

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

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA Nos. 402 & 403/JP/2012
निर्धारण वर्ष/Assessment Years : 2005-06 & 2006-07

M/s K.G.N.M.M.W. Educational research & Analysis Society, Jhalawar.	बनाम Vs.	The I.T.O., Jhalawar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAK 4637 N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P C Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Mrs. Neena Jeph Sr. DR

सुनवाई की तारीख/ Date of Hearing : 18/11/2014
घोषणा की तारीख/ Date of Pronouncement : 13/02/2015

आदेश/ ORDER

PER: R.P. TOLANI, J.M.

These are two assessee's appeals against the order dated 28/02/2011 passed by the learned CIT(A), Kota for A.Ys. 2005-06 and 2006-07. Common grounds are raised in both the appeals, which are as under:

Ground in ITA 402/JP/2012 (A.Y. 2005-06)

- "1. *The learned Commissioner of Income Tax (Appeals) has erred on facts and in law in denying the claim of exemption to the Society U/s 10(23C)(iiiad). He has further erred in upholding the finding of the A.O. that assessee society has inflated the expenses, collected the donation even though there is no such clause in the object of the society and that the moto of the assessee is to earn profit.*
2. *The learned Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 9,09,552/- out of salary expenses and Rs. 3,40,190/- out of other expenses."*

Ground in ITA 403/JP/2012 (A.Y. 2006-07)

- "1. *The learned Commissioner of Income Tax (Appeals) has erred on facts and in law in denying the claim of exemption to the Society U/s 10(23C)(iiiad). He has further erred in upholding the finding of the A.O. that assessee society has inflated the expenses, collected the donation even though there is no such clause in the object of the society and that the moto of the assessee is to earn profit.*
 2. *The learned Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 11,08,571/- out of salary expenses and Rs. 1,89,012/- out of other expenses."*
2. These appeals of the assessee are filed late by 347 days. An application for condonation of delay has been filed.

3. The brief facts of the case are that a survey U/s 133A of the Income Tax Act, 1961 (hereinafter referred as the Act) was carried out at the premises of the assessee institution on 02/9/2005. During the course thereof, some incriminating material was found indicating that the institution was being run with profit moto and was not eligible for exemption. As the returns were not filed, therefore, notices U/s 147 of the Act were issued by AO. The assessee did not file returns in pursuance of notice U/s 148 of the Act in stipulated time, therefore, the assessment was completed ex parte U/s 144 of the Act. After detailed observations, the income of the assessee of the respective years was determined by AO as under:-

For A.Y. 2005-06

Deficit as per income and expenditure account	Rs. (-) 8151/-
Add-(as discussed above)	
i. Excess Payment of Salary	Rs. 909522/-
ii. Other expenses	<u>Rs. 340190/-</u> <u>Rs. 1249712/-</u>
Total Income	Rs. 1241561/-
R/o	Rs. 1241560/-

For A.Y. 2006-07

Deficit as per income and expenditure account	Rs. (-) 14228/-
Add-(as discussed above)	
i. Excess Payment of Salary	Rs. 1108571/-
ii. Other expenses	<u>Rs. 189012/-</u> <u>Rs. 1297583/-</u>
Total Income	Rs. 1283355/-
R/o	Rs. 1283360/-

4. Aggrieved, the assessee preferred first appeal which was dismissed by learned CIT(A) holding as under:-

For A.Y. 2005-06

"As mentioned above, it was admitted by Shri Abid Khan, Secretary of society in his statement recorded during the course of survey that expenses on account of salary and other heads are inflated. He also stated that the amount has been utilized for the construction purpose. Subsequently, no evidence was furnished by appellant either before A.O. or the undersigned to prove that expenses are not inflated. No evidence was produced to prove that statement of Shri Abid Khan was incorrect. In view of these facts, A.O. is justified in rejecting the books of accounts of appellant. A.O. is also justified in making disallowance of Rs. 9,09,522/- out of salary and Rs. 3,40,190 out of other expenses on the basis of categorical admission of Shri Abid Khan in this regard. The disallowances are confirmed. Ground No. 6,7,8,9 and 10 are thus dismissed."

For A.Y. 2006-07

"As mentioned above, it was admitted by Shri Abid Khan, Secretary of society in his statement recorded during the course of survey that expenses on account of salary and other heads are inflated. He also stated that the amount has been utilized for the construction purpose. Subsequently, no evidence was furnished by appellant either before A.O. or the undersigned to prove that expenses are not inflated. No

evidence was produced to prove that statement of Shri Abid Khan was incorrect. In view of these facts, A.O. is justified in rejecting the books of accounts of appellant. A.O. is also justified in making disallowance of Rs. 11,08,571/- out of salary and Rs. 1,89,012/- out of other expenses on the basis of categorical admission of Shri Abid Khan in this regard. The disallowances are confirmed. Ground No. 6,7,8,9 and 10 are thus dismissed."

5. Aggrieved, the assessee is in these belated appeals before us. The learned counsel for the assessee adverted to the condonation petition, which narrates as under:-

"With reference to above, we beg to submit that for the reasons mentioned in the affidavit of CA Kaushal Agarwal as enclosed, assessee could not file the appeal before Hon'ble ITAT within the time allowed as per the statute. Now, the assessee is filing appeal against the order of CIT(A) before Hon'ble ITAT. It is, therefore, requested to kindly condone the delay in filing the appeal and oblige."

6. The affidavit of the Chartered Accountant deposes as under:-

I, CA. Kaushal Agarwal, son of Sh. Mohanlal Agarwal, aged 46 years, resident of Mangalpura, Jhalawar (Rajasthan) do hereby solemnly affirm on oath as under:-

1. *That I am a Chartered Accountant by profession practicing in the name and style of Agarwal Kaushal & Company at Jhalawar (Raj.).*
2. *That I have appeared before CIT(A) Kota in the appeal matter of M/s K.G.N.M.M.W. Educational research & Analysis Society, Jhalawar for A.Y. 05-06 and 06-07. This appeal was decided by CIT(A) against the society & order was sent to the society in the month of March 2011.*
3. *That Sh. Malik Parvej, President of the Society, handed me the said order sometime in the first week of April 2011 for necessary action. I kept the order with me for filing the appeal before I.T.A.T.. In the meanwhile, I went to NAGAUR (Raj.) for bank audit of ABBJ. When I returned back from bank audit, the filing of appeal before ITAT skipped from my mind and papers were filed in my record.*
4. *That now when Sh. Malik Parvej, President of the Society, approached me with the notice of TRO dt. 02.03.2012 for recovery of demand for these A.Y.'s on 20.03.2012, it came to my notice that appeal before Hon'ble ITAT has not been filed against the order of CIT(A).*
5. *That in these circumstances, there is a delay in filing of appeal before Hon'ble ITAT in above case due to my mistake.*
6. *That the facts stated in para 1 to 5 above are true & correct to the best of my knowledge & belief.*

7. The learned counsel for the assessee contends that the concerned Chartered Accountant has admitted that the impugned orders of CIT(A) were handed over to him by the assessee in the first week of April, 2011 for filing the appeals before ITAT. Thereafter, he proceeded to Nagaur for SBBJ bank's audit and on return, filing of assessee's appeals skipped from his mind. This fact revived in his memory when the assessee brought TRO notice dated 2nd March, 2011 and thereafter the appeals are filed before the ITAT on 24/7/2012. It is pleaded that the assessee should not suffer for the mistakes committed by his C.A. As the assessee was prevented by a sufficient cause in filing the appeals in time, therefore, the delay of 347 days may be condoned.

7.1 Reliance is placed on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition V. Mst. Katiji (1987) 167 ITR 471 (SC) for the proposition that when technical considerations and cause of substantial justice are pitted against each other, the cause of substantial justice should prevail. While condoning the delay in filing appeal a pedantic view may not be taken.

8. The learned D.R., on the other hand, vehemently opposed the assessee's petitions for condonation of delay. It is pleaded that:

(i) Neither the assessee nor the C.A. has given any specific and genuine reason to demonstrate that there exists a reasonable and sufficient cause to condone the delay.

(ii) It is trite law that it is the burden of the assessee to explain the delay of every day in a reasonable manner.

(iii) The assessments resulted in huge additions and for two years heavy demand of tax and interest was raised. This was a serious matter, which in normal circumstances would require frequent meetings and consultations between assessee and the counsel to analyze the issues. Such matters cannot be left to get and forgot the papers attitude of the CA. The theory, vague and too naïve to be believed.

(iv) The affidavit fails to reflect in credibility inasmuch as neither any particular dates nor events are mentioned to objectively corroborate the depositions. The visit of Mr. Malik Parvej, President of the Society is referred to some time in first week of April, which is a vague deposition. Similarly the dates when CA proceeded for SBBJ audit and returned there from have not been specified so the deposition remains vague and unverifiable.

(v) The C.A. has gone to Nagau for assignment of SBBJ bank audit of, the time schedule must be pre-decided, no pertinent details have been mentioned in the affidavit.

(vi) It is surprising and does not appeal to logic that neither any office assistant from the team of C.A. or assessee reminded him during one year about non filing of such important and high demand appeals.

(vii) No affidavit of Shri Malik Parvej is filed to corroborate the deposition of the C.A..

(viii) The notice of TRO dated 2nd March, 2012 is mentioned as an eye opener for the CA and assessee to file the appeals whereas in income tax proceeding, assessee is reminded to pay the outstanding demand of tax and interest not only on telephone but by other notice from the Assessing Officer before sending default cases to TRO.

(ix) No averment is made in the affidavit that except TRO notice, no other communication was made by department either by way of telephone or in writing.

(x) Shri Malik Parvej has not filed any affidavit to corroborate the version that in fact that anybody from assessee's side never visited or reminded the CA about such a huge outstanding demand and pending appeals, more so when the issues about returns of subsequent

years are process of registration may have been discussed between them.

(xi) It is vehemently contended by Id. DR that the affidavit is totally vague, general and does not explain the delay on day to day basis and reasonable and convincing averments are totally missing. The delay is not of few days but of about a year i.e. 347 days. If such deliberate delay is condoned on vague pleadings, it will not be conducive of the judicially settled principles of natural justice like delay defeats equity and law helps diligent and not the indolent.

(xii) The assessee has not filed evidence to support the contents of the affidavit, the conduct of the assessee and averments suffer from innumerable latches and inconsistencies and do not constitute sufficient reasons as proper basis for condonation of such prolonged delay.

9. We have heard the rival contentions of both the parties and perused the material available on the record. We find merit in the contentions of learned DR. The assessee has only filed a vague and general affidavit from the CA which utterly lacks any specific contentions and fails to explain day to day delay in reasonable manner. The assessee has neither filed any evidence nor the affidavit of Shri

Malik Parvej to corroborate the vague affidavit by the C.A.. It does not conform to general human conduct in such circumstances, preponderance of probabilities and surrounding circumstances which form sine qua non in the matters of condonation of delay.

It is unbelievable that an assessee, whose taxable income is claimed to be NIL is taxed for two years assessed at such a high income resulting in a huge tax and interest demand will not visit the C.A. office almost for a period of about one year to know about the filing of the appeals. There is no deposition in the affidavit that prior to TRO notice dated 02/3/2012, no other notice by way of telephone or writing was received either by assessee or the C.A. Thus, the depositions in affidavit remain vague, unsubstantiated and do not amount to explaining the sufficient cause.

10. The affidavit and cavalier conduct of Shri Kaushal Agarwal, C.A. raises serious questions on his professional competence and work ethics in giving such an affidavit which hides more than it explains. The burden is on the assessee to reasonably explain day to day delay and establish that there existed reasonable and sufficient cause in delaying the filing of appeals for about 1 year. If the proper dates or occasions are not mentioned with proper facts then the delay cannot be

condoned. In this behalf, we rely on the decision of the Hon'ble Madras High Court in the case of Madhu Dadha Vs. ACIT (2009) 317 ITR 458 (Mad). The Hon'ble High Court has held as under:-

"Held, dismissing the appeal, that it was clear that the assessee had not explained the cause of delay in filing the appeal, especially when the authorized representative who was given charge to file the appeal had died exactly one year after the last date for filing of the appeal. Even after the death of the authorized representative the assessee had taken more than six months to file the appeal. The assessee had neither given any particular or details in the affidavit as to the date on which the papers were handed over to the counsel for preparing the appeal and on what occasion the assessee enquired about the progress in preparing the appeal and filing it. The assessee had not taken a proper plea to show sufficient cause giving evidence and proof beyond reasonable doubt for the delay. There was no need to interfere with the order of the Tribunal."

In this judgment, the Hon'ble Supreme Court citation i.e. Collector, Land Acquisition Vs. Mst. Katiji (supra) has also been considered. We find merit in the contentions of Id. DR that law helps diligent and not the indolent as well as the axiomatic delay defeats equity.

In our considered view that the condonation petitions filed by the assessee and material available on the record, fail to invoke any

confidence, fail to explain reasonable and sufficient cause for condonation of long delay of 347 days in filing these appeals . The assessee has to come clean with all the relevant facts, which happened in the period of one year. The assessee has to explain all the events and be specific in the dates. The depositions made in the C.A. affidavit remain uncorroborated and there is no affidavit from the said Shri Malik Parvej in support of the affidavit of C.A.. Thus, the vague affidavit given by the C.A. remains uncorroborated and unreliable. In the entirety of facts and circumstances of the case, we decline to condone the delay of 347 days in filing these appeals.

11. In the result, both the assessee's appeals are dismissed.

Order pronounced in the open court on 13/02/2015.

Sd/- (टी.आर.मीना) (T.R. Meena)	Sd/- (आर.पी.तोलाणी) (R.P.Tolani)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13th February, 2015

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s K.G.N.M.M.W. Educational research & Analysis Society, Jhalawar.
2. प्रत्यर्थी / The Respondent- The ITO, Jhalawar.
3. आयकर आयुक्त(अपील) / The CIT(A), Kota.

4. आयकर आयुक्त/ CIT, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 402 & 403/JP/2012)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar