

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. 19/JPR/2024
निर्धारण वर्ष/Assessment Year : 2012-13

Sh. Mahendra Mehra Goyal Company, Near Subash Bazaar, Tonk.	बनाम Vs.	Income Tax Officer, Tonk.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AYEPM3917G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Jai Deep Malik, Adv.
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra (Addl. CIT)

आयकर अपील सं./ITA. No. 20/JPR/2024
निर्धारण वर्ष/Assessment Year : 2013-14

Sh. Mahendra Mehra Goyal Company, Near Subash Bazaar, Tonk.	बनाम Vs.	Income Tax Officer, Tonk.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AYEPM3917G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Jai Deep Malik, Adv.
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 31/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 01/08/2024

आदेश / ORDER

PER BENCH:

Vide this common judgment, both the above mentioned appeals are being disposed off, as they involve common points, and have been argued together.

The two appeals were filed by the assessee on 08.01.2024, relating to assessment year 2012-13 & 2013-14, while challenging orders dated 12.10.2023 passed by Learned CIT(A), u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as " the Act").

Vide impugned orders, Learned CIT(A) dismissed the two appeals filed by the assessee and upheld the assessment order dated 25.12.2019, relating to assessment year 2012-13, and another order dated 25.08.2021, relating to assessment year 2013-14.

2. Vide assessment order dated 25.12.2019, total income of the assessee was assessed at Rs. 99,00,000/- u/s 144 r.w.s. 147 of the Act, relating to assessment year 2012-13, while making addition as regards unexplained investment , as provided u/s 69 of the Act. At the same time, the Assessing Officer ordered for initiation of penalty proceedings u/s 271(1)(b) & (c) of the Act.

As regards, assessment year 2013-14, the Assessing Officer assessed total income of the assessee at Rs. 1,64,00,000/- u/s 144 r.w.s. 147 and Section 144B of the Act, by making addition in view of unexplained investment, as provided u/s 69 of the Act.

3. As noticed above, feeling dissatisfied with the two assessment orders, the assessee went in appeal before Learned CIT(A), but both appeals stand dismissed, because of no respite having been granted to him in those proceedings.

Hence, these two appeals.

4. It may be mentioned here that the impugned orders passed by Learned CIT(A) are dated 12.10.2023. The assessee could challenge the same prescribed period of limitation, when calculated from the date of service/communication of the orders.

Both the appeals came to be presented on 08.01.2024. Registry reported that the appeals were barred by limitation, having been filed 28 days after within the prescribed period of limitation.

Initially, no application seeking condonation of delay was filed. It was subsequently that the applications u/s 5 of the limitation Act came to be filed in each appeal on 16.04.2024.

In the first instance, Ld. AR for the appellant-applicant put forth submission on the applications and prayed for condonation of delay, while submitting that the appeals could not be filed within the prescribed period of limitation due to mistake on the part of his Accountant, in not communicating copies of the impugned orders to the Chartered Accountant earlier engaged by the assessee well in time.

As regards the impugned orders relating to assessment year 2012-13, the same are said to have been served on 14.10.2023.

In support of his contentions, Ld. AR for the appellant-applicant relied on affidavits of the assessee.

5. In the given facts and circumstances, the assessee should have also filed affidavit of his Accountant and that of the Chartered Accountant, to substantiate that there was 'sufficient cause' in non filing of the appeals within the prescribed period of limitation.

Except the affidavits of the assessee-applicant, no material has been placed on record.

However, the affidavit of the assessee-applicant goes unchallenged for want of cross examination from the side of the department.

In the given situation, it was for the assessee to specify as to who was his Accountant and as to on which date he delivered copies of the

impugned orders to the earlier Chartered Accountant. These particulars do not find mention in the applications or in the affidavits. Furthermore, the assessee has nowhere alleged in the application as to on which date he came to know about the mistake on the part of his Accountant and as to on which date, he engaged Shri Rajendra Goyal, Advocate for the purpose of filing of the present appeals. All these material particulars were required to be pleaded in the applications, and as such should have been pleaded. The appellant-applicant was also required to testify about the said significant facts. But, no step has been taken by the applicant.

6. However, having regard to the facts and circumstances of the case and the issue involved in the appeals, we deem it a fit case to condone the delay of 28 days in filing of the appeals. We also deem it a fit case to impose cost on the applicant for the said delay.

Accordingly, each application is disposed off and the appellant-applicant is directed to deposit costs of Rs. 1,000/- for each appeal. Costs to be deposited in Prime Minister's Relief Fund.

On behalf of the appellant, it has been submitted that costs shall be deposited without delay.

7. As requested by both the sides, appeals have also been heard on merits today itself.

8. On merits, Ld. AR for the assessee has submitted that reasonable opportunity of being heard was not granted by Learned CIT(A), and as such, the assessee could not be represented in those appeals. He further submits that in case one opportunity is provided to the assessee-appellant to represent his case before Learned CIT(A), he may be able to establish his claim put forth, while challenging the assessments.

9. It is available from the impugned orders that Learned CIT(A) issued five notices to the assessee-appellant in each appeal. Ld. AR of the assessee sought adjournment before Learned CIT(A) thrice i.e. for 08.09.2023, 20.09.2023 and 06.10.2023, Learned CIT(A) allowed his request twice, granting adjournments, but rejected the third prayer for adjournment when the appeals were listed for 06.10.2023.

10. We have enquired from Ld. AR for the assessee-appellant as to the grounds on which adjournments were sought before Learned CIT(A), but he has not able to provide us any reply or information regarding the reasons/grounds for seeking adjournments.

11. However, record reveals that notices dated 31.08.2023 were issued for taking up the appeals on 08.09.2023; that notices dated 14.09.2023 were issued for taking up of the appeals on 20.09.2023; and the final

opportunity was granted to the appellant vide notices dated 21.09.2023 for taking up of the appeals on 06.10.2023.

It is true that the assessee-appellant should have been duly represented before Learned CIT(A), particularly, when the last opportunity was granted, two notices having been issued prior thereto, but, taking into consideration that there was short gap between three notices issued as say the opportunities granted, we deem it a fit case were one more opportunity should be granted in the proceedings before Ld. CIT(A), to enable the assessee-appellant to represent his appeals before Learned CIT(A) so as to provide reasonable opportunity of being heard.

Result

12. in view of the above discussion, both the appeals are disposed off for statistical purpose, and the matters are remanded to Learned CIT(A) for fresh decision of both appeals, after providing one opportunity to the assessee-appellant of being heard.

We may observe that had the assessee-appellant put in appearance before Learned CIT(A), there was no need to make prayer for remand of the matters. Keeping in view this fact and that no justification has been submitted before us for seeking adjournments in those appeals before

Learned CIT(A), in reply to the final notice dated 21.09.2023, we deem it a fit case to impose costs on the assessee.

Accordingly, the assessee to deposit costs of Rs. 2000/- in each appeal. Costs to be deposited in Prime Minister's Relief Fund.

Learned CIT(A) to ensure production of receipts in proof of deposit of each costs imposed, before commencement of the proceedings pursuant to remand of the matter.

Order pronounced in the open court on 01/08/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 01/08/2024
*Santosh

आदेश की प्रतिलिपिअ ग्रेशित / Copy of the order forwarded to:

1. The Appellant- Sh. Mehendra Mehra, Tonk.
2. प्रत्यर्थी / The Respondent- ITO, Tonk.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 19 & 20/JPR/2024)

Sd/-

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

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar