

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. 706 & 707/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18 & 2018-19

The Dy. Conservator of Forest Baran	बनाम Vs.	The ITO (TDS) Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAGD 1755 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Sunil Porwal, CA
राजस्व की ओर से / Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 19/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 04/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals filed by the assessee are directed against two different orders of the Id. CIT(A) dated 23-01-2023 and 03-02-1013, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 and 2018-19 respectively raising therein following grounds of appeal.

ITA No. 706/JP/2024 – A.Y. 2017-18

- “1. The Id.CIT(A) has dismissed the appeal for the reason “appeal filed belated” nor condonation filed.
2. That the AO’s order passed u/s 201(1)/ 201(1A) is bad in law and not lawfully correct, the Id. CIT(A) has not considered this fact.

3. That levy of tax /interest u/s 194C for Rs.21,79,826/- for payment made to Van Suraksha Samiti(VMPFS) Rs.7,98,04,899/- (7,93,31,259+4,73,640) is not a contractual payment and thus do not attract the provision of Section 194C of Income Tax Act, 1961.’

ITA No. 707/JP/2024 – A.Y. 2018-19

‘1. The Id.CIT(A) has dismissed the appeal for the reason ‘appeal filed belated’ nor condonation filed.

2. That the AO’s order passed u/s 201(1)/ 201(1A) is bad in law and not lawfully correct, the Id. CIT(A) has not considered this fact.

3. That levy of tax /interest u/s 194C for Rs.16,31,915/- for payment made to Van Suraksha Samiti(VMPFS) Rs.6,51,96,350/- (6,35,48,185+16,48,165) is not a contractual payment and thus do not attract the provision of Section 194C of Income Tax Act, 1961.’

2.1 At the very outset of hearing of the appeals, the Bench noticed that there is delay of 423 days in ITA No. 706/JP/2024 and delay of 412 days in ITA No. 707/JP/2024 in filing the appeals by the assessee for which the assessee has filed applications for condonation of delay in connection with both the appeals.

2.2 After having gone through the applications for seeking condonation of delay made by the assessee and after hearing both the parties, the Bench finds the basic reason for seeking condonation of delays by the assessee is that the Assessee being a Govt. Department had hired the services of one Shri Akshay Khandelwal, CA for the income tax related matters but due to professional negligence, he failed to intimate timely with regard to orders passed by the Id.CIT(A) and because of which the Govt. Department could not file the appeals during the stipulated time. In this regard, affidavit has been filed by the Dy. Forest Officer. It is also noted

from the affidavit as well as condonation application of the assessee wherein no specific dates have been mentioned by the assessee. Hence, from the condonation application, it is observed that the reasons mentioned therein by the assessee are cryptic which demonstrates the casual and cavalier approach by the assessee in filing the belated appeals for which a cost of Rs.10,000/- each appeal is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, at the same time after having gone through the factual position, the Bench finds that the assessee is a Govt. Department and the issue in question has already been decided in favour of the assessee by the Coordinate Bench of ITAT vide its order dated 8-11-2023 (ITA No. 358 to 360/JP/2023) meaning thereby that the assessee has got a good case on merit. The Bench feels that the lis between the parties has to be decided on merits as far as possible and also keeping in view the principles laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and Others , 167ITR 471 (SC) and thus admit the appeal to be decided on merits.

2.3 While admitting the appeals of the assessee and moving further on merits, the ld. AR of the assessee submitted that the matter pertaining to ITA No. 706/JP/2024 may be taken as a lead case for decision as the issue involved in lead case are common and inextricably interlinked of the facts and circumstances of both the cases except the difference in amount in other assessment year. The ld.DR

did not raise any specific objection. Therefore, for the purpose of the present discussion, the case of ITA No. 706/JP/2024 is taken as a lead case.

2.4 After having gone through the facts of the present case, the Bench noticed that the appeals of the assessee was dismissed by the Id.CIT(A) and not admitted the same on the ground that there was delay of more than 02 years in filing the appeal before the Id. CIT(A) and no application relating to condonation of delay was filed. However, the Id. AR submitted before the Bench that identical reasons were before the Id. CIT(A) as the assessee had engaged the services of one Shri Akshay Khandelwal,CA for income tax matters but due to his professional negligence, he failed to intimate timely with regard to the decision of the AO and thus the assessee filed belated appeals before the Id. CIT(A). The Bench has heard the Counsels for both the parties on the said factual position and decision of the Bench shall remain the same. Be that as it may since the Bench has already held that the case of the assessee has got good merit in view of the fact that similar controversy in question has already been decided by the Coordinate Bench of ITAT in ITA Nos. 358 to 360/JP/2023 for the assessment years 2016-17 to 2018-19 vide its order dated 8-11-2023 and in ITA No.98 & 99/Jodh/2023 for the assessment year 2017-18 and 2018-19 vide its order dated 2-11-2023. Hence, keeping in view of the facts and circumstances of the case, the Bench set aside the orders passed by the Id.CIT(A) and condone the delay in filing the appeals before

the Id. CIT(A) and restore the matter back to the file of the Id. CIT(A) for afresh adjudication of the case on merits by providing opportunity of hearing to the assessee.

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

3.0 In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 04 /10/2024.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04 /10/2024

*Mishra

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

1. The Appellant- The Dy. Conservator of Forest, Baran.
2. प्रत्यर्था / The Respondent- The ITO (TDS), Kota
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 706 & 707/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar