

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

BEFORE SHRI N.K.SAINI, VICE PRESIDENT (SMC)

ITA No. 17/Jodh/2019
(ASSESSMENT YEAR-2012-13)

Sh Mahnoo Khan, S/o Shri Rahim Khan, Villagae Ranasar Churu	Vs	The ITO, Ward-1, Churu
(Appellant)		(Respondent)
PAN/TAN: FDJPK1005A		

Stay Application No.01/Jodh/2019
(in ITA No. 17/Jodh/2019)
(ASSESSMENT YEAR-2012-13)

Sh Mahnoo Khan, S/o Shri Rahim Khan, Villagae Ranaasar Churu	Vs	The ITO, Ward-1, Churu
(Appellant)		(Respondent)
PAN/TAN: FDJPK1005A		

Revenue By	Sh. P.K. Singi, DR
Assessee By	Sh Suresh Ojha, Advocate
Date of hearing	03.05.2019
Date of Pronouncement	03.05.2019

ORDER

PER N. K. SAINI, V.P.

The appeal by the assessee is directed against the order dated 17.12.2018 of the CIT(A)-3, Jaipur.

2. Following grounds have been raised in this appeal :-

1. *That the order passed by the Commissioner of Income Tax (Appeals) is illegal and against the law.*
2. *That the reopening of the assessment u/s 147/148 of IT Act is illegal and against the law.*
3. *That the assessee was prevented by reasonable cause for compliance of notice of 147 and 142(1) of Income Tax Act.*
4. *That the Commissioner of Income Tax (Appeals) should not have dismissed the Appeal by treating that there was no reasonable cause, where as the assessee was prevent by a reasonable cause and CIT (A) should have condone the delay looking to the reasonableness of the explanation.*
5. *Without prejudice the delay so mention by the CIT (A) that is 741 days is not correct because the appeal in hard copy was submitted on 20.04.2017.*
6. *That the mistake committed by Advocate is a reasonable cause, as has been held by varies High Court and Tribunal and CIT (A) should have considered as reasonable cause.*
7. *That the Commissioner of Income Tax (Appeals) should have appreciated that the application of provisions of section 50C of the Income Tax Act is not applicable in the case of the assessee, because the land in question is leasehold land and on the leasehold land the provisions of section 50C of Income Tax Act is not applicable in view of order of Hon'ble Tribunal.*

8. Without prejudice the Income Tax Officer should not have calculated the Income as Capital Gain and Commissioner of Income Tax (Appeals) should not have confirm because the amount of consideration was received earlier and possession thereof was given on 24th August 1999 as such the Capital Gain Tax is not attracted in these facts in circumstances.

3. The main grievance of the assessee vide ground No. 4 relates to the dismissal of the appeal in limine. The facts of the case in brief are that the Assessing Officer on the basis of information received came to know that the assessee was enjoying the taxable income from capital gains for the year under consideration but have not filed his return of income. The Assessing Officer observed that the assessee sold one immovable property having registered value as per the sale deed of Rs. 4 lacs and DLC value at Rs. 8,55,840/- . He also observed that the value of the capital gains worked out to Rs. 5,58,910/- after providing benefit of cost of indexation. He framed assessment u/s 144 of the Act at an income of Rs. 5,58,910/-.

4. Being aggrieved , the assessee carried the matter to the Ld. CIT(A) who dismissed the appeal in limine by observing as under:-

"The appellant has e-filed the instant appeal on 26.10.2018, there is a delay of 741 days. The appellant filed condonation delay petition as under:-

"The appeal cannot be submitted in due time due to the negligence of the advocate Sh. Akhtar Rasul

and not due to wilful default of applicant. The assessment order and other related paper were handed over to Adv Akhtar Rasool for filling of appeal but he could not file appeal within due time and handed over all the papers to the assessee on 15.04.2017 with written acceptance that he kept the papers in a drawer and overlooked them and could not file the appeal in the given 30 days limitation period. It is therefore requested that the delay in filling in appeal is not due to my wilful default. Hence it is prayed that this Honourable Court may be pleased to condone the delay in filling the appeal and the appeal may please be treated as filed within the allowed time. ”

3. *I carefully considered the condonation delay application I find that there was no genuine cause which prevented the appellant to file the appeal in time. Therefore I rejected the condonation delay petition and the appeal is dismissed at admission stage."*

5. Now, the assessee is in appeal. The Ld. counsel for the assessee furnished the written submissions stating therein as under:-

"It is stated that one of the issues involved in the appeal is in respect of rejection of appeal in Limini i.e. out of limitation.

In this respect I want to submit that the assessee is an illiterate person and only knows how to put signature somehow. The appeal in question was handed over to his Advocate Shri Akhtar Rasul who was practicing in the civil side. The assessee handed over papers to him for furnishing his appeal but the appeal was not submitted by the Advocate. The Commissioner of Income Tax (Appeals), was requested so as to condone the delay on account that the assessee was prevented by reasonable cause due to non furnishing of appeal by his then Advocate to whom documents were given. The copy of the application for

condonation of delay as well as copy of letter/confirmation by Shri Akhtar Rasul is at page 1 -3 of the Paper Book. The assessee very much wanted to submit appeal within stipulated time but on account of the mistake of the Advocate, appeal could not be furnished. Therefore, this being a mistake on the part of Advocate for which he himself admitted that due to his busyness he overlooked, the appeal could not be submitted. This fact came to Notice of the Advocate when the Demand Notice was received. As such, the assessee was prevented by reasonable cause. The rejection of request for condonation of delay is arbitrary and against the principle of natural justice. The Commissioner of Income Tax (Appeals) should have accepted the reason submitted by the assessee as reasonable cause.

It is worthwhile to submit here that the Commissioner of Income Tax rejected the Appeal by calculating 740 days as delay. But the assessee furnished the Appeal in hard copy on 22.4.2017, as such the delay was only 217 days only. I again want to submit that the date of service is 15.9.2016 and the date of submission of appeal in hard copy was 20.4.2017, therefore, the delay is only 217 days and not 740 days. The copy of form no 35 is at page 4&5 of the paper book. The copy of acknowledgement of receipt is at page 6 which was dated 26.10.2018. The fact and evidence adduced by the assessee before the Commissioner of Income Tax (Appeals) establish that there is/ was no ignorance of the assessee and the delay is on account of mistake on the part of the then Advocate due to which the assessee was prevented by reasonable cause."

6. Reliance was placed on the following case laws:-

- i) *ITO Vs. Golabdass Stores, 69 TTJ 474 (ITAT Jodhpur)*
- ii) *Vedabai alias Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil [2002] 253 ITR 798 (SC)*
- iii) *Collector, Land Acquisiton Vs. Mst. Katiji And Others, 167 ITR 471 (SC)*

7. It was further submitted that the Ld. CIT(A) ought to have condoned the delay after considering the submissions of the assessee. The Ld. counsel for the assessee also furnished an affidavit of the assessee stating therein as under:-

"Affidavit

I, Mahnoo Khan S/o Shri Rahim Khan aged -79 years, resident of Village Ranasar, Churu, declare on oath as under :-

- 1. That the assessment of mine for assessment year 2012-13 was completed by the I.T. O. Ward-1, Churu on 31.08.2016 under section 144 r.w.s.147/148 of the I.T. Act,1961 and huge demand of Rs. 2,37,070/- was created. Out of the above mentioned amount, Rs. 47,489/- has been recovered and Rs. 1,89,581/- is outstanding till today.*
- 2. That an appeal was preferred before the Commissioner of Income Tax (Appeals), Jaipur -3 against the order of I.T.O., Ward-1, Churu.*
- 3. That the appeal so filed was decided by the C.I.T.(A), Jaipur-3 on 17-12-2018 and no relief was granted .*
- 4. That I was prevented by reasonable cause for filing the appeal before the CIT (A) against the order of Income Tax Officer, Ward -1 Churu.*
- 5. That the financial position of the mine is not sound so as to deposit such a huge demand.*
- 6. That an appeal has been preferred by me against the order of the C.I.T.(A), Jaipur-3 before the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur which is still pending.*
- 7. That in case the stay is granted; I will submit the security or will obey the order of the Hon'ble Bench.*

What has been stated above is true to the best of my knowledge and belief.

Nothing has been concealed.

So God may help me.

*Sd/-
Deponent*

*Dated. 0.1.2009
(Mahnoo Khan)"*

8. In his rival submissions, the Ld. Sr.DR supported the impugned order passed by the Ld. CIT(A) and further submitted that the delay in filing the appeals before the Ld. CIT(A) was not properly explained, therefore, the appeal was rightly dismissed by the Ld. CIT(A) in limine.

9. I have considered the submissions of both the parties and perused the material available on record. In the present case it is noticed that the Ld. CIT(A) dismissed the appeal in limine and had not condoned the delay. He mentioned that there was delay of 740 days in filing the appeal, however, the claim of the assessee is that the delay is of 217 days. The assessee also filed an affidavit first time before this Bench of the Tribunal which was not available to the Ld. CIT(A). It is also claimed that the proper application was filed for condemnation of delay alongwith certificate issued by the then advocate beofre the Ld. CIT(A) which has not been appreciated in right perspective. Copy of the same are placed at page Nos. 1 to 3 of the assessee's paper book. I, therefore, considering the totality of facts, deem it appropriate to set aside this case back to the file of the Ld. CIT(A) to be adjudicated afresh in

accordance with law after providing due and reasonable opportunity of being heard to the assessee.

10. Since the appeal of the assessee has been decided, the Stay Application No. 01/Jodh/2019 filed for stay of the outstanding demand now becomes in fructuous and accordingly the same is dismissed.

11. In the result, the Stay Application of the assessee is dismissed and the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 03.05.2019)

Sd/-
(N.K. SAINI)
Vice President

Dated : 03.05.2019

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
सहायकपंजीकार/ Assistant Registrar

