

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 758/JP/2017
निर्धारण वर्ष/Assessment Year : 2013-14

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| Sh. Jagpal Singh S/o Sh. Kehar Singh, Vill.- Alampur, Post-Bhiwadi, Tehsil-Tijara, Distt.-Alwar (Raj.) | बनाम Vs. | ITO, Ward-Bhiwadi |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BKUPS1182C | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओर से/ Assessee by : Sh. Anoop Bhatiya (CA)
राजस्व की ओर से/ Revenue by : Sh. A. S. Nehara (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 16/06/2022
उदघोषणा की तारीख/Date of Pronouncement: 21/06/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeal)- Alwar [Here in after referred as Ld. CIT(A)] for the assessment year 2013-14 dated 21.07.2017 which in turn arises from the order passed by the assessing officer passed under section 271(1)(c) of the Income tax Act, 1961 (in short 'the Act') dated 30.08.2016.

2. This appeal filed by the assessee is filed delayed by 11 days. At the time of hearing of the instant appeal the Id. AR appearing for the assessee submitted before us the contentions raised in the application for condonation of delay filed by the assessee along with the appeal. He has also drawn our attention to the affidavit executed by the assessee justifying the delay by the assessee in bringing this appeal. The contentions raised in the petition raised for condonation delay in filling this appeal is as under:

Application for Condonation of Delay u/s 253(5) of the Income Tax Act, 1961.

Hon'ble Sirs,

The order u/s 250 was passed by the Id. CIT(Appeals), Alwar on 22/07/2017 which was served on me on 31/07/2017.

Accordingly, I was supposed to file the appeal within 60 days of the receipt of order i.e. on or before 28.09.2017. The present appeal is delayed by 11 days.

I am an agriculturist and reside at Village Alampur, Post Bhiwadi, Tehsil-Tijara, Alwar. I am not exposed to the nitty gritty of the tax laws.

I had purchased a piece of land situated at Tijara (Alwar) from M/s Mamta Modern Education Society, Vikaspuri, New Delhi on 29.11.2012. Thereafter, certain proceedings of assessment were taken up by the ITO, Ward-Bhiwardi, Alwar which resulted into assessment order under section 144 wherein the purchases of property was wrongly considered as sale of property by assessing officer. However, I could not understand the nature and implication of this order.

Later, I received a penalty order dated 30.08.2016 levying a penalty of Rs.20,00,000/- which was appealed against before CIT(Appeals), Alwar contending the levy of penalty on the ground that assessee did not sell the property rather purchased the property. However, CIT(Appeals), Alwar decided appeal against me ignoring the fact that

assessee did not sell rather purchased the property. During the course of certain discussions with my friends, came to know that should file an appeal against the order of CIT (Appeals), Alwar seek necessary relief the matter.

I, being resident of rural area, took time to visit Jaipur for filing appeal through authorized representative CA (Mr.) Anoop Bhatia and the meanwhile due to lack of knowledge of tax laws resulted into non-action on my part of filing appeal within the stipulated time frame. This resulted into delay in filing the appeal.

Income tax is a complex subject and lack of its knowledge constitutes a reasonable cause for delay in filing the appeal. Reliance is placed on the following judicial pronouncement:

Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh & Ors. (1979) 118 ITR 326 (SC)

"...It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maula, J. pointed out in *Martindale vs. Falkner* (1846) 2 CB 706: "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so. "Scrutton, L.J. also once said: "It is impossible to know all the statutory law, and not very possible to know all the common law. "But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans vs. Bartlam* (1937) AC 473:".....the fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application." It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dt. 25th June, 1970. We accordingly, reject the plea of waiver raised on behalf of the State Government...."

I, therefore, make a humble prayer that on account of the above reason, delay in filing appeal may please be condoned. Reliance is placed on the following judicial pronouncements:

1. *Collector, Land Acquisition vs. Mst. Katiji* [1987] 167 ITR 471

"The legislature has conferred the power to condone delay by enacting S.5 of the Limitation Act of 1963 in order to enable the

courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the end of justice that being the life-purpose of the existence of the institution of courts."

2. M/s GMG Engineering Industries vs. M/s Issa Green Power Solution (Civil Appeal No. 4473/2015) With A.C. Govindaraj and Ors. vs. M. Krishnamoorthy & Ors. (Civil Appeal No. 4473/2015): In this case, Hon'ble Supreme Court held in Para 8 as under:

"It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bonafide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence."

In view of the above, a very humble prayer is made for condoning the delay.

Submitted most respectfully,

In this regard, he has further relied upon the judgment passed by the Hon'ble Apex Court in the matter of Collector, Land Acquisition vs. Mst. Katiji & Ors., reported in (1987 AIR 1353) wherein the delay has been condoned in a meritorious matter for the ends of justice.

2.1 On the other hand, the Ld. DR with all his fairness has not raised any serious objection to such submissions made by the assessee's counsel and judgment of the Hon'ble Apex Court in

condoning the delay, if any, in regard to filing of petitions before the Court of law.

2.2. Having heard the Ld. Counsel appearing for the parties and having regard to the facts and circumstances of the case, we find that sufficient cause has been shown by the assessee for not been able to file the instant appeal before us in due time and furthermore, respectfully relying upon the order dated 10.01.2022 passed by the Hon'ble Apex Court we condone the delay 11 days.

3. The only issue assailed by the assessee in this appeal is confirmation of penalty by the Id. CIT(A) and the related ground taken in this appeal is as under:

"1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the Id. AO in imposing penalty of Rs. 20,00,000/- u/s 271(1)(c) of the Income Tax Act, 1961. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty of Rs. 20,00,000/- imposed u/s 271(1)(c).

2. The assessee craves its right to add, amend or alter any of the grounds on or before the hearing."

4. Brief facts of the case are that the assessee filed his return of income declaring total income of Rs. 2,78,800/- on 28.03.2015. The case was selected for scrutiny. Notice under section 143(2) of

the Act was issued on 07.09.2015 and was duly served upon the assessee. The assessment proceedings for the under consideration was completed as per provision of section 144 of the Act. The Id. AO based on the perusal of AIR data noticed that the assessee has sold immovable property for Rs. 65,84,544/- but no details in respect of sale of immovable property is found in the ITR filed by the assessee not only that the assessee has not filed the related details in the assessment proceeding and the assessment was completed as per provisions of section 144 of the Act on 16.02.2016 thereby making an addition of Rs. 65,84,544/- and a sum of Rs. 99,973/- was also added to the return of income of the assessee being the deduction claimed under chapter VIA which was not supported by the evidence.

5. Aggrieved from the said order, the assessee has preferred an appeal before the Id. CIT(A) which is pending for hearing.

6. In the meanwhile, the Id. Assessing Officer has also passed an order imposing penalty u/s 271(1)(c) read with section 274 of the I.T. Act wherein also the assessee has not filed the reply and

therefore, the Id. AO has levied the penalty of Rs. 20,00,000/- u/s 271(1)(c) of the Act for an addition of Rs. 65,84,544/- and deduction claimed and not allowed under chapter VI-A for an amount of Rs. 99,973/- claimed by the assessee in his return of income.

7. Aggrieved from the said order of the penalty levied by the Assessing Officer, the assessee has filed an appeal before the Id. CIT(A) and assessee did not get succeed in the appeal. The relevant observations of the Id. CIT(A) while dismissing the appeal of the assessee is as under:-

“I have considered the order passed by the AO and submissions filed by the appellant. I have considered the fact that the appellant had failed to declare the sale of the property and the sale consideration in the return of the income filed for the A.Y 2013-14. I have also noted the fact that the A.O was constrained to make the assessment ex-parte u/s 144 of the Act as the assessee did not even bother to attend to the assessment proceedings. Even in the appellate proceedings the submission was filed in Dak and no evidences have been filed in support of his claim. The assessee failed to discharge his onus of declaring a sale in the return of income and the resultant capital gain. Therefore, the A.O has rightly imposed penalty of Rs. 20 lakhs u/s 271(1)(c) of the Act for concealment of income and furnishing inaccurate particulars. Accordingly, the penalty of Rs. 20 lakhs is confirmed and the appellant's ground of appeal on the issue is dismissed.”

8. During the proceedings before us, the Id. AR of the assessee vehemently argued that Id. CIT(A) decided the appeal against the assessee vide order dated 21.9.2017 ignoring the fact that assessee did not sell but purchased the property. The Id. AR of the assessee further submitted that the assessee had also preferred an appeal before the CIT(A) against the assessment order making the addition ex party is yet to be decided upon by the Id. CIT(A). During the course of proceedings before CIT(A) on quantum addition the assessee filed a petition for Acceptance of Additional Evidence Alwar which was forwarded to Id. AO (ITO, Bhiwadi) for further examination. Consequently, Id AO vide his remand report dated 27.03.2019 certified the following (at page 2 of his remand report):

"I have gone through the document/submission filed by the assessee. The AO had made an addition on account of capital gain earned by assessee of Rs.65,84,544/- because the assessee had failed to produce any evidence/explanation in respect of above property transaction during the assessment proceeding. But, now the assessee has furnished the necessary documents (i.e. registered deed) in support of his claim. On perusal of ITS details as well as registered document in respect of property transaction, it is found that the assessee has purchased an immovable property for value at Rs. 32,00,000/- (DLC value Rs. 65,84,544) from M/s Mamta Modern Education Society, New Delhi (purchaser) on 29.11.2012 whereas it was mentioned in ITS detail as property sold by assessee Sh. Jag Pal Singh, Village-Alampur, Tehsil, Tijara, Alwar and purchased by Mamta Modern education Society, New Delhi. Since, the assessee has not

sold any property during the financial year, therefore, no capital gain arises in the hand of assessee."

In context of the above stated facts, it is reiterated that during the relevant year under consideration assessee did not sell any property hence the penalty levied on the ground of addition of Rs. 65,84,544 which is further upheld by Id. CIT(A) is invalid in law and deserves to be quashed.

9. Thus, the issue before us is levy of penalty on two counts, first addition of Rs. 65,84,544/-, considering the property has sold but in fact the property is purchased by the assessee as it is evident for the remand report of the Id. AO dated 27.03.2019. The relevant observations of the Id. AO are reproduced in the submission of the assessee hereinabove and therefore, the same is not repeated for the sake of repetition. The other amount on which the penalty is calculated in the ex-parte order non-granting of deduction of Rs.99,973/- claimed under chapter VI-A.

10. Since, the very basis of addition on which the penalty is levied is yet to be decided on merits as contrary facts to the finding of the Id. AO are placed on record before the Id. CIT(A) in quantum

appeal as additional evidence and the matter is yet not finalised. The Id. AO reported in his remand report submitted in quantum remand proceeding which will affect the levy of the penalty. While dismissing the appeal of the assessee with respect to levy of penalty this aspect is not seen by the Id. CIT(A).

11. Per contra, the Id. DR has not controverted the finding of Id. Assessing Officer given in the remand report but at the same time requested that the matter may be remanded back as the quantum appeal is pending before the Id. CIT(A).

12. We have heard the rival contentions and perused the material placed on record. Considering the contention of the Id. DR, since the quantum appeal is pending before Id. CIT(A) and the fact related in the remand proceedings is not considered by the Id. CIT(A) while dealing with the appeal of the assessee in penalty appeal. Therefore, in the interest of justice, the Id. CIT(A) is directed to decide the appeal of the assessee for levy of penalty of Rs. 20,00,000/- afresh considering the remand report placed on record by the Id. Assessing Officer in the quantum appeal, after

affording proper opportunity of being heard to the assessee and thus, this issue is restored back to the file of the Id. CIT(A).

In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/06/2022.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/06/2022

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Jagpal Singh, Alwar
2. प्रत्यर्थी / The Respondent- ITO, Ward-Bhiwadi
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 758/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar