

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 371/JP/2024
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. Anukampa Homes Pvt. Ltd. 401, Anukampa Mansion-II, M.I. Road, Jaipur- 302 001	बनाम Vs.	The ACIT Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHCA 3032 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 07/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 05/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 21-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2018-19 raising therein following grounds of appeal.

- “1. The Id. CIT(A) has erred on facts and in law in dismissing the appeal ex-parte without providing adequate opportunity of hearing and without deciding the appeal on merit.
2. The Id. CIT(A) has erred on facts and in law in not deciding the assessee's ground relating to the adhoc

disallowance of expenses of Rs.1,32,93,545/- being 10% of project development expenses and other administrative expenses of Rs.13,29,35,464/-“

2.1 At the outset of hearing of the appeal, the Bench noticed that there is delay of 312 days in filing the appeal by the assessee for which the ld. AR of the assessee has filed a condonation application dated 27-03-2024 praying therein as under:-

“.....However, the order came to the notice of the assessee on 04-03-2024 as stated in the affidavit enclosed herewith. Thus, there is no delay in filing of appeal from the date of communication of order but there is delay of 312 days from the date of order. The said delay is for a reasonable cause as explained in the affidavit of assessee. Therefore, it is requested to kindly condone the delay and admit the appeal for hearing.”

To this effect, the assessee has also filed an affidavit praying therein to condone the delay, giving following reasons.

“2. That AO passed the assessment order by disallowing Rs.132,93,545/- being 10% of project development expenses and other administrative expenses and thus reduced the carry forward business loss of Rs.9,04,42,914/-.

3. That against this order appeal was filed on 27-05-2021. The ld. CIT(A) issued notice u/s 250 on 20-10-2021, 21-12-2021 and 06-04-2022 which was during the Covid period and therefore these notices could not be responded. Thereafter, after around 1 year notice issued on 16-03-2023 was not received and therefore, it could not be responded. Accordingly, the ld. CIT(A) dismissed the appeal vide order dated 21-03-2023.

4. That the said order came to the notice of assessee when penalty order u/s 270A dated 04-03-2024 was received on the e-mail address of CA Shri Yogesh Vijay and CA R.K. Malpani.

5. That accordingly, the appeal is now filed before the Hon'ble ITAT with a request to condone the delay which is for the reasons stated above though from the date of knowledge of the order there is no delay.

2.2 During the course of hearing, the ld. DR further objected to such inordinate delay of 312 days made by the assessee in filing the appeal. The ld. DR also relied upon a decision of Hon'ble Bombay High Court in the case of Vama Apparels (India) Pvt. Ltd. vs ACIT, Central Circle -42 [2019] 102 Taxmann.com 398 (Bombay) wherein the Hon'ble Bench has dismissed the appeal of the assessee as to the condonation of delay and allowed the appeal of the Revenue.

2.3 The Bench heard both the parties and perused the submissions of the respective parties and the case law advanced by the ld. DR. In this case, it is noticed that the assessee has submitted the sufficient reason through his affidavit and application for condonation of delay (supra). Hence, in view of the above facts and circumstances of the case of the assessee and the narration as made by the assessee in his affidavit (supra), the Bench condone the delay and admit the appeal.

3.1 Apropos Ground No. 1 & 2 of the assessee, the facts as emerge from the order of the ld. CIT(A) wherein he dismissed the appeal of the assessee by observing as under:-

“3.8 I have perused the impugned assessment order u/s 143(3) r.w.s. 143(3A) & 143(3B). The appellant has not furnished any submissions in support the grounds of appeal during the appellate proceedings. Taking into account the entire conspectus of this case, I see no reason to disturb the categorical findings of the assessing officer regarding assessment of the total loss of the appellant at Rs.9,04,42,914/-. Accordingly, all grounds of appeal are dismissed.”

3.2 During the course of hearing, the ld AR submitted that one more chance may be given to contest the case before the AO and to submit all the necessary documents to settle the dispute in question.

3.3 On the other hand, the ld DR relied upon the order of the ld. CIT(A)

3.4 The Bench heard both the parties and perused the materials available on record. It is an admitted fact that the assessee is ex-parte before the AO and also before the ld. CIT(A). Therefore, he could not put forth his defence. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is noticed that various opportunities were provided to the assessee for settling the issue but the assessee remained lethargic and unserious in pursuing his case for which a cost of Rs.2.000/- is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, I am of the view that lis between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of

being heard to the assessee. Hence, the matter is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

2.6 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

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

Order pronounced in the open court on 05/08/2024.

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 05 /08/2024

***Mishra**

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

1. The Appellant- M/s. Anukampa Homes Pvt. Ltd. Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-1, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.371/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar