

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 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. 45/JP/2018  
निर्धारण वर्ष / Assessment Year :2007-08

Smt. Poonam Pandey, L/H of Late Shri Manoj Kumar Pandey, B-Block, B 79, Vaishali Nagar, Jaipur.	बनाम Vs.	J.C.I.T., Jhunjhunu Range, Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CCYPP 8524 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia (CA)  
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/09/2018  
उदघोषणा की तारीख / Date of Pronouncement : 25/09/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 21/10/2016 of Id. CIT(A)-35, New Delhi/Camp Office at Jaipur arising from the penalty order passed U/s 271E of the Income Tax Act, 1961 (in short the Act) for the A.Y. 2007-08. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case, the Id. CIT(A) has legally and factually erred in confirming a penalty of Rs. 9,00,000/- U/s 271E of the Act ignoring the fact of the case as alleged in the penalty order and also without appreciating the facts of the case in its right perspective.

2. *The appellate craves the right to add, amend and alter the grounds on or before the hearing.”*

2. The Id. CIT(A) has dismissed the appeal of the assessee ex parte as none has appeared on behalf of the assessee before the Id. CIT(A). We further note that the Id. CIT(A) has stated in the order regarding two notices issued to the assessee in para 4.2 as under:

*“4.2 During the appellate proceedings, there was non-compliance by the appellant/AR. The details of non-compliance is as follows:*

<i>Issue of notice U/s 250(1)</i>	<i>Hearing of fixed for</i>	<i>Response of the appellant.</i>
<i>25/05/2015</i>	<i>12/06/2015</i>	<i>Request for adjournment</i>
<i>10/10/2016</i>	<i>20/10/2016</i>	<i>None appeared</i>

*Hence, there were no additional submissions or facts brought up by the appellant to defend its appeal. The appeal is therefore, being decided on the basis of facts and record available in file.”*

3. The Id AR of the assessee has pointed out that after filing the appeal before the Id. CIT(A), the assessee expired on 09/09/2012. He has filed a copy of the death certificate of the assessee and submitted that due to the death of the assessee, nobody had appeared on behalf of the assessee before the Id. CIT(A). He has further pointed out that the appeal filed by the assessee against the order passed U/s 271D of the Act is still pending before the Id. CIT(A) and the legal heirs of the assessee have already been brought on record in the appeal before the Id. CIT(A). Thus, the Id AR has pleaded that the assessee through his legal heirs may be

given one more chance to present the case of the assessee before the Id. CIT(A) as the appeal of the assessee was dismissed ex parte.

4. On the other hand, the Id DR has though objected to the request of the assessee and submitted that the legal heirs of the assessee ought to have taken appropriate steps before the Id. CIT(A).

5. Having considered the rival submissions as well as careful perusal of the record we find that after filing the appeal on 24/8/2012, the assessee expired on 09/09/2012 and therefore, there was no appearance before the Id. CIT(A) on behalf of the assessee. Though, the legal heirs of the assessee ought to have taken the appropriate steps for pursuing the appeal and substituting the deceased assessee, however, since it is a case of death of the assessee during the pendency of the appeal and rather just after filing the appeal before the Id. CIT(A), therefore, in the facts and circumstances of the case and in the interest of justice, the legal heirss of the assessee are granted one more opportunity to present the case before the Id. CIT(A). Accordingly, we set aside the impugned order and remit the matter back to the record of the Id. CIT(A) for granting the opportunity of hearing to the assessee through legal heirs and then decide the same afresh.

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

Order pronounced in the open court on 25/09/2018.

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:- 25<sup>th</sup> September, 2018

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Poonam Pandey, L/H of Late Shri Manoj Kumar Pandey, Jaipur.
2. प्रत्यर्थी / The Respondent- The J.C.I.T., Jhunjhunu Range, Jhunjhunu.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 45/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar