

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीराठौड़ कमलेशजयन्तभाई, लेखा सदस्य एवंश्रीनरेन्द्रकुमार, न्यायिकसदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकरअपीलसं./ITA No. 1107& 1108/JP/2025
निर्धारणवर्ष/AssessmentYear :- 2016-17

Shri Jitendra Kumar Flat No. 202, Silver Wings, Rani Sati Nagar Gyan Vihar, Nirman Nagar, Brijlalpura Jaipur – 302 019	बनाम Vs.	The ITO Ward 1(3) Jaipur
स्थायीलेखा सं./जीआईआरसं./PAN/GIR No.: ASMPK 0014A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Vijay Goyal, CA
राजस्व की ओरसे/ Revenue by: Shri Gautam Singh Choudhary,JCIT-DR

सुनवाई की तारीख/Date of Hearing : 11/09/2025
उदघोषणा की तारीख/Date of Pronouncement: 11 /09/2025

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Both these appeals have been filed by the assessee against two different orders of the learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi [for short Id. CIT(A)] dated 10-06-2025 u/s 144 of the Act and dated 08-07-2025 u/s 271(1)(c) of the Act, for the assessment year 2016-17 raising therein following grounds of appeal;

1. On the facts, in the circumstances of the case and in law, Id. CIT(A) erred in dismissing the appeal of the assessee on the ground of belated appeal. The Id. CIT(A) further erred in not consideration the delay condonation request in judicial perspective and not condoning the delay in filing of appeal which was for sufficient and reasonable cause.

2. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in confirming the addition of Rs.37,09,574/- made by AO by assuming sales of the appellant Rs.4,00,00,000/- as against Rs.3,76,23,650/- declared by the assessee and applying estimated net profit rate @ 10% on such sales as thereby estimating the net profit of the assessee Rs.40,00,000/- as against Rs.2,90,430/- declared by the assessee.

ITA NO. 1108/JP/2025 – A.Y. 2016-17 - U/S 271(1)c) of the Act

1. On the facts, in the circumstances of the case and in law, Id. CIT(A) erred in dismissing the appeal of the assessee on the ground of belated appeal. The Id. CIT(A) further erred in not consideration the delay condonation request in judicial perspective and not condoning the delay in filing of appeal which was for sufficient and reasonable cause.

2. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in confirming the imposition of penalty of Rs.10,56,093/-imposed u/s 271(1)(c) of the I.T. Act, 1961.

2.1 First of all, we take up the appeal of the assessee in ITA No.1107/JP/2025 for adjudication

3.1 Apropos of the grounds of appeals of the assessee, it is noticed that Id. CIT(A) has not condoned the delay of 2200 days in filing the appeal before him by the assessee before him and thus Id. CIT(A) rejected the appeal of the assessee by observing in para Nos.19 to 23 of his order as under:-

19. In the instant case the assessment order is dated 10.12.2018 and appellant was required to file appeal latest by 09.01.2019. The appellant has not adduced any reasonable cause to explain the delay. Unless and until it is demonstrated that there was sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of 30 days, the delay thereafter cannot be condoned without there being compelling grounds as advocated by the Hon'ble Courts.

20. From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s 249(2) of the Act. Thus, this clearly is a case of laches and is directly the result of deliberate inaction on the part of the appellant.

21. This is not a case of change in law which is beneficial to the appellant and hence the delay in seeking such remedy may be condoned in the furtherance of substantial justice. Therefore, there is no denial or destruction of a statutory right in this case, by adhering to the prescribed period of limitation as otherwise it will only lead to protract the matter endlessly and will undoubtedly render the legislative scheme and intention behind the concerned provision otiose as held by the Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s Glaxo Smith Kline Consumer Health Care Limited 2020[36] G.S.T.L. 305.

22. For these reasons, the delay of 2200 days in filing of appeal in this case is not condoned as no "sufficient and reasonable cause" has been shown u/s.249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s 249(2) of the Income Tax Act, 1961 r.w.s. 5 of Limitation Act and hence the appeal sought to be instituted belatedly is hereby rejected.

23. In the result, the appeal is rejected.”

3.2 In the course of hearing, Id. AR of the assessee submitted that with regard to assessment year 2016-17, the AO passed assessment order dated 10-12-2018 u/s 144 of the Act and also passed penalty order dated 21-06-2019 u/s 271(1)(c) of the Act. Both the orders are ex-parte orders. He further submitted that the assessee had not received any notice u/s 142(1) in relation to assessment year and thus he was not aware of passing of the assessment order dated 10-12-2018. Ld. AR further submitted that the assessee did not file ITR for A.Y. 2016-17 being not liable to file the I.T.R. and that is why he has not uploaded his address on Income Tax Portal. However, the assessee got to know this fact on 01-12-2024 when his brother visited the office of CA for some work and upon logging the Income Tax Portal, this fact of passing of both the orders came to his knowledge. Accordingly, the assessee filed the appeal before Id. CIT(A) who did not consider this delay of 2200 days in filing the appeal by the assessee and thus rejected the appeal. To this effect, the assessee has filed an affidavit dated 09-09-20125 that the delay in filing the appeal was bona fide.

3.3 On the other hand, Id. DR supported the order of Id. CIT(A) and submitted that there is much delay in filing the present appeal before the Id. CIT(A).

3.4 We have heard both the parties and perused the material available on record. In this case, it is noticed that the AO passed an ex-parte assessment order u/s 144 of the Act by holding as under:-

“2. In response to the notice u/s 143(2), none attended nor any reply filed by the assessee. Further notices, u/s 142(1) of the Act issued to the assessee on 06-07-2018, 26-07-2018, 4-11-2018, 16-11-2018 and finally on 28-11-2018 but none attended nor any reply filed by the assessee. The assessee was further asked to file his reply vide this office notice u/s 142(1) of the Act dated 28-11-2018 and was also intimated that in case of non-filing of reply the case will be decided ex-parte u/s 144 of the I.T. Act on merit and on the material available on the record but no reply has been received till date.”

Thus in the absence of any details/ documents from the side of the assessee, the AO made addition of Rs.40,07,920/- in the hands of the assessee. In first appeal, the Id. CIT(A) rejected the appeal of the assessee for the reason that there was inordinate delay of 2200 days in filing the appeal before him. From the arguments/

submission of the affidavit of the assessee, it is observed that the assessee did not receive any notice dated 28-11-2018 u/s 142(1) of the Act and if the AO had been more serious to service the notice to the assessee then he would have served the notice to the assessee either by post or through staff but it was not done. Hence, it appears that the assessee was not in a position to respond to the notices of the AO. It is also 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. However, we are of the view that disputes 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, we may make it clear that our 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.

4.1 As regards the penalty appeal of the assessee, it is noticed that the Id. CIT(A) has not condoned the delay of 1979 days in not timely filing the appeal by the assessee before him and thus Id. CIT(A) rejected the appeal of the assessee holding the same analogy as made in the appeal u/s 144 of the Act (supra).

4.2 We have heard both the parties and perused the materials available on record. In this case, it is noticed that AO passed penalty order dated 21-06-2019 by holding that the assessee failed to furnish the return and thereby furnishing inaccurate particulars of income and therefore, he held him liable for imposition of penalty u/s 271(1)© of the Act and accordingly imposed penalty of a sum of Rs.10,56,093/- u/s 271(1)© of the Act. In first appeal the Id. CIT(A) rejected the appeal of the assessee on the ground of delay of 1979 days in filing the appeal. The Bench from the entire conspectus of the case feels that when the quantum proceedings of the assessee have been restored to the file of the AO for afresh adjudication, then

the penalty order passed by the AO becomes infructuous. Hence, this penalty appeal of the assessee is held to have become infructuous , as the outcome would depend on outcome of quantum proceedings.

5.0 In the result, the quantum appeal (ITA No.1107/JP/2025) of the assessee is disposed of, for statistical purposes and penalty appeal (ITA No. 1108/JP/2025) becomes infructuous.

Order pronounced in the open court on 11/09/2025

Sd/-

(नरेन्द्रकुमार)
(NARINDER KUMAR)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठौड़ कमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11 /09/2025

***Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Jitendra Kumr , Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(3), Jaipur
3. आयकरआयुक्त / The ITO
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA Nos. 1107/JP/2025)

आदेशानुसार / By order,

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सहायकपंजीकार / Asst. Registrar