

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", 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. 859/JP/2018

निर्धारण वर्ष / Assessment Year : 2006-07

Surendra Singh, Ward No. 10, main market, Keshorai Patan, Bundi.	बनाम Vs.	Income Tax Officer, Bundi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AZAPS 0338 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri B.V. Maheshwari (CA)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 15/01/2019
उदघोषणा की तारीख / Date of Pronouncement : 16/01/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26/03/2018 of Id. CIT(A), Kota for the A.Y. 2006-07. The assessee has raised following grounds of appeal:

- "1. That the Id. CIT(A), Kota have grossly erred in passing the appeal order ex parte. The Id. CIT(A) issued notice in past- but not on or before date of order there was no notice of hearing which is coming up from the first page of appeal order itself.*
- 2. That the Id. A.O. grossly erred in not allowing the exemption u/s 54F on investment of long term capital gain for purchase of house. That the Id. A.O. stated that there can be no purchase on Ikrarnama, which is ill confined and when the possession has been given then the property have been purchased in all respect and hence deduction is to be allowed u/s 54F of I.T. Act, 1961.*

Further the Id. CIT(A) also erred in confirming the order passed by the Id. A.O.

3. *That the appellant craves leave to add, alter, amend the grounds of appeal."*

2. The ground No.1 of the appeal is regarding the ex parte order passed by the Id. CIT(A). The assessee is an individual and engaged in the activity of Hatwari and agriculture on rent basis. The Assessing Officer has made an addition of capital gain by disallowing the claim U/s 54F of the Act.

3. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Id. CIT(A), however, due to non-appearance on behalf of the assessee, the Id. CIT(A) has dismissed the appeal ex parte and confirmed the disallowance of deduction U/s 54F of the Income Tax Act, 1961 (in short the Act).

4. Before us, the Id AR of the assessee has submitted that the Id. CIT(A) has stated in the impugned order that despite four notices, no one has appeared on behalf of the assessee, however, the assessee has not received any notice nor informed by his authorized representative C.A. Shri S.P. Gupta who was representing the assessee before the Id. CIT(A). The Id. AR has further submitted that his authorized representative appeared before the Id. CIT(A) and took adjournments, however, on the last date of hearing dated 09/11/2017, he could not attend the hearing

and the impugned order was passed after five months without giving further opportunity of hearing to the assessee. He has further contended that since the assessee is not well versed with the procedure being a rural background person, therefore, he was dependent upon the authorized representative. The Id. CIT(A) has dismissed the appeal without giving proper opportunity of hearing to the assessee. Even otherwise the assessee is having good prima facie case on merits as the assessee produced the purchase agreement through which the assessee has invested in the new asset for deduction U/s 54F of the Act. He has also referred to the sale agreement through which this property in which the assessee made the investment was subsequently sold. Thus, the Id AR has submitted that the assessee may be given one more opportunity to present his case before the Id. CIT(A).

5. On the other hand, the Id. DR has fairly agreed to the request of the Id. AR for remanding the matter back to the record of the Id. CIT(A).

6. Having considered the rival submissions as well as relevant material on record we note that though the Id. CIT(A) has mentioned in the impugned order that despite four notices and two adjournments taken by the assessee, none had appeared on behalf of the assessee when the appeal was finally taken up for hearing. We further note that the Id.

CIT(A) has not given specific dates on which the appeal was fixed for hearing. We find that the assessee was not given opportunity of effective hearing before passing the impugned order. Accordingly, in the facts and circumstances of the case when the appeal of the assessee was dismissed by passing the ex parte order and Id. CIT(A) has not given specific dates of hearing on which the assessee took adjournments and subsequently the date of hearing on which the assessee failed to appear before the Id. CIT(A), we set aside the impugned order to the record of the Id. CIT(A) for granting one more opportunity of hearing to the assessee and deciding the appeal on merit.

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

Order is pronounced in open court on 16th January, 2019.

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:- 16th January, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Surendra Singh, Bundi.
2. प्रत्यर्थी / The Respondent- The ITO, Bundi.

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. 859/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar