

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 455/Mds/2015

निर्धारण वर्ष /Assessment Year : 2005-06

M/s. Jaidayal Prannath Kapur,
C/o Mrs. Ritu Kapur,
9A, Pent House, 52, Taylors
Road, Kilpauk,
Chennai – 600 010.
PAN AAFFJ3186G
(अपीलार्थी/Appellant)

v. The Assistant Commissioner of
Income-tax,
Business Circle-VIII,
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri K. Meenakshisundharam, ITP

प्रत्यर्थी की ओर से/Respondent by : Shri A.V.Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 07.04.2015

घोषणा की तारीख/Date of Pronouncement: 07.04.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order
of the Commissioner of Income-tax(Appeals) dated 27.11.2014.

2. The grievance of the assessee in this appeal is with regard to dismissing the appeal without giving proper opportunity of being heard to the assessee by the Commissioner of Income-tax(Appeals).

3. The brief facts of the case are that the assessee filed the return of Income for the assessment year 2005-06 on 28.07.2005 admitting a total income of *Rs.13,73,790/-*. The return was processed u/s 143(1) of the Act. While completing the assessment for A.Y. 2004-05, Assessing Officer found that the assessee had claimed depreciation on composite value of land and building in various years. However, at the time of joint venture agreement, the assessee wanted to split the cost of land and building and had not declared separate value for land and building in the balance sheet. However, the assessee claimed depreciation treating the land and building as a single asset. The Assessing Officer wanted to treat whole asset as one asset and allow depreciation on it. Hence, AO calculated short term capital gains as per Sec.50 of the Act for the A.Y. 2004-

05. This point was upheld by the CIT(A) and the Hon'ble ITAT subsequently. Hence, after obtaining approval from the JCIT, the assessment for the A.Y. 2005-06 of the assessee was re-opened by issue of notice u/s 148 on 05.07.2011. In response, no reply received from the assessee firm or its partners/Authorised Representative. With due permission from the JCIT, the AO carried out spot inspection at the place of Mrs. Ritu Kapur (Partner of the assessee firm). None appeared and finally a letter was filed in Tapal on 13.02.2013 before the AO. The relevant portion of the same as reproduced in the assessment order is as under:

"The firm has been closed as on 01.04.2006 with the retirement of the partner, Preetika Kapur from the firm on 01.04.2006. The firm had been taken over by the other partner, Mrs. Ritu Kapur w.e.f. 01.04.2006. There had been therefore no firm for 2007-08 and 2008-09. It is of course true that the firm had not filed the NIL Returns for these years. The failure is very much regretted and in view of the ground reality that there had been no firm for these two years, the assessments may be closed as no proceedings for these two years of 2007-08 and 2008-09.

Regarding the assessments for 2005-06 and 2006-07, the copies of the returns filed for these two years are enclosed. There had been no escapement of

income for these two years. The original Returns filed may be treated as returns filed in response to assessee notices under Section 148."

Accordingly, the assessment was completed u/s.144 r.w.s.147 of the Act by the Assessing Officer on 31.3.2013 by making additions to returned income of ₹ 13,73,790/- to the extent of ₹46,19,308/- under short term capital gains and determining the assessed income at ₹ 59,93,100/-. Aggrieved by the assessment order, the assessee went in appeal before the Commissioner of Income-tax(Appeals).

4. The Commissioner of Income-tax(Appeals), without giving proper opportunity of being heard to the assessee, dismissed the appeal. Against this, the assessee is in appeal before us.

5. The learned AR submitted that the Commissioner of Income-tax(Appeals) wrongly recorded that there was no appearance by the assessee or his representative nor was there any petition for adjournment on 24.11.2014, when the case was posted for hearing. He also submitted that the assessee's representative, Sri.K.Meenakshisundharam appeared on behalf of the assessee on 24.11.2014 at 4 PM, as he could not appear

at 11.30 AM owing to his official work in the Income Tax Appellate Tribunal, Chennai on that day in the morning. Further he submitted that the Commissioner(Appeals) called for the representative by 4.10PM and also called for the appeal file of the assessee from his office staff. According to the Id. AR, the representative of the assessee was with the Commissioner(Appeals) in his room till 4.45 PM and the Commissioner (Appeals) asked the representative to appear next day, as his staff Mr.Vinod told the Commissioner (Appeals) in the presence of the representative that the appeal file was missing and could not be immediately found out. He further submitted that the assessee's representative, Shri K.Meenakshisundharam had entered the I.T.A.No of the case, his Phone Number and the time of arrival on 24.11.2014 in the visitors register, but the Commissioner (Appeals) without looking into the visitors register kept in his Office, came to the conclusion that there was no response on the date of hearing. He further submitted that the same representative went to meet the Commissioner(Appeals) on 25.11.2014 at 3 PM, as directed by the Commissioner (Appeals) on 24.11.2014. Since the concerned Commissioner

(Appeals) was conversing with another Commissioner (Appeals) in another room, the representative waited for the Commissioner (Appeals) till 5.30 PM and the Commissioner (Appeals) did not return to his room till 5.30PM. As the Office hours were over and since all the staff were leaving the office by that time, the representative also left the Office hoping that another hearing notice will come to the assessee. According to the Id. AR, the learned Commissioner (Appeals) erred in dismissing the appeal in limine on wrong information that the assessee was not interested in prosecuting the appeal. The Id. AR submitted that the appeals referred to in the order as having been dismissed by the Commissioner (Appeals) and the Tribunal were disposed of all appeals for earlier years and on different issues not having any relevance to the issues involved in the instant appeal. He also submitted that the assessee craves leave to file additional grounds and additional evidences as the hearing progresses in accordance with law and procedures. Finally, the Id. AR prayed that the Tribunal may be pleased to restore the appeal to the file of the Commissioner of Income tax(Appeals) for fresh disposal in accordance with law.

6. On the other hand, the Id. DR submitted that though proper opportunity was given to the assessee, the same was not used by the assessee in proper perspective. Hence, there is no default from the Department in giving opportunity to the assessee. He relied on the order of the Commissioner of Income-tax(Appeals).

7. We have heard both the parties and perused the materials on record. The order was passed by the Commissioner of Income-tax(Appeals) without participation of the assessee or assessee's counsel. In this case, it is appropriate to give one more opportunity to the assessee to put forth its case before the lower authorities. In our opinion, the order passed by the Assessing Officer is also ex parte, u/s.144 r.w.s. 147 of the Act. Hence, we remit the entire issues to the file of the Assessing Officer for fresh consideration and the assessee is directed to co-operate with the Department and put forth all the necessary documents to support its case.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing
on Tuesday, the 7th of April, 2015 at Chennai.

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-
(चंद्र पूजारी)
(Chandra Poojari)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 7th April, 2015.
mpo*

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.