

आयकर अपीलिय 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. 720/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18

Smt. Rukshmani Singh Nathawat 16, Devi Bhawan, Parivahan Marg Near Civil Lines, Railway Crossing C-Scheme, Jaipur	बनाम Vs.	The ITO Ward 2 (3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGCPN 5030 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Paridhi Jain, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 24/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 02/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 26-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 raising therein following grounds of appeal.

1) The Learned National Faceless Appeal Centre (NFAC), Delhi (Herein referred to as "Learned NFAC (A)") has erred in law and on facts in upholding in upholding the penalty levied in the Penalty Order u/s 272A(1)(d) of the Act passed by the National Faceless Appeal Centre (NFAC), Delhi (Herein referred to as NFAC) and dismissing the appeal, same is bona fide mistake on the part of the appellant.

2) The Hon'ble NFAC (A) has erred in law and on facts in not deciding the issue on merits and upheld the order of the Ld. NFAC who had erred in levying penalty of Rs.30,000/- u/s 272A(1) (d) of the Income Tax Act, 1961 without appreciating the fact that the no response to Notice u/s 142(1) is bona fide mistake on the part of the appellant, which is unjustified, unwarranted and excessive.

3. The Hon'ble NFAC (A) has erred in law and on facts in upholding the penalty u/s 272A(1)(d) of the Act on addition made by the AO in the assessment order in respect of cash deposited during demonetization of Rs.12,00,000/- added to the total income of appellant without appreciating the fact that the amount deposited is nominal and does not involve concealment or furnishing of inaccurate particulars of income with the intention to evade taxes.’

2.1 At the very outset of the hearing, it is noticed that there is delay of 24 days in filing the present appeal. In this regard, the assessee moved an application dated 20-05-2024 alongwith affidavit for seeking condonation of delay. It was submitted by the ld. AR of the assessee that the assessee being a widow and home maker does not understand the legal mater and therefore, she hired a professional to file an appeal. The assessee had acted in good faith by trusting the professional that he would be doing needful on behalf of the assessee. However, the said professional did not appear nor filed any reply during the hearing before the lower authorities. Therefore, in such a situation penalty u/s 272A(1)(d) of the Act was levied upon the assessee and subsequently confirmed by the ld. CIT(A). It was further submitted that the assessee was not aware that she was required to keep reminding the professional and to keep a check on the income tax portal at regular interval.

Therefore, under these circumstances, the assessee could not attend the notices issued by the Department.

2.2 On the contrary, the ld DR supported the order passed by the Revenue Authorities and submitted that the assessee has no sufficient cause for seeking of condonation of delay.

2.3 The Bench has heard both the parties and perused the materials available on record and the judgement cited by the respective parties and also the orders of the lower authorities. From the records, it is found that the assessee is a widow and home maker and in support of her contention, she has filed an affidavit wherein it has been specifically mentioned that the assessee does not understand the legal matter and therefore she acted in good faith by trusting the professional to whom she engaged for this task and he would be doing needful on behalf of the assessee. From the entirety of the facts and circumstances, it is found that the assessee had no sufficient knowledge / information regarding tax matters and being a widow and home maker as well as lay person had absolutely trusted and relied upon the professional who in turn had not acted diligently in the case of the assessee. She had to suffer because of the lapse on the part of the professional. Therefore, keeping in view my above discussion and also keeping in view the settled proposition laid down by the Hon'ble Supreme Court in the case of Collector, land

Acquisition vs. MSt. Katiji and Others, 167 ITR 471 (SC), the delay of 24 days is condoned.

3.1 Now coming to the merits of the present appeal, it is noticed that order imposing penalty u/s 272A(1)(d) has been passed and upheld against the assessee. In this regard, the assessee had already put forth her submission in detail which is also part and parcel of the application for seeking condonation of delay wherein it has been mentioned that the assessee had hired the services of professional and she acted in good faith by trusting upon the said professional that he would be doing needful but the said professional did not appear and not even filed reply and attended on behalf of the assessee. It is an undisputed fact that the assessee is a Widow and home maker and she was not aware of this fact as well as legal matters and also she was required to keep reminding the professional and to keep check on the IT Portal at regular intervals. Therefore, under such circumstances she could not attend the notices issued by the Department. Therefore, considering the above submissions which has not been rebutted by the ld.DR except by submitting that the assessee has not intentionally appeared before the lower authorities and it being a peculiar facts and circumstances of the case, I am of the view that penalty u/s 272A(1)(d) of the Income Tax Act should not be imposed if a reasonable cause for non-compliance of statutory notice is presented. The Bench rely upon the decision of ITAT Delhi Bench in the case of Maqsood Ali vs ITO (ITA No. 1376/Del/2023

dated 21-06-2023 wherein *it is held that the penalties u/s 272A(1)(d) of the Income Tax Act should not be imposed if a reasonable cause for non-compliance of statutory notice is presented.* The Bench further rely on the decision of ITAT Mumbai Bench in the case of Triumph International Finance India Ltd. vs DCIT (ITA No. 1870/Mum/2020 dated 10-03-2022) wherein *it has been held that as assessee has not been able to show reasonable cause for failure to comply with the statutory notices u/s 142(1) of the Act. Thus in my view, the penalty levied u/s 272A(1)(d) of the Act is unsustainable. The Assessing Officer is directed to delete the penalty.* Hence, considering the totality of the facts of the case and the case laws cited (supra), the Bench feels that the penalty levied upon the assessee stands deleted and the appeal of the assessee is allowed.

4.0 In the result, the appeal of the assessee is allowed with no order as to costs.

Order pronounced in the open court on 12/08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/08/2024

*Mishra

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

1. The Appellant- Smt Rukshmani Singh Nathawat, Jaipur आदेशानुसार / By order,
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(3), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 720/JP/2024)

सहायक पंजीकार / Asstt. Registrar