

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. 829/JP/2024
निर्धारण वर्ष / Assessment Year : 2009-10

Bank of India New Sanganer Road, 202, Govardhan Colony, Opp. Sanjivini Hospital, Jaipur	बनाम Vs.	The Addl. CIT(TDS) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JPRB02554G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Shailesh Mantri, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 22/07/2024
उदघोषणा की तारीख / Date of Pronouncement : 18/09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 26-10-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2009-10 raising therein following grounds of appeal.

“1. That the penalty u/s 271© for Rs.3,57,980/- imposed by the AO and confirmed by ld. CIT(A) are bad in law”

2.1 At the outset of the hearing of the appeal, the Bench noticed that there was delay of 523 days in filing the appeal before the Bench. However, the ld. AR of the assessee has filed an application for condonation of delay with following prayer.

“...it is to submit that the CIT(A) order was passed on 26-10-2022 and was issued on the e-mail of the Bank. It did not come to the notice as the bank system marked the E-mail as spam mail and transferred the same to spam folder. On being aware, we requested for true and certified copy of the order and received true and certified copy of the order on 06-04-2024 and submitted appeal before your goodself on 31-05-2024 at online portal.

To this effect, the assessee has filed an affidavit for condonation of delay in filing the appeal for A.Y. 2009-10.

2.2 On the other hand, the ld. DR objected to such inordinate delay and relied upon the order of the ld. CIT(A).

2.3 The Bench heard both the parties and perused the materials available on record. The Bench noticed from the order of the ld. CIT(A) wherein the assessee had filed the appeal late by 358 days before him who rejected condonation of the assessee by observing as under:-

“5.4.....The appellant had not satisfactory explained the delay of each day in filing of this appeal. The appellant had

neither substantiated the statements made by it regarding this delay nor the statements, in my opinion are genuine cause of delay as per section 249(3) of the IT Act, 1961 and do not constitute "sufficient cause" as per this section as well as section 5 of the Limitation Act, 1963. In view of these facts and circumstances, it is held that the inordinate delay in filing of this appeal is merely on account of negligent or sheer carelessness on part of the appellant which cannot constitute "sufficient cause" for condoning this delay. Accordingly, the request of the appellant for condonation of delay on the basis of these statements is liable to be rejected and the appeal is dismissed as the same had been submitted beyond the prescribed time limit."

It is also noticed that the assessee was provided various opportunities to contest the case before the ld. CIT(A) but the ld. AR of the assessee did not comply with the notices sent by the ld.CIT(A) and thus he dismissed the appeal of the assessee by observing as under:-

"6.4.....The appellant had not made any submissions during the penalty proceedings also. As per Section 271C, the appellant is liable for penalty on tax as the appellant had made default in deduction of TDS of the entities at S.No 2 to 5 of the collated in the penalty order. The appellant had not give any reasonable cause for such failure which can invoke the provisions of Section 273B. It is very clear that the responsibility of the appellant for deduction of TDS is very much there as per various

provisions of the Act unless the specific procedures have been followed as per law. The appellant had not produced any documents or filed any submission to justify its claim taken in the grounds of appeal. In these facts and circumstances of the case, I have no material to interfere with the order of the AO. Accordingly, the penalty of Rs.3,57,980/- levied by the AO u/s 271C is hereby “confirmed” and the grounds taken by the appellant are hereby dismissed on merit.

7. In the result, the appeal is “dismissed” on technical ground as well as merit.”

The Bench has taken into consideration the order of the Id.CIT(A) who has dismissed the appeal of the assessee on technical ground as well as merit. From the entire conspectus of the records, the Bench noticed that the assessee was ex-parte before the Id. CIT(A) and the AO to substantiate its case. It is also noted that the AO at page 5 in his order mentioned that *“In this regard, it is submitted that no documentary evidence was submitted by the Branch Manager for verification and examination as required by provision to Section 201(1) of the I.T. Act.* It shows that the assessee was deprived off to contest the case before the AO. The Bench has also taken into consideration the affidavit of the assessee as to condonation of delay of appeal by 523 days for the reason that the order passed by the Id. CIT(A) dated 26-10-2022 did not come to the notice as it was received directly into the spam folder of the Branch Bank and thus the delay took place in filing the appeal before the Bench. In this view of the matter, the Bench feels that there is sufficient

cause in not timely filing the appeal by the assessee before this Bench. Thus the delay so made in filing the appeal is condoned.

2.4 Be that as it may since it is an admitted fact that the assessee is ex-parte before the AO and also before the Id. 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.10,000/- 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 his 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.

2.5 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 assesee is allowed for statistical purposes

Order pronounced in the open court on 18 /09/2024.

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 18/09/2024

***Mishra**

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

1. The Appellant- Bank of India, Jaipur
2. प्रत्यर्थी / The Respondent- The Addl. CIT(TDS) , Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 829/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar