

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 914/JP/2016  
निर्धारण वर्ष/Assessment Year : 2006-07

Shri Jagdish Sharma S/o Shri Narayan Sharma Village & Post: Sarangpura Tehsil: Sanganer, Ajmer Road, Jaipur	बनाम Vs.	The ITO Ward- 7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ARKPS 0610 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 915/JP/2016  
निर्धारण वर्ष/Assessment Year : 2006-07

Shri Chouthmal Sharma S/o Narayan Sharma Village & Post: Sarangpura Tehsil: Sanganer, Ajmer Road, Jaipur	बनाम Vs.	The ITO Ward- 7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BOVPS 2251 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 916/JP/2016  
निर्धारण वर्ष/Assessment Year : 2006-07

Shri Hanuman Sahai Sharma S/o Shri Narayan Sharma Village & Post: Sarangpura Tehsil: Sanganer, Ajmer Road, Jaipur	बनाम Vs.	The ITO Ward- 7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: FWEPS 5511 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 917/JP/2016  
निर्धारण वर्ष/Assessment Year : 2006-07

Shri Ghasi Ram Sharma S/o Shri Narayan Sharma Village & Post: Sarangpura Tehsil: Sanganer, Ajmer Road, Jaipur	बनाम Vs.	The ITO Ward- 7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKAPR 2783 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 918/JP/2016  
निर्धारण वर्ष/Assessment Year : 2006-07

Shri Prahlad Sahay Sharma S/o Shri Ladu Ram Sharma Village & Post: Sarangpura Tehsil: Sanganer, Ajmer Road, Jaipur	बनाम Vs.	The ITO Ward- 7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BFIPS 2370 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri R.N. Sharma, Advocate  
राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT- DR

सुनवाई की तारीख / Date of Hearing : 27/09/2017  
घोषणा की तारीख / Date of Pronouncement : 10 /10/2017

आदेश / ORDER

PER BHAGCHAND, AM

The above mentioned appeals have been filed by different assessee's against separate order Id. CIT(A)-III, Jaipur dated 09-08-2016 for the assessment year 2006-07. The grounds of appeal raised by the above mentioned assessee's are as under:-

ITA No.914/JP/2016 – Shri Jagdish Sharma

“1.1. The impugned order u/s 147 dated 21-01-2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

1.3 The AO has erred in passing the assessment order without providing adequate and reasonable opportunity of being heard and without confronting the material gathered in the gross breach of law. Hence, the assessment so made and consequential additions so made may kindly be quashed and deleted.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in not admitting the appeal or not condoning the delay in filing of appeal. Although there was no delay in filing of appeal because the assessee had not received the assessment order, the appeal has been filed after taking the certified copies of assessment order and from that date the appeal was well within time. Hence, the appeal so not admitted or condoned by the Id. CIT(A) without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence the same may kindly be admitted or condoned the same by your honour or may kindly be directed to Id. CIT(A) in the interest of natural justice, directed to Id. CIT(A).

3. Rs. 21,00,634/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 21,00,634/- on account of Long Term Capital Gain on the entire sale consideration of Agriculture Land which was not a capital asset as per I.T. Act, thus the AO erred in taxing the sale of agriculture land under Long Term Capital Gain. Hence, the addition so made by the AO without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

4. Rs. 12,58,202/-:-The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 12,58,202/- on account of unexplained cash deposits in the bank account. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

5. Rs. 4,500/-: The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 4,500/- on account of bank interest. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

6. The AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies it liability of charging of any such interest. Hence, the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in fully.

7. The appellant prays your honour indulgence to add, amend or alter all or any of the grounds of appeal on or before the date of hearing.

ITA No.915/JP/2016 – Shri Chouthmal Sharma

“1.1. The impugned order u/s 147 dated 21-01-2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

1.3 The AO has erred in passing the assessment order without providing adequate and reasonable opportunity of being heard and without confronting the material gathered in the gross breach of law.

Hence, the assessment so made and consequential additions so made may kindly be quashed and deleted.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in not admitting the appeal or not condoning the delay in filing of appeal. Although there was no delay in filing of appeal because the assessee had not received the assessment order, the appeal has been filed after taking the certified copies of assessment order and from that date the appeal was well within time. Hence, the appeal so not admitted or condoned by the Id. CIT(A) without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence the same may kindly be admitted or condoned the same by your honour or may kindly be directed to Id. CIT(A) in the interest of natural justice, directed to Id. CIT(A).

3. Rs. 21,00,634/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 21,00,634/- on account of Long Term Capital Gain on the entire sale consideration of Agriculture Land which was not a capital asset as per I.T. Act, thus the AO erred in taxing the sale of agriculture land under Long Term Capital Gain. Hence, the addition so made by the AO without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

4. Rs. 15,00,230/-:-The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 15,00,230/- on account of unexplained cash deposits in the bank account. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

5. Rs. 5,801/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 5,801/- on account of bank interest. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

6. The AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies its liability of charging of any such interest. Hence, the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

7. The appellant prays your honour's indulgence to add, amend or alter all or any of the grounds of appeal on or before the date of hearing.

ITA No.916/JP/2016 – Shri Hanuman Sahai Sharma

“1.1. The impugned order u/s 147 dated 21-01-2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

1.3 The AO has erred in passing the assessment order without providing adequate and reasonable opportunity of being heard and without confronting the material gathered in the gross breach of law. Hence, the assessment so made and consequential additions so made may kindly be quashed and deleted.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in not admitting the appeal or not condoning the delay in filing of appeal. Although there was no delay in filing of appeal because the assessee had not received the assessment order, the appeal has been filed after taking the certified copies of assessment order and from that date the appeal was well within time. Hence, the appeal so not admitted or condoned by the Id. CIT(A) without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence the same may kindly be admitted or condoned the same by your honour or may kindly be directed to Id. CIT(A) in the interest of natural justice, directed to Id. CIT(A).

3. Rs. 21,00,634/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 21,00,634/- on account of Long Term Capital Gain on the entire sale consideration of Agriculture Land which was not a capital asset as per I.T. Act, thus the AO erred in taxing the sale of agriculture land under Long Term Capital Gain. Hence, the addition so made by the AO without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

4. Rs. 13,0,460/-:-The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 13,60,460/- on account of unexplained cash deposits in the bank account. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

5. Rs. 6,093/-: The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 6,093/- on account of bank interest. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

6. The AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies it liability of charging of any such interest. Hence, the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in fully.

7. The appellant prays your honour indulgence to add, amend or alter all or any of the grounds of appeal on or before the date of hearing.

ITA No.917/JP/2016 – Shri Ghasi Ram Sharma

“1.1. The impugned order u/s 147 dated 21-01-2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

1.3 The AO has erred in passing the assessment order without providing adequate and reasonable opportunity of being heard and without confronting the material gathered in the gross breach of law. Hence, the assessment so made and consequential additions so made may kindly be quashed and deleted.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in not admitting the appeal or not condoning the delay in filing of appeal. Although there was no delay in filing of appeal because the assessee had not received the assessment order, the appeal has been filed after taking the certified copies of assessment order and from that date the appeal was well within time. Hence, the appeal so not admitted or condoned by the Id. CIT(A) without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence the same may kindly be admitted or condoned the same by your honour or may kindly be directed to Id. CIT(A) in the interest of natural justice, directed to Id. CIT(A).

3. Rs. 21,00,634/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 21,00,634/- on account of Long Term Capital Gain on the entire sale consideration of Agriculture Land which was not a capital asset as per I.T. Act, thus the AO erred in taxing the sale of agriculture land under Long Term Capital Gain. Hence, the addition so made by the AO without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

4. Rs. 20,53,575/-:-The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs.20,53,575/- on account of unexplained cash deposits in the bank account. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

5. Rs. 6,655/-: The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 6,655/- on account of bank interest. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

6. The AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies it liability of charging of any such interest. Hence, the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in fully.

7. The appellant prays your honour indulgence to add, amend or alter all or any of the grounds of appeal on or before the date of hearing.

ITA No.918/JP/2016 – Shri Prahlad Sahay Sharma

“1.1. The impugned order u/s 147 dated 21-01-2014 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2 The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

1.3 The AO has erred in passing the assessment order without providing adequate and reasonable opportunity of being heard and without confronting the material gathered in the gross breach of law.

Hence, the assessment so made and consequential additions so made may kindly be quashed and deleted.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in not admitting the appeal or not condoning the delay in filing of appeal. Although there was no delay in filing of appeal because the assessee had not received the assessment order, the appeal has been filed after taking the certified copies of assessment order and from that date the appeal was well within time. Hence, the appeal so not admitted or condoned by the Id. CIT(A) without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence the same may kindly be admitted or condoned the same by your honour or may kindly be directed to Id. CIT(A) in the interest of natural justice, directed to Id. CIT(A).

3. Rs. 21,00,634/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 21,00,634/- on account of Long Term Capital Gain on the entire sale consideration of Agriculture Land which was not a capital asset as per I.T. Act, thus the AO erred in taxing the sale of agriculture land under Long Term Capital Gain. Hence, the addition so made by the AO without considering the true facts and legal position is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

4. Rs. 13,59,160/-:-The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 13,59,160/- on account of unexplained cash deposits in the bank account. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

5. Rs. 6,748/-:- The AO has grossly erred in law as well as on the facts of the case in making the addition of Rs. 6,748/- on account of bank interest. Hence, the addition so made by the AO and not adjudicated by the Id. CIT(A) is totally contrary to the provisions of law and facts. Hence, the same may kindly be deleted in full.

6. The AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies its liability of charging of any such interest. Hence, the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

7. The appellant prays your honour's indulgence to add, amend or alter all or any of the grounds of appeal on or before the date of hearing.

2.1 The facts as emerge from the orders of the ld. CIT(A) in respect of the above appeals are that these appeals have been summarily rejected by the ld. CIT(A) on the ground of late filing of appeals of approx. 180 days by the respective assessee's. The relevant observation of the ld. CIT(A) as mentioned in the case of Shri Prahlad Sahay Sharma (ITA No.918/JP/2016) is as under:-

'4.3 .....The main reasons stated for delay in filing of appeal are that the assessment order was not served on the assessee. On careful consideration of all relevant facts it may be noted that the facts stated by the appellant for delay in filing of appeal are factually not correct. The appellant is claiming that the assessment order dated 21.01.2014 which has been dispatched on 28.01.2014 against which the appeal has been filed was never received by the assessee. But such contention is not correct in as much as the assessment order 21.01.2014 has been sent through registered post on the address as mentioned in form 35 thus it is not the case that the address was changed. It may be noted that the assessment order is passed on 21.01.2014, dispatched on 28.01.2014 through registered post and the appeal has been filed on 28.08.2014, i.e. by delay of approximately 180 days and prima facie there was no reasonable cause for such delay. It may also be stated that the delay in filing of appeal can be condoned only in the circumstances when the appellant has acted with reasonable diligence. For such finding reliance is placed on the following case laws:

- (i) Brij Inder Singh Vs. Kanshi Ram AIR 1917-PC-156
- (ii) Baroda Rayon Corporation Ltd. (Guj.) 87 STC 266
- (iii) Baldeo Lal Roy Vs. State of Bihar (1960) 11 STC 104 (Pat.)
- (iv) M. Loganathan Vs. CIT (Mad.) 302 ITR 139

The reasons for late filing of the appeal as cited above cannot said to be bona-fide and therefore, this case is not found fit for condonation of delay. As the appeal has not been presented as per provision of sec. 249(2) of IT Act and the delay in filing of appeal is not condoned, therefore, the appeal is rejected being ab-initio void. The grounds of appeal are accordingly not required to be adjudicated. “

2.2 During the course of hearing the Id.AR of the assessee prayed that the AO had not provided adequate opportunity of being heard to the respective assessee's. The Id.AR of the assessee further submitted that the Id. CIT(A) had also not granted the condonation of delay in late filing the above appeals. The respective assessee had genuine reasons as the assessment order was not served on the assessee. The delay in filing the appeal was on account of not getting the assessment order for which the assessee applied the certified copies before the Department. For the sake of convenience and brevity of the case, the relevant submission of the assessee as to the issue of not allowing condonation of delay by the Id. CIT(A) is as under:-

“At the outset, it may be mentioned that the appellant is a layman, and an illiterate person not conversant with the tax laws. The assessee had not received the assessment order in time. He came to know about the order when the demand notice for penalty was served on him and he contacted a CA to seek his advice. It is at this juncture, the AO was requested to supply a certified copy of the assessment order passed by him. Immediately on receipt of the assessment order, the appeal was filed. The Id. CIT(A) ignoring the true facts and circumstances and also the evidence placed before him in this regard, rejected the appeal as being time barred. The request made to the AO for obtaining certified copy of assessment order is placed at page 1 of the paper book. In the principles of natural justice, the Id. CIT(A) ought to have admitted the appeal condoning the delay and decided it on merits. In view of the above facts, the appellant craves that the order of the Id. CIT(A) may be set aside and the appeal be decided on merits.”

2.3 On the other hand, the Id. DR supported the orders of the Id. CIT(A) in respective appeals.

2.4 I have heard the rival contentions and perused the materials available on record. It is noted that the AO had passed the separate assessment order on 21-01-2014 which were dispatched on 28-01-2014. However, these assessee's claimed that these orders were not received by them. Thus the orders were made and dispatched in time but these assessee's claim that these orders were not received by them. Subsequently, the respective assessee's applied for certified copies of the assessment order. It is further noted that the respective assessee's filed the appeal before the Id. CIT(A) who summarily rejected the appeal of the respective assessee's vide her separate order dated 09-08-2016 being time barred and not allowing the condonation of delay. In view of the facts, circumstances of the case and arguments of the Id.AR of the assessee, it will be in interest of equity and justice to condone the delay in filing the appeal by the respective assessee's. It is also pertinent to mention that the efforts should be made to adjudicate upon the case of the assessee on merits instead of dismissing the same on technical reasons. Considering the above scenario in the case of the above assessee's, it will be in the interest of equity and justice to restore the above appeals to the file of the Id. CIT(A) to decide them afresh on merits by providing adequate opportunity of being heard to the respective assessee's. The respective assessee's are also

directed to produce all the relevant documents/ papers before the Id. CIT(A) for adjudication concerning the issue raised in the grounds of appeal before this Bench. Thus the above appeals of the respective assessee's are allowed for Statistical purposes.

3.0 In the result, the appeals of the assessee's are allowed for statistical purposes.

Order pronounced in the open court on 10 /10/2017.

Sd/-  
(भागचन्द)  
(Bhagchand)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /10/ 2017

\*Mishra

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

1. अपीलार्थी / The Appellant- (1) Shri Jagidsh Sharma (2), Chauthmal Sharma (3) Hanuman Sahay Sharma, (4) Ghasi Ram Sharma (5) Prahlad Sahay Sharma
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 7(2), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 914 to 918/JP/2016 )

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar