

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. 858/JP/2018
निर्धारण वर्ष / Assessment Year :2006-07

Smt. Narendra Kaur, B-74, Ridhi Sidhi Nagar, behind Petrol Pump, Kunhari, Kota.	बनाम Vs.	Income Tax Officer, (TDS), Bundi.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACWPK 9633 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 857/JP/2018
निर्धारण वर्ष / Assessment Year :2006-07

Smt. Narendra Kaur, B-74, Ridhi Sidhi Nagar, Kota.	बनाम Vs.	Additional CIT, Range- Sawai Madhopur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACWPK 9633 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती 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.

These two appeals by the assessee are directed against the two separate orders dated 16/03/2018 and 19/03/2018 of Id. CIT(A), Kota

arising from the assessment order U/s 143(3) read with Section 147 and penalty order passed U/s 271D of the Income Tax Act, 1961 (in short the Act) for the A.Y. 2006-07. The assessee has raised following grounds in these appeals:

Grounds of ITA 858/JP/2018

- “1. That the Id. CIT(A) grossly erred in passing the said appeal order ex parte.
2. That the Id. A.O. grossly erred in taking action U/s 147/148 of IT Act, 1961.
3. That the Id. A.O. grossly erred in charging tax on long term capital gain on Rs. 1,33,262/-. The assessee claimed deduction U/s 54F and invested the entire net consideration in construction of house then there is nothing to deny to allow deduction U/s 541F.

The Id. CIT(A) also erred in sustaining the addition made by A.O.
4. Any other ground at the time of the hearing.”

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 derives income from business. 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 Act.

4. Before us, the Id AR of the assessee has submitted that the Assessing Officer while completing the assessment has made addition on account of long term capital gain by disallowing the claim of deduction U/s 54F of the Act. The dispute in this case is identical as in the case of assessee's husband namely Shri Surendra Singh in ITA No. 859/JP/2018. Since the authorized representative of the assessee did not appear before the Id. CIT(A), consequently, the appeal of the assessee was dismissed ex parte.

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. We have considered the rival submissions as well as material available on record. At the outset we note that the Id. CIT(A) has passed the impugned order ex parte when nobody has appeared on behalf of the assessee. It is mentioned by the Id. CIT(A) that despite four notices and two adjournments, none has appeared on behalf of the assessee. We find that the facts emerging from the record of the Id. CIT(A) are identical as in the case of Surendra Singh Vs ITO in ITA No. 859/JP/2018. We have considered the matter in the case of Surendra Singh Vs ITO (supra) vide even dated order as under:

"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."

Accordingly, we set aside the appeal of the assessee to the record of the Id. CIT(A) for granting one more opportunity of hearing to the assessee.

7. In ITA No. 857/JP/2018, though, the Id. CIT(A) passed the impugned order on merits, however, it was also passed ex parte as nobody has appeared on behalf of the assessee. Since all these matters arising from identical facts and circumstances, therefore, in the interest of justice, this appeal is also set aside to the record of the Id. CIT(A) for granting one more opportunity of hearing to the assessee.

8. In the result, both these appeals of the assessee are 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- Smt. Narendra Kaur, Kota.
2. प्रत्यर्थी / The Respondent- (i) The ITO (TDS), Bundi &
(ii) The Addl.CIT, Range-Sawai
Madhopur.
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. 858 and 857/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar