

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A"-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. 816/JPR/2024
निर्धारण वर्ष/Assessment Year : 2010-11

Sh. Raj Kumar Kandoi Plot No. 21, 22A, Hanuman Vatika-2, Chitrakoot Marg, Ajmer Road, Jaipur.	बनाम Vs.	Income Tax Officer Ward-4(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAZPK5709R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri S.L. Poddar, Adv.
राजस्व की ओरसे / Revenue by: Shri Anil Bhardwaj (CIT)

आयकर अपील सं./ITA. No. 921/JPR/2024
निर्धारण वर्ष / Assessment Year : 2010-11

Sh. Raj Kumar Kandoi Plot No. 21, 22A, Hanuman Vatika-2, Chitrakoot Marg, Ajmer Road, Jaipur.	बनाम Vs.	Income Tax Officer Ward-4(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAZPK5709R		
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निर्धारिती की ओरसे / Assesseeby : Shri S.L. Poddar, Adv.
राजस्व की ओरसे / Revenue by: Shri Anil Bhardwaj (CIT)

सुनवाई की तारीख / Date of Hearing : 23/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 23/07/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

On 24.05.2024, an appeal filed before Learned CIT(A), by the assessee-appellant, challenging assessment order dated 15.09.2017, passed by the Assessing Officer u/s 143(3) r.w.s. 153A and section 245HA of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), and relating to assessment year 2010-11, came to be dismissed by Learned CIT(A), Jaipur-4. It came to be dismissed while observing that the appeal could not be admitted due to delay in its filing and also because of incorrect particulars given in appeal in Form-35.

2. On 25.06.2024, another appeal filed by the assessee-appellant before Learned CIT(A), challenging penalty order dated 15.03.2018 levying penalty under section 271(1)(c) of the Act, relating to the aforesaid assessment year came to be dismissed, for the same reasons.

Hence, these two appeals by the assessee.

3. Since both the appeals are based on common ground and involve common issues, same have been argued together, and are being disposed of vide this common judgment.

4. Arguments heard. File perused.

5. Ld. AR for the assessee-appellant has submitted that even though as per case of the department copies of the assessment order and that of the penalty order, pertaining to assessment year 2010-11 are purported to

have been delivered to the AR of the assessee on 15.09. 2017 and 15.03.2018 respectively, actually, none of the two orders was received by the AR of the assessee on that date.

He has tried to explain that on that date, copies of other assessment orders relating to other assessment years were delivered to the AR of the assessee, but copies of the impugned assessment order and that of penalty order were not amongst the said copies.

Ld. AR for the assessee has further submitted that all assessment orders pertaining to other assessment years were challenged by the assessee, but, no appeal could be filed against the impugned assessment order and the penalty order, due to the bonafide mistake. He has further submitted that the assessee was under the expression that no such assessment order or penalty order had been passed in respect of the assessment year 2010-11.

The contention is that in the given circumstances. Learned CIT(A) should have entertained the appeals, while condoning the delay in filing thereof, but, the appeals have been dismissed being barred by limitation, and as such, the impugned orders be set aside and the matters may be remanded to CIT(A) for decision of the appeals on merit, after condoning the delay in filing of appeals before CIT(A).

6. On the other hand, Ld. DRs for the department in respective appeal have submitted that copies of the impugned assessment order and that of the penalty order were actually delivered to the AR of the assessee on 15.09.2017 and 15.3.2018, respectively, against her receipt, and as such, the appeals having been filed before Learned CIT(A) beyond prescribed period of limitation and that too without furnishing any sufficient cause, no fault can be found with the impugned orders, and as such present appeals deserve to be dismissed.

However, at the same time, Ld. DRs i.e. for the department have submitted that in each Form No.35 submitted before CIT(A), wrong dates or particulars were furnished, they have no objection to the remand of the matters to Learned CIT(A) for disposal of the applications seeking condonation of delay afresh, provided that correct particulars are furnished in rectified Form No. 35 furnished in each appeal, and that too subject to costs for due delay which has occurred in this regard i.e. on account of furnishing of wrong particulars in Form No.35 of each appeal, and availing for fresh opportunity.

7. As noticed above, one of the grounds for dismissal of the appeal was that correct particulars were not furnished in Form-35.

As is available from copy of Form No. 35 in appeal pertaining to assessment order, the date of assessment order was furnished therein as on 29.04.2019, as against 15.09.2017 i.e. actual date of passing of the assessment order, and the date of service of the said order was also mentioned as 29.04.2019 against the actual date of service of the order i.e. on 15.09.2017.

As regards the second appeal, as per copy of Form -35 in appeal pertaining to penalty order, the date of order was furnished therein as on 18.03.2019 as against 15.03.2018 i.e. actual date of passing of the penalty order, and the date of service of the said order was also mentioned as 18.03.2019 against the actual date of service of the order i.e. 15.03.2018.

8. In the course of arguments, Ld. AR for the assessee-appellant has candidly admitted the errors as regards the date(s) of the assessment order and penalty order, and the dates of service of the said orders on the AR of the assessee, and submitted that mistakes being inadvertent mistakes, rectified form(s) No.35 depicting correct dates be allowed to be filed before CIT(A), while remanding the matters.

9. In view of the candid admission by the Ld. AR for the assessee-appellant regarding mistake in putting forth date(s) of passing of and service of copies, of the orders by the Assessing Officer, we deem it a fit

case to allow the assessee to present rectified Forms-35 before Learned CIT(A), giving correct particulars i.e. date(s) referred to above. We order accordingly.

10. As regards delay in filing of the appeal before Learned CIT(A), one of the submissions put forth by the Ld. AR for the assessee-appellant at the Bar is that other assessment orders relating to other assessment years, qua the assessee-appellant, were timely challenged before Learned CIT(A), but, inadvertently, no appeal could be filed within the prescribed period of limitation, and as such delay in filing of the appeals be condoned.

11. As per papers submitted on behalf of the department, an application dt. 9.5.2024 is purported to have been submitted by the AR of the appellant before Ld. CIT(A). Its perusal would reveal that no such plea was raised on behalf of the appellant in said application submitted before Ld. CIT(A). So, the plea that no copy of the impugned assessment order and penalty order was there in the lot, has been put forth before us for the first time.

Copies of Note sheets prepared by the department, and pertaining to assessment years 2007-08 to 2013-14 would reveal that the same bear signatures of Ms. Kushbu Jain, AR of the assessee. Ld. AR representing the appellant before us admits this fact.

When copies of assessment orders and penalty order are stated to have been received by the assessee through his AR, it was duty of said AR to thoroughly check the copies while receiving the same from the department. Had the AR checked the same at the very time of their supply by the department, she would have detected soon that copies of the two orders were not there in the lot supplied, and department would have cross-checked and done the needful, in case actually it was so.

Be that as it may, as already observed, wrong dates were furnished in each Form No.35 submitted on behalf of the assessee before CIT(A), and as such, matter deserves to be remanded to Learned CIT(A) for decision afresh on the point of condonation of delay.

Result

12. In the given situation, when there were mistakes as regards date(s) of the orders and as regards date(s) of supply of copies thereof and rectified Form 35 has been allowed to be filed before Learned CIT(A), both these appeals are disposed of, for statistical purposes. Ld. CIT(A) to decide the applications seeking condonation of delay afresh after providing reasonable opportunity to the assessee of being heard. However, in the given facts and circumstances, assessee-appellant is burdened with costs of Rs.1,000/-in each appeal on account of furnishing of wrong particulars in Forms No.35

and availing another opportunity to furnish fresh Forms No.35. Costs to be deposited in Prima Minister's Relief Fund. Receipts to be submitted before Ld. CIT(A) before commencement of the proceedings in terms of this common order.

Learned CIT(A) shall be at liberty to issue any further direction to the assessee, in accordance with law, for effective adjudication of the application (s) seeking condonation of delay in filing the appeals there.

Copy of the common order be also placed in the records of the connected appeal No. 921/JPR/2024.

Order pronounced in the open court on 23/07/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 23/07/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Raj Kumar Kandoi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(2), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 816& 921/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar