Though the ld. AR for the assessee has placed on record a detailed submissions on merits of the case but the ld. CIT(A) did not consider the reason advanced by the assessee as sufficient cause and therefore, the appeal of the assessee was dismissed being barred by limitation and the same was not admitted. The ld. AR for the assessee based on the contention recorded in the order of the ld.

CIT(A) as well as it is evident from the affidavit filed by the ld. AR for the assessee at the time of hearing of the appeal further affirmed on that:-

“ I Ashish Khandelwal, Son of Shri Gopal Lal Gupta, resident of Plot NO. 2, Chandra Kala Colony. Durgapura, Jaipur hereby affirm as under:-

1. That deponent is practicing chartered accountant and Legal Counsel of Shri Phool Chand Meena (appellant of the case).
2. That the appellant contacted the deponent for filing appeal before the CIT (A) for AY 2015 16 & in turn form 35 was filed by the deponent with delay of 101 days.
3. That the PAN address mentioned in the assessment order & in the statutory notices Le. K 13, 4<sup>th</sup> Floor, Brij Anukampa Tower, Ashok Marg, C-scheme, Jaipur, belonged to the old tax counsel i.e. Shri Naresh Kumar Jain who used to undertake return filing of the appellant.
4. That the e-mail address on the portal ie. nareshkjain000@gmail.com belonged to the old tax counsel over which statutory notices as well as assessment order were served.
5. That the delay of 101 days in filing 35 as explained by the appellant to the deponent was solely owing to non-communication of the receipt of statutory notices as well as assessment order by the old tax counsel.
6. That the return for all succeeding years were filed by the appellant at the permanent residential address i.e. Byadwalo Ki Dhani, Badi Ka Bas, Sanganer, Jaipur.
7. That all the statutory notices as well as assessment order u/s 144 for A.Y. 2015-16 passed by the AO on 11.03.2023 were sent to the above E-mail address as well as to PAN address of the deponent.
8. That as explained to deponent by the appoint the factum of assessment order dated 11.03.2023 for AY 2015-16 came to knowledge only when IT portal was logged on for filing return for AY 2023-24 by the return preparator in July 2023.”

6 The ld. DR is heard who relied on the finding recorded in the order of the lower authority and objected to the prayer of the assessee.

7. Considering that aspect of the matter and fact declared by the counsel of the assessee, we find that the assessee should not have suffered on merits of his case, merely on the negligent on the part of the counsel of the assessee. Considering that

facets of the matter, we are of the considered view that the Id. CIT(A) erred in not admitting the appeal of the assessee based on the contentions so raised before him. Thus, considering the overall facts as placed on record we are of the considered view that the assessee has sufficient and reasonable cause for filing of the appeal before the Id. CIT(A) belatedly and that delay of filing that appeal is condone. As the order of the Id. AO in the quantum proceedings ex-parte considering the facts of the case, we deem it fit to set aside the matter to the file of the AO.

Based on this observation, for statistical purpose, the appeal of the assessee in ITA no. 361/JP/2024 is treated as allowed.

8. So far as the appeal in ITA No. 360/JPR/2024 is concerned the same is related to the levy of penalty u/s 271B of the Act for an amount of Rs. 40,000/-. Aggrieved from that levy of penalty, the assessee preferred an appeal before the Id. CIT(A) who is also not favour to the assessee and confirmed the levy of penalty by holding as under:-

“ I have carefully considered the ground of appeal, statement of facts of the case and assessment order. It is a fact on the record that the appellant has contended that the failure to comply to statutory notices was due to the fact that all the statutory notices were issued & served on the PAN address which belonged to the earlier counsel, who did not intimated the appellant. It is pertinent to mention that at the time of PAN application, counsel address was mentioned as the appellant resided in village, wherein postal service were not proper at that point of time. The PAN address at which notices were issued was K-13, 4th Floor, Brij Anukampa Tower, Ashok Marg Jaipur which belonged to earlier counsel.

The appellant has further contended that the appellant was regularly furnishing the return for AY 2016-17 to AY 2021-22 at the correct address i.e. Byadwalo. ki Dhani, Badi Ka Bas. Sanganer, Jaipur. But the penalty proceeding was related to AY-2015-16, therefore, said contention of the appellant is not found tenable.

Further, the Ld. AO has contended that the assessee has no valid explanation for not complying with the statutory notices issued, and further has no say in the matter on the subject of imposition of the above proposed penalty u/s 271(1)(b) of the Act. Thus, on the basis of the above facts & the circumstances of the case, it is concluded that the assessee has deliberately or without any valid reason or explanation has failed to comply with the Notices issued u/s. 142(1) of the Act dated 24.08.2022, 15.09.2022, 29.09.2022 & 04.12.2022 which were issued during the course of the assessment proceedings. The above act of the assessee amounted to non-cooperation during the assessment proceedings and contempt of the statutory Notices issued on him. Thus, it is concluded that the case of the assessee is a fit case for imposition of penalty u/s.271(1)(b) of the Act for non-compliance of the above said notices issued u/s. 142(1) of the Act dated 24.08.2022, 15.09.2022,29.09.2022 & 04.12.2022. Accordingly, penalty of Rs. 10,000/- (Rupees ten thousand only) for each such failure totaling to Rs.40,000/- (Fourty Thousand Only) is levied on the assessee u/s 271(1)(b) of the Act for non-compliance on his part on one occasions viz notice issued u/s. 142(1) of the Act dated 24.08.2022, 15.09.2022, 29.09.2022 & 04.12.2022.

In this case, contention of the appellant that failure to comply to statutory notices was due to the fact that all the statutory notices were issued & served on the PAN Address which belonged to the earlier counsel, is not found tenable as the appellant has not furnished any supporting documentary evidence or, affidavit of earlier counsel in this regard to support and buttress her contention.

Therefore, I find no infirmity in the order of the AO. In this view of the matter, the penalty levied by the AO is upheld. Consequently, the appeal of the appellant is dismissed.”

9. Aggrieved from that the order of the ld. CIT(A) the assessee prefer the present appeal in support of the grounds so raised. The ld. AR of the assessee submitted following written submissions as under:-

“Brief Facts of the Case

The appellant is an individual residing in Byadwalo ki Dhani, Badi Ka Bas, Sanganer, Jaipur. During the relevant year, the appellant deposited cash into bank account and made investment in FDR which emanated out of preceding cash withdrawal from bank, agriculture Income & sale of plots.

The notice u/s 148 of the Income tax Act was issued to the appellant & Ex-parte order was passed u/s 144/147 of the Income Tax Act, 1961. The Id A.O. imposed penalty u/s 271(1)(b) of the Income Tax Act, 1961 for failure to comply to statutory notices amounting to Rs. 40,000/- vide order dated 04.09.2023.

The appellant was preferred against the penalty order before the worthy CIT(A)-NFAC where in appellate commissioner uphold the penalty of Rs. 40000/- imposed by the AO. Aggrieved by the order, the appellant preferred an appeal before your honour. With this background the individual grounds of appeal are as under.

#### Background of the appellant

The appellant resides in village & is illiterate and does not have any knowledge of technicalities income tax laws. Moreover the appellant is return filer since AY 2016-17. The screen shot from IT portal is enclosed to substantiate the contention. All the statutory notice were served upon the PAN address which belonged to preceding counsel, inconsiderate of the address mentioned in ITR of succeeding year. The factum of proceeding were not in knowledge of the appellant. With this background, the submission on relevant grounds of appeal is as under:-

GROUND No. 1: That the Id CIT(A)-NFAC has erred in law as well in facts of the case in upholding the penalty u/s 271(1)(b) to the tune of Rs. 40000/- imposed by the AO without appreciating that appellant was prevented from making compliance of notice due to Improper service of notice.

#### Brief Submission:

That the action of worthy CIT(A) in upholding the imposition of penalty by the AO without appreciating that the non compliance was unintentional, bona fide & was beyond the control of the appellant, is bereft of any merit & legality, for the reasons encapsulated point wise as under:-

a) The failure to comply to statutory notices was due to the fact that all the statutory notices were issued & served on the PAN Address which belonged to the earlier counsel ie. CA Naresh Kumar Jain, who did not intimated the appellant. It is pertinent to mention that at the time of PAN application, counsel address was mentioned as the appellant resided in village, wherein postal service were not proper at that point of time. The PAN address at which notices were issued was K-13, 4th Floor, Brij Anukampa Tower, Ashok Marg Jaipur which belonged to earlier counsel. (Affidavit enclosed)

b) The Id AO mechanically issued the statutory notices to the PAN address without bothering to verify the return address. The Id AO had wherewithal of the appellant on the IT portal but instead of making effort to issue & serve notice at correct address, the AO persistently issued notice at the PAN address as a matter of course. The appellant was regularly furnishing the return for AY 2016-17 to AY 2021-22 at the correct address i.e. Byadwalo ki Dhani, Badi Ka Bas, Sanganer, Jaipur.

c) The appellant belongs to rural background and therefore e-mail address on the portal belonged to preceding counsel. The appellant is not tech savvy and does not know operation of e-mail. It is ground reality that villagers are not tech-friendly. The issue of any notice was not in knowledge of the appellant and therefore non compliance was beyond the control of the appellant.

d) That the contention of the appellant that there was improper service of notice is backed by the recent ruling of the Hon'ble Bombay high court in Mrs. Chitra Supekar V Principal Commissioner of Income Tax-2, Pune [WRIT PETITION NO.15580 OF 2022], where it was categorically held as under:-

#### Conclusion:

7. We have heard both counsels at length and have perused the proceedings, we agree with the view taken by the Delhi High Court in the case of CIT vs Eshaan Holding (P) Ltd. upholding the view of the ITAT that if there is no valid service of notice under section 148, the reassessment proceedings are null and void as also the decision of the Punjab and Haryana High Court in the case of CIT vs Avtar Singh which held that service of notice under section 148 is a condition precedent for making reassessment or re-computation under section 147 of the Act.

8. In our view, before issuing the notice under section 148A (b) it was imperative for the AO to have checked if there was a change of address. A condition precedent for any proceeding including a proceeding u/s. 148A, is a valid service of notice, lest it would be a jurisdictional error. With regard to, the first notice dated 20th March 2022, it is the case of the petitioner that they had not received any notice dated 20th March 2022 and the revenue contended that it was served through speed post at the last known address. It is evident that though the respondents had the new address of the petitioner as evinced from the ITR filed on 10th January 2021, the respondents chose to send the notice to their old address. We also find no averment or proof of the service of notice dated 20th March 2022 on the petitioner in respondent's affidavit in reply dated 14th November 2022. The cascading effect of non-service was the petitioner did not get an opportunity to respond to the notice. Consequently, the notice dated 20th March 2022 and the proceedings thereafter are void. Apropos section 151(ii) of the Act the sanction from the PCCIT ought to have been taken when order was sought to be passed beyond the period of three years i.e. beyond 31st March 2022 on 5th April 2022. Consequently, the notice dated 20th March 2022

and order dated 5th April 2022 deserves to be set aside on account of jurisdictional error i.e. for want of service and consequently, for non-compliance with the provisions of the Act.

With this background on the compelling circumstances which prevented the appellant from making compliance to the statutory notices, IT is humbly prayed before your honour to kindly allow the appeal and direct for deletion of penalty of RS. 40000/- imposed by the AO u/s 271(1)(b) of the Act.

The appellant assures your good self for no repetition of any such act in future.”

10. The ld. AR of the assessee also filed a detailed paper book in support of the order of the ld. CIT(A) The index of the document submitted by the ld. AR of the assessee are as under:-

S. No.	Particulars	Page No.
1.	Written submission	1-3
2.	Copy of returns of succeeding year	4-12
3.	Affidavit in support of non compliance	13
4.	Copy of judgment of Hon'ble Bombay High Court in Chitra Supekar v. ITO [WP 15580 of 2022]	14-18

11. The ld. AR of the assessee based on the arguments set rest supported by an affidavit submitted in ITA No. 361/JPR/2024 that the reasons for filing the delay in appeal before the ld. CIT(A) that was disputed in ITA No. 361/JPR and the same for the levy of penalty u/s 271(1)(b) of the Act. Therefore, he submitted that considering the fact of the case of the assessee was prevented from sufficient cause and therefore prays to delete the levy of penalty.

12. Per contra, the ld. DR representing for the Revenue that the assessee cannot be merely submitted that they have relied upon the e-mail ID submitted in his

profile for the compliance of the Income Tax portal and therefore plea of the assessee is not acceptable.

13. We have heard both the parties and perused the material available on record. The Bench noted that while the appeal in the quantum proceeding have condoned the delay based on the documents and arguments advanced by both the parties and that delay which was condone on account of facts submitted in that appeal and since we have condoned the delay on the same reason of delay we consider the noncompliance of the notice before the ld. AO. Considering that aspect of the matter noncompliance of the notices u/s 271(1)(b) of the Act by the same reasons are hereby directed to be deleted. We direct the ld. AO to delete the levy of penalty of Rs. 40,000/- in the case of the assessee. In the result, the appeal in ITA No. 360/JPR/2024 is allowed.

In the result, the appeals of the assessee in ITA No. 361 is allowed for statistical purposes and in ITA No. 360/JPR/2024 are allowed.

Order pronounced in the open court on 19/07/2024.

Sd/-  
(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 19/07/2024  
\*Santosh

Sd/-  
(डॉ. एस. सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

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

1. The Appellant- Sh. Phool Chand Meena, Jaipur.
2. प्रत्यर्थी / The Respondent- RJN-W-(106)(2), 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. गाड फाईल / Guard File ITA No. 360 & 361/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar