

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1778, 1779 & 1780/PUN/2018
निर्धारण वर्ष / Assessment Years : 2010-11, 2011-12 & 2012-13

Kailas Sahadeo Nimhan,
S. No. 16/1, Sahdeo Height Sa,
Someshwarwadi Pashan,
Pune – 411008

PAN : ACPPN8861R

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 2, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 30-11-2018

घोषणा की तारीख / Date of Pronouncement : 03-12-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

In these three appeals for the assessment years 2010-11, 2011-12 and 2012-13 the assessee has assailed the order of Commissioner of Income Tax (Appeals)-3, Pune for the respective assessment years. All the impugned orders are of even date i.e. 01-08-2018.

2. Smt. Deepa Khare appearing on behalf of the assessee submitted at the outset that the impugned orders for the respective assessment years

have been passed in an ex-parte proceeding. Even the assessment orders have been passed u/s. 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The ld. AR submitted that the assessee is a partner in partnership firm M/s. J K Housing Development Corporation engaged in the business of construction. In the year 2015, the assessee had to undergo angioplasty since then the assessee is not keeping good health. During the relevant period the business of assessee had also suffered due to recession. The financial hardship caused by slump in business further contributed to the ill health of the assessee. The ld. AR submitted that if an opportunity is granted to the assessee, the assessee would appear before the lower authorities to represent his case.

3. On the other hand Shri M.K. Verma representing the Department vehemently defended the impugned orders. The ld. DR submitted that the impugned orders were passed in the year 2018, whereas, as per the contention of the assessee, the assessee had undergone angioplasty in the year 2015, considerable time has elapsed in between.

4. Both sides heard. Orders of the authorities below perused. A perusal of assessment order shows that the assessments of the assessee for all the impugned years were reopened. In re-assessment proceedings, the assessee did not appear despite having given several opportunities. The Assessing Officer was constrained to complete assessment u/s. 144 r.w.s. 147 of the Act. Even in First Appellate proceedings, the assessee failed to appear before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) decided the appeals of assessee on merits in ex-parte proceedings. The non-appearance of the assessee before the authorities below is purportedly on account of medical exigencies. Taking into consideration entirety of facts, we deem it appropriate to

restore the issues raised before us in the present set of appeals to the file of Assessing Officer for de-novo adjudication. However, it is made clear that if the assessee fails to appear before the Assessing Officer, the Assessing Officer is at liberty to draw adverse interference against the assessee. Needless to say, that before deciding the issues afresh the Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

5. In the result, the impugned orders are set aside and all the three appeals of assessee are allowed for statistical purpose.

Order pronounced on Monday, the 03rd day of December, 2018.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd December, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-3, Pune
4. The Pr. C.I.T.-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune