

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 242/JP/2020  
निर्धारण वर्ष / Assessment Year : 2010-11

|                                                                                        |             |                                   |
|----------------------------------------------------------------------------------------|-------------|-----------------------------------|
| Munka Dall & Oil Mills Pvt. Ltd.<br>Flat No. 102, Sunshin Palm,<br>Sikar Road, Jaipur. | बनाम<br>Vs. | The ITO,<br>Ward-4(2),<br>Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCM 0932 D                                   |             |                                   |
| अपीलार्थी / Appellant                                                                  |             | प्रत्यर्थी / Respondent           |

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar (Adv.)  
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 15/07/2020  
उद्घोषणा की तारीख / Date of Pronouncement: 20/07/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 09.01.2019 of Id. CIT(A), Jaipur for the assessment order 2010-11. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference.

2. There is delay of 349 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.

3. We have heard the Id. AR as well as the Id. DR on condonation of delay in filing the present appeal. The Id. AR of the assessee has submitted that the notices issued by the Id. CIT(A) after the case was transferred from the Id. CIT(A)-II, Jaipur to Id. CIT(A), Ajmer was not received by the assessee due to the reason that the assessee has sold its factory premises in the year 2018 and consequently the address of the assessee was changed to Flat No. 102 SunShin Palm, Sikar Road, Jaipur. The Id. AR of the assessee has submitted that the assessee in the return of income for the assessment year 2018-19 as well as for the assessment year 2019-20 has given a new address of the assessee therefore, change of the address was duly intimated to the Department when the assessee filed his return of income for the assessment year 2018-19 and for the assessment year 2019-20. He has also pointed out that the assessee also intimated about the change of address to the ROC and other Government Departments and necessary changes were made in this respect. Thus, the Id. AR has submitted that due to change of address of the assessee neither notices issued by the Id. CIT(A), Ajmer after the case was transferred from the Id. CITI(A), Jaipur to Id. CIT(A), Ajmer nor the impugned order passed by the Id. CIT(A) was received by the assessee as these were sent to the old address of the

assessee. Thus, the Id. AR has submitted that only when the assessee received the penalty order passed U/s 271(1)(c) of the IT Act it came to know about the impugned order of the Id. CIT(A) and immediately filed the present appeal. Thus, the delay in filing the appeal is neither willful nor deliberate but due to bonafide reason of not receiving the impugned order by the assessee prior to the date when the penalty order U/s 271(1)(c) of the Act received by the assessee. He has further pointed out that the penalty order U/s 271(1)(c) of the Act was also passed by the AO ex-part and the service of the said order dated 12.03.2020 was affected through departmental process server. Once, change of address was duly intimated to the AO then it was the duty of the AO to communicate the same to the Id. CIT(A). The Id. AR has pleaded that when the assessee has explained a reasonable and bonafide cause for delay in filing the appeal then the same may be condoned so as to decide the appeal of the assessee on merits. In support of his contention, he has relied upon the following order as under:-

- I. Vijay Vishan Meghani vs. DCIT (2017) 398 ITR 250.
- II. Just Steel vs. DCIT (2012) 74 DTR (MA) 86.

III. Improvement Trust vs. Ujagar Singh (SC) Civil Appeal Nos.

2395 of 2008 dated 26.06.2010.

The Id. AR has also referred to number of other decisions on this point that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. He has contended that time and again the Hon'ble Supreme Court has observed that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The term "Sufficient cause" should be understood in its proper spirit, philosophy and purpose so that substantial justice should be preferred then the technical considerations. Accordingly, he has prayed the delay in filing the appeal may be condoned.

4. On the other hand, Id. DR has submitted that the reason explained by the assessee being non receipt of notices are contrary to the fact that the notices as well as impugned order were sent to the assessee at the address given by the assessee in Form no. 35. In the absence of change of address given by the assessee or any such fact brought on record of the Id. CIT(A) there is no occasion for the Id. CIT(A) to send the notices or the impugned order at the new address. The assessee cannot shift the burden without giving a fresh addresss to

the Id. CIT(A). The Id. DR has further contended that this cannot be considered as bonafide mistake as the assessee did not even bothered about the pendency of its appeal before the Id. CIT(A) or to verify the status of the appeal filed by the assessee for a long time and only when the penalty order passed u/s 271(1)(c) of the Act was served upon the assessee, the assessee has taken these steps for filing the appeal. Therefore, these explanation of the assessee are nothing but gross negligence on the part of the assessee not to pursue or even bothered about the appeal filed before the Id. CIT(A). She has opposed to the condonation of delay.

5. We have considered the rival submissions as well as relevant material on record. The assessee filed the appeal before the Id. CIT(A) on 25.01.2018 subsequently, the appeal was transferred from the Id. CIT(A)-II, Jaipur to Id. CIT(A), Ajmer vide notification dated 25.09.2018. In the mean time the assessee sold the premises at C-186, Road No. 9, VKI Area, Jaipur and sifted to new address at Flat No. 102 SunShin Palm, Sikar Road, Jaipur however, the said change of the address of the assessee was not intimated to the Id. CIT(A). Therefore, nothing was brought on record of the Id. CIT(A) regarding the change of address of the assessee. In these facts the Id. CIT(A) was not

supposed to issue the notices at the new address of the assessee. The Id. CIT(A) has given reason for deciding the appeal ex-parte in para 3 of the impugned order as under:-

*"3.0 During the course of appellate proceedings, the appeal was fixed for hearing on 25.10.2018, 13.11.2018, 11.12.2018 and 27.12.2018. The appeal was last fixed for hearing on 09.01.2019. No one has attended on any of the date of hearing and no written submission has been filed. Therefore, the appeal is decided after going through the assessment order and grounds of appeal as under."*

Thus, it is clear that after the case was transferred to the jurisdiction of the Id. CIT(A), Ajmer the assessee never appeared and attended the proceedings and consequently the appeal of the assessee was decided by impugned ex-parte order. The assessee has explained the reasons for delay in filing the appeal that the assessee has not received the impugned order and came to know about the same only when the order passed U/s 271(1)(c) of the Act dated 12.03.2020 was served upon the assessee at the new address through the process server of the Department. There is no dispute about the fact that because of the failure on the part of the assessee to intimate the new address to the Id. CIT(A) the notices issued by the Id. CIT(A) as well as impugned order could not be received by the assessee. Thus, we find that

explanation of non receipt of the impugned order by the assessee is factually correct however, the reason for such non receipt of the impugned order is the failure on the part of the assessee to give the fresh address to the Id. CIT(A). Therefore, in these facts and circumstances of the case when the Id. CIT(A) has decided the appeal of the assessee vide impugned ex-parte order, the delay in filing the appeal is due to mistake on the part of the assessee which cannot be regarded as a deliberate or willful default on the part of the assessee. It is settled proposition of law if the cause of delay as explained by the assessee is found to be factual correct then laps on the part of the assessee cannot be a ground for rejecting the condonation of delay. The cause of substantial justice has to be preferred then the technical consideration. Therefore, even if there is lapse or inaction on the part of the assessee a justice oriented liberal approach has to be taken while considering the condonation of delay. Accordingly, in the facts and circumstances of the case and in the interest of justice we condone the delay of 349 days subject to cost of 2500/-.

6. The assessee has raised the following grounds:-

*"1. Under the facts and in the circumstances of the case the learned CIT(A) has erred in confirming the action of the learned*

*AO in passing the order u/s 147/143(3) which is void ab-initio deserves to be quashed.*

*2. Under the facts and in the circumstances of the case the learned CIT(A) has erred in passing the ex-parte order without serving the notice of hearing to the assessee.*

*3. Under the facts and in the circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 1,52,457/- on account of misuse of CCM facility.*

*4. Under the facts and in the circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 3049/- for commission payment for availing CCM facility.*

*5. Under the facts and in the circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 44,93,115/- on account of speculation and F & O losses set off against the business income."*

7. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. The appeal of the assessee was decided by the Id. CIT(A) by impugned ex-parte order. The facts and circumstances under which the appeal of the assessee was dismissed by ex-parte order has been discussed by us while deciding the application for condonation of delay in foregoing in para of this order. When notices issued by the Id. CIT(A) at the old address and the assessee has already sifted to the new address then considering the facts and circumstance of the case as well as in the interest of justice we set aside the impugned order of the Id. CIT(A) and remit the matter to the

record of the Id. CIT(A) for deciding the same afresh after giving one more opportunity of hearing to the assessee.

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

Order pronounced in the open court on 20/07/2020.

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20/07/2020.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Munka Dall & Oil Mills Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(2), 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. 242/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar