

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

श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य एवं श्री सुधीर पारीक, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI SUDHIR PAREEK, JM

आयकर अपील सं./ITA. No. 710/JPR/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Sh. Sita Ram Saini 283, Maliyon Ki Dhani, Hatnoda, Chomu, Jaipur.	बनाम Vs.	The ITO, Ward-7(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BINPS1052E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Mrs. Prabha Rana, (Adv.) &
Shri Athrav Mundra (Adv.)
राजस्व की ओर से / Revenue by : Mrs. Meenakshi Vohra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 19/12/2024
उद्घोषणा की तारीख / Date of Pronouncement : 01/01/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the National faceless Appeal Centre, Delhi [for short CIT(A)] dated 25.08.2023 for the assessment year 2014-15, which in turn arise from the order dated 23.12.2016 passed under section 144/143(3) of the Income Tax Act,1961 [for short "Act"] by the ITO, Ward-7(3), Jaipur [for short AO].

2.1 At the outset of hearing, the Bench observed that there is delay of 29 days in filing of the appeal by the assessee for which the Id. AR of the assessee filed application for condonation of delay with following prayer and the assessee to this effect also filed an affidavit also :-

“3. Hence, the assessee was under bona-fide belief that the assessed income after giving appeal effect will be net profit of 8 % on total gross business receipt of Rs. 79,95,179/- which includes gross receipt/sale of Rs. 46,27,013/ declared by the assessee. After allowing a rebate of Rs. 1,11,104/-u/s 80C, 80TTA and 80GG (already allowed by the Ld. AO in the Assessment Order) and adding other income of Rs. 1,426/- Total Income should be Rs. 5,29,936/- only and therefore payable demand was under the impression that will be very limited and not advisable to file an appeal.

4. But the Ld. AO first passed the appeal effect of order u/s 250 of the IT Act on 26.09.2023 Rs. 36,28,667/- creating a huge demand again paper book page no. 01. The assessee submitted an application u/s 154 and the Ld. AO passed the appeal effect order again r.w.s. 154 Rs. 9,00,115/- paper book page no. 06-07 your honour can see that demand raised is Rs. 2,17,954/- paper book page no. 08-09 whereas the assessee income should be, after giving appeal effect, Rs. 5,29,936/-. The assessee submitted again an application u/s 154 on dated 29.09.2023 paper book page no. 02-05 and the Ld. AO had yet not passed the appeal effect order. Your honour kind attention is invited to the facts in brief as under:-

4.1. Your honour, it is the case of cash deposited into bank of Rs. 79,95,179/- and the assessment was made u/s 144.

4.2. During remand report proceedings, the undisputed facts are appearing in the Ld. CIT order page no. 4 para 2nd that Rs. 46,27,013/ is towards business receipts and Rs. 33,68,166 towards withdrawal from bank again deposited into the bank. However the Ld. CIT Appeal passed the order to apply a net profit of 8% on total gross business receipt of Rs. 79,95,179/- which is bad in Law and Facts, especially when it is undisputed facts that out of Rs. 79,95,179/- Rs. 33,68,166

towards withdrawal from bank again deposited into the bank. To get the peace the assessee had not filed the appeal. Your honour, the proper appeal effect yet had not passed and the AR advised the undersigned assessee to file an appeal with condonation of delay.

5. So the appeal with the request for condonation of delay in filing appeal. Your honour it has been held that If there was sufficient cause shown for the condonation of delay, then, the Appellate authority should have applied the well-settled principles in consideration of the application. Your froñour kind attention is invited to the well-settled principles are that if the cause shown or the explanation given is true, reasonable and bona fide, then, whether the delay should be condoned and which would enable the assessee to have an adjudication of the issue on merits. Your honour, one of the principles which have been carved out in numerous decisions of the Hon'ble Supreme Court on the point is that if the litigant has acted under legal advice bona fide, and that is mistaken, ordinarily he should not be penalised.

6. The Hon'ble Apex Court in the case of State of West Bengal v. The Administrator, Howrah Municipality reported in AIR 1972 page 749 (SC) had held that the scope of expression "sufficient cause" for the condonation of delay should receive a liberal construction so as to advance the substantial justice. The AR relied on the decision of Hon'ble Apex Court in the case of N. Balakrishnan v. M.Krishnamurthy AIR 1998 page 3222: 2008 TaxPub(EX) 1737 (SC)."

In support of the contentions so raised the Authorized signatory filed an affidavit to support the contentions raised in the prayer for condonation of delay in filing the appeal.

2.2 The Id. AR of the assessee appearing in this appeal submitted that the assessee is serious on the duties and the delay of 29 days in preparation and filing of appeal was on account of sufficient reasons and the common understanding of the assessee on the appeal disposed by the Id. CIT(A). Considering that aspect

of the matter Id. AR prayed that the liberal approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

2.3. During the course of the hearing, the Id. DR fairly did not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench noted that the reasons advanced by the assessee for condonation of delay of 29 days are sufficient to condone the delay and it has merit based on the prayer advanced by the assessee as per the prayer made to condone the delay. Thus, we concur with the submission of the assessee and condone the delay of 29 days in filing the present appeal by the assessee in view of the decision of State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 page 749] wherein the apex court held that the scope of expression "sufficient cause" for the condonation of delay should receive a liberal construction as to advance the substantial Justice..

3. Now coming to the merits of the case, the assessee has

challenged the order of the Id. CIT(A) on the following grounds: -

“1. The order of the learned Commissioner of Income tax (appeals), NFAC with a direction to recompute the income by applying the net profit of 85 by considering gross business receipts of Rs. 79,95,179/- whereas the business receipts is only Rs. 46,27,013/-. No telescopic benefit was allowed for Rs. 33,86,166/- in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned Commissioner of Income tax (Appeals), NFAC had not given any adverse inference in the cash flow statement filed by the appellant.”

4. The brief fact of the case is that the return of income was filed by the assessee u/s 139(1) of the Income- tax Act 1961 in ITR-4 on 31.01.2016 declaring total income of Rs. 2,60,490/- and agriculture income of Rs. 1,50,280/-. On selection of the case for limited scrutiny under CASS, notice u/s 143(2) of the Income Tax Act 1961 was issued on 05.09.2016 which was personally served upon the assessee on 11.09.2016 by notice server. In compliance to the notice issued, the Id. AR of the assessee appeared on 15.09.2016 and case was fixed for hearing on 26.09.2016. On 28.09.2016, the Id. AR of the assessee appeared and furnished written submission, copy of computation of total income with ITR and copy of bank accounts. On 07.10.2016, the Id. AR of the assessee appeared, and he was asked to file details and documents and books of accounts regarding the source of cash deposited in bank account.

On 19.10.2016, the Id. AR appeared seeking further adjournment, accordingly the case was fixed for hearing on 03.11.2016 but none was attended on the date given. Vide order sheet dated 18.11.2016, the case was fixed for hearing on 25.11.2016 and again the necessary documents and details were called for, but the assessee has repeated the same history and compliance was not made.

4.1 The Id. AO noted the time-barring proceedings are involved, therefore, taking into consideration of non compliance on the part of the assessee, he had no alternative except completing the time-barring assessment u/s 144 of the Act and for that and in order to afford final opportunity to the assessee, a detailed show-cause notice u/s 144(1) of the I.T. Act 1961 was issued on 02.12.2016 and got served through Regd. Post fixing the case for hearing on 12.12.2016. On the date of hearing fixed on 12.12.2016 neither the assessee attended personally or through an authorized representative nor furnished any written submission, therefore the case was completed u/s 144 of the Act based on the material available with the AO. While doing so Id. AO based on the AIR information noted that the assessee in the year under consideration deposited total cash of Rs. 2,98,600 in his saving bank account

with Bank of Baroda and Rs. 76,99,179/- in ICICI Bank Ltd. Since, the assessee offered no explanation regarding these cash deposits and not furnished any documentary evidences regarding source of the cash deposits, therefore, considering the facts of the case, total of the cash deposits of Rs. 79,95,179/- was treated as unexplained cash credits u/s 68 r.w.s. 115BBE of the IT. Act, 1961 and was added to the total income of the assessee.

5. Aggrieved, from the said order of assessment, assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) after considering the contention of the assessee and report of the Id. AO in the remand proceeding considered the cash deposit to the extent of Rs. 46,27,013/- as turnover upon which 8 % was already disclosed and for the balance amount of Rs. 33,68,166/- [79,95,179/- less 46,27,013/-] he also considered 8 % further income and accordingly the appeal of the assessee was allowed in part. The finding of the Id. CIT(A) which is disputed before us reads as under:-

“6. Decision:

6.1 Following the remand report it is seen that the assessee has declared a net profit at Rs. 370165/- (i.e. @ 8% of gross receipt/sale) on gross receipt/sale of 4627013/-.

6.2 The AO in his remand report has stated that the assessee could not submit any evidence in respect of his explanation about the cash deposited in the bank account. Bower, the AO has given the benefit of Rs. 4627013 on which the assessee had declared net profit of Rs.

370165/- by apply a rate 8% as per the provisions of Section 44AD. The AO has recommended that the differential amount of Rs. 33,68,166/- (Rs. 7995179- Rs. 4627013) may be treated as unaccounted but yet a business receipt.

6.3 In the fitness of things and to give quietus to long pending litigation the net profit of 8% may hence be applied to the gross business receipts of Rs. 7995179/-. As a result the assessment may be finalized at an increase of 8% as the gross receipt.

6.4 The appeal of assessee is hence partly allowed.”

6. As the appeal of the assessee was considered in part based on the documents submitted in the remand proceedings the view taken by the Id. CIT(A) is not correct and complete and therefore, the assessee has challenged that order of the Id. CIT(A) before us and to support the grounds so raised the Id. AR of the assessee has filed a detailed written submission which reads as under :-

“Your honour is requested to Ld CIT (a) page no.3 last line of Point no. 2 onwards wherein the Ld AO relevant paras of his remand report is appearing. Your Honour, this remand report is appearing up to page no. 4 just before Point no. 4. Your Honour kind attn. is invited to page no. 4, 2nd para wherein the Ld AO confirmed that the assessee furnished all bank statement of the assessee, Bank Book, Cash Book and sale and purchases bill, confirmation of parties and ledger accounts. Your Honour the Ld AO confirmed that the Ld AO verified the same. Your Honour the Ld AO after verification state that the assessee has not submitted any documentary evidences for his claim. Where is the fact is that the assessee submitted that the assessee several time withdrawal the cash and if cash is not utilised then the same is deposited in bank account. Kindly see Ld CIT(A) order page no.4 para 1 line no. 5 onwards. The assessee is producing here with a table showing summary of cash book:-

S. No.	particular	Debit	Credit
1.	Opening balance	646127.28	
2.	Cash withdraw from ICICI Bank	2380500.00	
3.	cash withdrawn from Bank of Baroda	4201183.00	
4.	Cash withdraw from HDFC Bank	11600.00	

5.	Cash withdraw from PNB Bank	2636800.00	
6.	Cash Sales	4884468.00	
7.	Cash deposited in Bank ICICI		7833978.00
8.	Cash deposited in Bank of Baroda		3322431.00
9.	Cash deposited in PNB		3049236.00
10.	Cash deposited in HDFC		10000.00
11.	Cash exp.		136923.00
12.	Closing cash balance		40811028
	Grand total	14760678.28	14760678.28

Your honour the Ld AO erroneously stated that the assessee deposited cash in ICICI bank of Rs. 76,99,179/-and deposited cash in Bank of Baroda of Rs. 2,98,600/-. It appears that the Ld AO has taken figures from AIS information submitted by the bank.

2. Hence your honour the source of cash deposit into bank is as under:-

- a) Opening Balance Rs. 6,46,127.28
- b) Cash Withdrawal from Bank Rs. 92,30,083.00
- c) Cash Sales Rs. 48,84,468.00

3. Your honour the evidence of opening cash balance of Rs. 6,46,127.28 is already appearing in cash book which was verified by the Ld AO in remand report and therefore it is undisputed fact that the assessee submitted documentary evidences in this regard.

4. Your honour the evidence of withdrawal and again deposited into bank is already appearing in bank statement and cash book and therefore it is undisputed fact that the assessee submitted documentary evidences for his claim that the cash was withdrawn from bank of Rs.92,30,083/-.

5. Your Honour, the assessee also made cash sales of Rs. 48,84,468/-and evidence of cash sales is already in cash book and sale bill and therefore it is undisputed fact that the assessee submitted documentary evidences for the same.

6. The assessee has already submitted paper book which was submitted before LD CIT(A) in remand report proceeding vide acknowledgement no. Dated.

7. Hence Your Honour Kindly allow the appeal by considering turnover of Rs. 46,27,013/-instead of rs. 79,95,179/- and the 8% of Rs. 46,27,013/- is net profit of the assessee. The assessee will get the relief of Rs. 2,71,879/-.”

7. The Id. AR of the assessee also filed a detailed paper book in support of the contention so raised in the written submission and the index of the document submitted are as under:-

S. No.	Particulars	Page No.
1.	Written submission before Id. CIT Appeal	1-15
2.	ICICI Bank statement	16-22
3.	Bank of Baroda	23-30
4.	(2002) 125 Taxman 259 (Gau) (Mag.) ITAT Gauhati bench ACIT vs. Kamini Finance & Investment Co. Ltd. IT Appeal No. 240 (Gauhati) of 1994 October 31,2001	31-34
5.	(1994) 75 Taxman 164 (Calcutta)/(1994) 207 ITR 979 Calcutta/(1995) 124 CTR 113 (Calcutta) (2304.1993) High Court of Calcutta CIT v. Ranicherra Tea Co. Ltd.	35-38
6.	Reply 18.11.2016 AY 2014-15	39-39
7.	Reply of SCN 2.12.2016 AY 2014-15	40-40
8.	Reply 143(2) 05.09.2016 AY 2014-15	41-41
9.	Cash book AY 2014-15	42-49
10.	BOB Ledger AY 2014-15	50-52
11.	PNB Ledger AY 2014-15	53-55
12.	ICICI Bank Ledger AY 2014-15	56-61
13.	Shop Allotment Krishi Mandi	62-71
14.	Sales details	72-83
15.	Appeal effect of order u/s 250 of the Income Tax Act, 1961	84

8. Ld. AR of the assessee also filed a day wise cash book showing each day balance of cash in support of the contention that the assessee has repositied the money for an amount of Rs. 33,68,166/- out of the earlier balance available and that aspect of the matter being not considered the present appeal lies and to

support the cash book already filed he demonstrated that there is no negative balance if the earlier withdrawal is considered as source of cash deposit for an amount of Rs. 33,68,166/- and thereby the order of Id. CIT(A) ordering to tax 8 % of 33,68,166/- does not hold correct finding.

9. Per contra, the Id. DR relied on the orders of the Id. CIT(A) and submitted that the assessee remained non co-operative before the Id. AO and considering the evidence placed on record by the assessee substantial relief has already been granted to the assessee and even the charge of 8 % on the cash deposit not part of the turnover has rightly considered it to tax income to the extent of 8 %.

10. We have heard the rival contentions and perused material available on record. The bench noted that the apple of discord so raised in the ground no. 1 & 2 raised by the assessee is that whether the contention of the Id. CIT(A) accepting the same set of cash book considered the cash deposit to the extent of Rs. 46,27,013/- as part of the turnover and directed to delete the addition then why not the contention of the assessee that the balance amount of

Rs. 33,68,166/- is the amount of the re-deposit of the amount out of the cash sales and earlier withdrawal. We have gone through the finding of the lower authority whereby we note that the assessee has already filed the additional evidence in the appellant proceeding thereby the Id. AO after verifying the cash book so submitted accepted the cash deposit of Rs. 46,27,013/- as part of the turnover offered by the assessee while filling the ITR. From the same set of cash book so filed the assessee contended that the cash to the extent of Rs. 33,68,166/- contains the re-deposit of cash into the bank account out of cash balance available in that cash book and that re-deposit amount cannot be considered as turnover and thereby cannot be considered to estimate the income of 8 % on that amount. While doing so we also directed the Id. AR of the assessee on 17.12.2024 to file a cash book making the total available with the assessee on each day and the assessee has finally filed it on 19.12.2024 which shows that the assessee was having the sufficient cash on hand to the extent of Rs. 33,68,166/- which was deposited out of the cash balance [available from withdrawal or cash sales already considered for

turnover] from the copy of the cash book so filed and therefore, the Id. CIT(A) was not justified in directing to considered the income to the extent of 8 % of Rs. 33,68,166/-. In the light of the discussion so recorded herein above ground no 1 & 2 raised by the assessee are allowed.

In the result, the appeal of the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(सुधीर पारीक)

(SUDHIR PAREEK)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 01/01/2025

*Santosh

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

1. अपीलार्थी / The Appellant- Sita Ram Saini, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(3), Jaipur.
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. 710/JPR/2023 }

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar