

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. 143/JP/2019  
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Devendra Agarwal 7, Shanti Path, Mangal Marg, Brahampuri, Jaipur.	बनाम Vs.	The ITO, Ward 5(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHCPA 6118 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vedanta Agarwal (Adv.)  
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 26/03/2019  
उदघोषणा की तारीख / Date of Pronouncement: 28/03/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 06.12.2018 of Id. CIT (A), Jaipur for the assessment year 2014-15. The assessee has raised the following grounds:-

- "1. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in passing ex-party appeal order whereas his office accepted adjournment application of assessee and ensured that new date of hearing will be intimated through new notice of hearing.*
- 2. On the facts & circumstances of the case Ld. CIT(A) grossly erred in rejecting appeal of assessee without considering the facts*

*of the case and without giving the proper opportunity of being heard to the assessee.*

*3. On the facts & circumstances of the case Ld. AO grossly erred in imposition penalty of Rs. 1,50,000/- U/s 271B of the Act.”*

2. At the time of hearing, the Id. AR of the assessee has submitted that the Id. CIT(A) has dismissed the appeal of the assessee ex-parte by rejecting the request for adjournment filed by the Authorized Representative of the assessee. He has referred to para 4 of the impugned order and submitted that on 22.11.2018 when the case was listed for hearing the Authorized Representative of the assessee filed a letter for adjournment on the ground that he was busy in election of Central Council of ICAI scheduled to be held on 8<sup>th</sup> & 9<sup>th</sup> December, 2018. Thus, when a reasonable cause was explained for seeking adjournment then the Id. CIT(A) should have granted one more opportunity of hearing to the assessee. He has pleaded that the matter may be set aside to the record of the Id. CIT(A) for deciding the same afresh after giving an opportunity of hearing to the assessee.

3. On the other hand, the Id. DR has vehemently objected to the request for setting aside the matter to the Id. CIT(A) and submitted that the Id. CIT(A) has granted 5 opportunities of hearing to the assessee but the assessee kept on seeking adjournment one after another. He

has also pointed that the appeal of the assessee was also not filed in accordance with the provisions of Section 249 read with rule 45 of the I. T. Rules which requires the appeal shall be filed electronically. Since, the appeal was not filed electronically, therefore, the same was also not maintainable and accordingly dismissed by the Id. CIT(A).

4. We have considered the rival submissions as well as relevant material on record. The impugned order was passed by the Id. CIT(A) ex-parte. Initially the appeal of the assessee was fixed for hearing before the Id. CIT(A) on 06.09.2018 and on that day the Id. AR of the assessee sought adjournment. Similarly on the subsequent occasions when the appeal was fixed for hearing on 18.09.2018, 29.10.2018, 12.11.2018 & 22.11.2018 the Id. AR of the assessee sought adjournment by explaining the reasons. The Id. CIT(A) adjourned the hearing on the earlier occasions except for the last occasion on 22.11.2018. We find that the reasons given in the letter as recorded by the Id. CIT(A) are reasonable cause for not attending the proceedings because the Id. AR of the assessee was busy in Central Council of ICAI elections scheduled for 8<sup>th</sup> & 9<sup>th</sup> December, 2018. Though the Id. CIT(A) granted sufficient opportunities to the assessee however, on the last occasion when the Id. AR has explained the reasons for not attending

the hearing then having regard to the facts and circumstances of the case one more opportunity ought to have been granted to the assessee. As regards the maintainability of the appeal for want of e-filing, we note that the Id. CIT(A) except giving the reasons in the impugned order did not raise this defect by issuing any notice or otherwise for rectification of the same on the part of the assessee. Though there was a defect in filing of appeal as the assessee did not file electronically but filed in physical form therefore, the said defect is required to be removed by the assessee. Accordingly, in the facts and circumstances of the case as well as in the interest of justice, we set aside the impugned order of the Id. CIT(A) and remand the matter to the record of the Id. CIT(A) for adjudication of the same afresh after giving an opportunity of hearing to the assessee. The assessee is directed to remove the defects and e-file the appeal within a period of 30 days from the date of this order.

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

Order pronounced in the open court on 28/03/2019.

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 28/03/2019.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

**\*Santosh.**

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

1. अपीलार्थी / The Appellant- Shri Devendra Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 5(1), 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. 143/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar