

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. 128 & 129/JP/2018
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

M/s Aastha Buildhome Developers Pvt. Ltd., E-60, Girdhar Marg, Malviya Nagar, Jaipur.	बनाम Vs.	ACIT, Circle-6, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHCA 4165 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri K.L. Moolchandani (Adv.)
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/10/2018
उदघोषणा की तारीख / Date of Pronouncement : 05/11/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 30.11.2017 for Assessment Years 2012-13 & 2013-14 respectively.

2. At the outset, the Id. AR of the assessee submitted that the order was passed by the Id. CIT(A) *ex-parte* qua the assessee. It was submitted that due to some communication gap between the assessee company and its AR, the appeal so filed could not be defended before

the Id. CIT(A). It was submitted that no written reply or any explanation whatsoever could be filed by the AR of the appellant for the reasons best known to him. The assessee company was under the bona-fide belief that since the AR had been authorized to take proper care of such proceedings, so they felt complacent and had left the proceedings at the disposal of its AR only. It was only after the receipt of the appeal order, the assessee company came to know about the non-compliance on the part of its AR. The assessee company is still unable to understand as to how and under what circumstances, no compliance was made by the AR of his stature that too without informing the assessee company about such non-compliance. As non-compliance of the appeal proceedings was not within the notice of the assessee company so the appeal could not be defended properly before the Id. CIT (A) for reasons beyond its control. It was submitted that as held consistently by the judicial authorities, failure of Authorized Representative to attend assessment proceedings without informing assessee is a 'reasonable cause' and in support, reliance was placed on the decision of the Co-ordinate Bench in the case of Inderjeet Singh Damania, Noida vs. ACIT Circle-33(1) New Delhi (ITA No. 5742 & 5743) wherein it was observed as under:

"It is our considered opinion that the failure of the assessee's counsel to attend the assessment proceedings without informing the assessee was a reasonable cause which would fall within the exception as provided in section 273B"

It was accordingly submitted that the assessee company was prevented by reasonable cause u/s 273B of the Act from defending its appeal

before the Id. CIT(A). As no written reply or explanation could be submitted before the Id. CIT (A) to defend the appeal so the Id. CIT (A) had passed the appeal order in the spirit of 'an ex-parte order' with the following findings:

"In view of the fact that no further submission have been made nor details filed before me, the addition made by the Assessing Officer is confirmed"

It was submitted that the appeal order has been passed in the 'spirit of an ex-parte order' without addressing the various points at issue and the various contentions due to non-appearance and non-representation by the AR of the appellant. In support of its contentions, the assessee company has filed the affidavit of one of its Directors. It was accordingly submitted that in the interest of 'equity' and 'natural justice', the matter may be set-aside to the file of the Id CIT(A) to examine the same on merits.

3. The Id. DR is heard who has relied on the order of the lower authorities and submitted that the assessee has been granted sufficient opportunities by the Id. CIT(A) however, the assessee has failed to attend the proceedings before the Id. CIT(A). However, the Id DR fairly submitted that where the Bench so decide, the matter may be set-aside to the file of the Id CIT(A) for examination of matter on merits.

4. We have heard the rival contentions and perused the material available on record. We find that the Id. CIT(A) has provided various

opportunities to the assessee company, however, the Id. AR so authorized by the assessee company has not attended to the said proceedings. The Id. CIT(A) thereafter passed the order *ex-parte* qua the assessee relying solely on the findings of the Assessing Officer. At the same time, the Id. AR has submitted that the assessee company has duly appointed the AR to attend to the appellate proceedings before the Id. CIT(A) and due to the reasons beyond its control and imagination, the Id. AR has not attended to the proceedings. In the affidavit so filed by the Director of the assessee company, the assessee has submitted that the Id. AR which has been authorized to attend to the appellate proceedings before the Id. CIT(A) has not attended to those proceedings without notice and knowledge of the assessee company. It was further submitted in the affidavit that the authorized representative did not intimate the assessee at any stage that they would not be attending to the appeal proceeding and therefore, the assessee was under bona-fide belief that the Id. AR was taking care of its appeal proceedings and it was only after receiving the appeal orders that the assessee came to know about such default on the part of the Id. AR. Further, in Form No. 35, it is noted that the address for communication/notices has been stated by the assessee company as that of its AR. In the peculiar facts and circumstances of the case where the Id. AR duly appointed by the assessee company fails to represent the assessee before the Id. CIT(A), we find that there is a reasonable cause on part of the assessee company in not attending to such proceedings and the assessee company deserves one more opportunity to represent its case before the Id. CIT(A). Therefore, in the interest of justice and fair play, the matter is set

aside to the file of the Id. CIT(A) to examine the same afresh after proceedings reasonable opportunity to the assessee. At the same time, the assessee is directed to attend the proceeding so scheduled by the Id. CIT(A) and should not seek any unnecessary adjournment in the matter without showing reasonable cause to the satisfaction of the Id.CIT(A).

In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 05/11/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/11/2018.

*Santosh

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

1. अपीलार्थी / The Appellant- M/s Aastha Buildhome Developers Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, 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. 128 & 129/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar.