

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 825/JP/2018
निर्धारण वर्ष / Assessment Year :2012-13

Shri Nitesh Agarwal, Prop.- M/s S.S. Diam, 38, Uniyara Garden, Nehru Park, Trimurti Circle, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-5, Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: ANWPA 5674 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar &
Ms. Isha Kanoongo (Adv)
राजस्व की ओर से / Revenue by : Smt. Rolee Agarwal (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 05/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 19/09/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 13/02/2017 of Id. CIT(A), Ajmer for the A.Y. 2013-14.

2. There is a delay of 387 days in filing the present appeal. The assessee has filed an application for condonation of delay, which is supported by the affidavit of the assessee. Since, there is an inordinate delay in filing the appeal and the revenue has raised serious objection

against the maintainability of the present appeal, we have heard on the condonation of delay application only at this stage.

3. The Id AR of the assessee has submitted that the assessee is an individual and received impugned order of Id. CIT(A) dated 13/2/2017 on 18/3/2017, however, the assessee was facing very turbulent time in the family as well as with his earlier C.A., who had mischievously prepared the accounts of the assessee and also filed the return of income in his own signatures without bringing the fact in the notice of the assessee. He has pointed out that the assessee is undergoing with various problems, he has misplaced the impugned order and forgot to give the papers to his counsel for filing the appeal. The Id AR has submitted that the assessee was fighting with his C.A. regarding false accounts prepared by him and filing the return of income based on such false accounts. The Id AR has further submitted that the situation went from bad to worse. The assessee had filed complaint against the C.A. and further a case in the Court of Mahanagar Magistrate against the misdeeds of the C.A.. Thus, the Id AR has submitted that the assessee was fighting for getting the relevant papers from the C.A. and in this process, the assessee could not take steps to file the appeal within the stipulated period of limitation. The Id AR has referred to the complaints filed by the assessee against the C.A. as well as the court case pending. He has further contended that due to misdeeds of

the C.A., the assessee has suffered heavy losses on account of non-recovery of dues from the debtors namely Shree Gms INC, New York. Since the goods were supplied to the client based at U.S.A., therefore, the assessee had to initiate the proceedings through the Indian Embassy. The Id AR has referred to the record in respect of the steps taken by the assessee for recovery of the dues from the U.S. based debtor for supply of goods. He has further contended that apart from all these problems in the business front, the assessee was also facing lot of problems on the family front as the sister of the assessee was also facing divorce proceedings and ultimately the court proceedings has resulted into divorce to his sister. Due to loss suffered by the assessee and non-recovery of debts, the assessee has also faced various court cases on account of dishonor of cheques and therefore, he has faced the court proceedings U/s 138 of the Negotiable Instruments Act. The Id AR has further pointed out that the father of the assessee was suffering from cancer and has been undergoing the treatment of various hospitals including Santokba Durlabh Ji hospital, Breech Candy hospital, Mumbai as well as other hospitals, therefore, the assessee has spent lot of time and money in the treatment of his father since the year 2012. He has referred the medical record of his father regarding treatment of cancer. Thus, the Id AR has submitted that due to all these problems, the assessee could not take steps to file the appeal

against the impugned order within the period of limitation and therefore, there was a delay of 387 days in filing the appeal. The Id AR has submitted that when the assessee has explained the sufficient reasons for not filing the appeal, then the delay in filing the appeal may be condoned by taking a liberal view as held by the various courts including the Hon'ble Supreme Court as well as various Hon'ble High Courts. In support of his contention, he has relied upon the following decisions:

- (i) Vijay Vishan Meghani Vs DCIT (2017) 398 ITR 250 (Mum).
- (ii) Just Steels Vs DCIT (2012) 74 DTR (MA) 86.
- (iii) Oracle India Pvt. Ltd. Vs DCIT (2008) 13 DTR 371.

The Id AR has submitted that when the cause of delay has been explained by the assessee which is not malafide then the time period of delay should not be considered as a relevant factor.

4. On the other hand, the Id CIT-DR has submitted that there is an inordinate delay of 387 days in filing the appeal. The assessee has not explained any reasonable cause for the delay in filing the present appeal. Though, the assessee has shifted the blame to the C.A. without taking steps for filing the appeal, which were entirely in the control of the assessee. Therefore, the Id CIT DR has submitted that despite all these problems as explained by the assessee as cause of delay, the assessee was doing the business and therefore, when the assessee could find the time to

do his business then non-filing of the appeal in the garb of the various problems cannot be considered as a reasonable explanation and cause of delay in filing the appeal.

5. We have considered the rival submissions as well as the relevant material on record. The assessee has explained the reasons for delay as attributable to the various problems on the business front, family front as well as the assessee was having some dispute with his C.A. In support of his explanation, the assessee has filed the record regarding the complaint against the C.A. Shri Anurag Kumar Agarwal. The assessee has also filed a complaint U/s 420, 367, 468 and 471 of the IPC before the Additional Chief Metropolitan Magistrate, Jaipur. A copy of these records have been filed alongwith the application for condonation of delay. Thus, there is no denial that the assessee has been fighting with his C.A. regarding manipulation of the accounts and filing false/wrong return of income without the knowledge and signature of the assessee. Though, these allegations are subject matter of the proceedings pending before the court, however, the fact which is undisputed that the assessee has been prosecuting the matter of complaint against the C.A. before the various authorities including the Court of Additional Chief Metropolitan Magistrate, Jaipur. The assessee has also filed the record of the exports made to M/s Shree Gems INC, 22 West, 48th Street Suite No. 1203, New York Ny 10036 USA. The assessee has also

placed on record the travel documents showing the visit of the assessee to the USA as well as the documents of export, shipping bills, clearance of cargo etc. Thus, we find that these explanations and reasons of delay are based on true facts which are substantiated by the documentary evidence. Further the assessee has also filed the medical record of ailment of his father suffering from cancer. We find that the father of the assessee has been undergoing the cancer treatment since the year 2012. The medical record of treatment from Breach Candy Hospital, Mumbai shows that the assessee's father is being treated from Breach Candu Hospital. Thus, the reasons explained by the assessee are found to be true and therefore, these are bonafide explanation and not malafide. It is settled proposition of law that the court should take lenient view on the matter of condonation of delay provided the explanation and reasons for delay is bonafide and not merely a device to cover an ulterior purpose or an attempt to save limitation in an underhand way. While construing the sufficient cause, a liberal view should be taken and court should lean in favour of the party as explained the reasons for delay as bonafide. Whenever substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred. On the facts and reasons explained by the assessee, we are satisfied that the assessee was prevented from filing the appeal within the period of limitation. The reasons as explained in

the application for condonation of delay are duly supported by documentary evidence, therefore, there is nothing on record to suggest that the assessee has taken any advantage in filing the present appeal belatedly. Thus, once the assessee explained the cause of delay which is found as bonafide and not a device to cover an ulterior purpose then the length of delay itself cannot be a reason for denying the condonation. Thus, when the assessee was passing through a bad phase for such a long time on business front as well as on family front and facing the problem even with the CA and fighting for getting his account set right. Then in the facts and circumstances of the case and in the interest of justice, we condone the delay of 387 days in filing the present appeal. Since the matter was heard only on the condonation of delay and therefore, the merits of the matter is required to be heard and adjudicated. Accordingly, the Registry is directed to fix the appeal of the assessee for deciding on merits in regular course. The parties be informed.

6. In the result, the condonation of delay is allowed.

Order pronounced in the open court on 19/09/2018.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19th September, 2018

*Ranjan

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी/The Appellant- Shri Nitesh Agarwal, Jaipur.
2. प्रत्यर्थी/ The Respondent- The ACIT, Circle-5, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 825/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar