

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 41 to 43/JP/2019
निर्धारण वर्ष / Assessment Year: 2008-09

Virendra Kumar Meena, S/o- Late Sh. Bajrang Lal Meena, Vill.- Bagli, Post- Labaan, Tehsil- Indergarh, Distt.- Bundi.	बनाम Vs.	I.T.O., Ward 2(3), Kota.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: BOAPK 5729 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri C.L. Yadav (CA)
राजस्व की ओर से / Revenue by : Ms. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 20/03/2019
उदघोषणा की तारीख / Date of Pronouncement : 10/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the assessee against the separate orders of Id. CIT(A), Kota and Alwar dated 19/04/2018 and 28/04/2017 respectively for the A.Y. 2008-09 in the matter of order passed U/s 144 read with Section 147/271(1)(c)/271(1)(b) of the Income Tax Act, 1961 (in short the Act).

2. From the record, I found that there is a marginal delay in filing the appeal and therefore, after considering the reasons of delay, I condone the delay and the appeal is heard on merit.

3. **First I take ITA No. 41/JP/2019**

In this appeal, the assessee is aggrieved for addition of Rs. 6,79,420/- on account of capital gains.

4. Rival contentions have been heard the record perused. In this case, the A.O. got information that the assessee had sold his house property but the capital gain was no disclosed by filing any return of income. Accordingly, after issuing of notice U/s 148 of the Act, the A.O. framed assessment U/s 144/147 of the Act. The A.O. noted that the statement of assessee Shri Virendra Kumar Meena was recorded on 16/12/2010 by the Inspector at his residence. In reply to question No. 5, the assessee replied that house No. 1-E-26, Talwandi was sold by him on 12/07/2010 for Rs. 12,90,000/- (stamp value was estimated at Rs. 13,58,840/-). It was also stated that the house was jointly owned by the assessee and his uncle Shri Sohan Lal Meena. It was further stated that his uncle Shri Sohan Lal Meena and his family members were also residing in the very same house. The reason for sale of house

was that they want to repay the loan and finally the sale proceed was utilized for repaying the loan and thereafter the assessee shifted to his village.

5. I found that the house so sold was estimated for stamp valuation was at Rs. 13,58,840/-, accordingly, the A.O. made the addition of half the value of the house (in so far as the other house portion was belonging to his uncle Shri Sohan lal Meena). I found that no deduction for cost of acquisition nor benefit of indexation was given. I also found that because of non-service of any notice to the assessee, the assessee never produced the required evidence before the A.O. because he was shifted to his village. After sale of the house, the proceeds of which was utilized for repayment of old loans. It appears that the Id. CIT(A) has also passed ex parte order and order of the A.O. was confirmed.

6. In view of the above facts and circumstances and in the substantial interest of justice, we restore the matter back to the file of the A.O. for deciding the issue afresh after considering the cost of acquisition of the house. The A.O. is also directed to given benefit of indexation and minimum income for which the assessee is not liable to pay any tax. The assessee is also directed to appear before the A.O.

within a period of 2 months from the date of receipt of this order. I direct accordingly.

7. **Now I take ITA No. 42/JP/2019**

This is an appeal filed by the assessee against the order of the Id. CIT(A), Kota, dated 19/04/2018 for the A.Y. 2008-09, in the matter of imposition of penalty U/s 271(1)(c) of the Act.

8. As I have already set aside the quantum proceeding to the file of the A.O., therefore, the penalty is also set aside to the file of the A.O. to be framed afresh after deciding the quantum appeal.

9. In the result, both i.e. quantum appeal and penalty appeal is allowed for statistical purposes only.

10. **Now I take ITA No. 43/JP/2019**

This is an appeal filed by the assessee against the order of the Id. CIT(A), Alwar dated 28/04/2017 for the A.Y. 2008-09, in the matter of imposition of penalty U/s 271(1)(b) of the Act.

11. In this case, the A.O. has levied the penalty of Rs. 10,000/- for non-appearance of the assessee on the fixed date of hearing and also not submitting the documents desired by the A.O.. As I have already

discussed in the quantum appeal that after sale of the house, the assessee has shifted to his village, therefore, notice issued by the A.O. was not served on him, which is a reasonable cause for not appearing before the A.O.. Accordingly, I do not find any justification for the penalty so imposed, therefore, the A.O. is directed to delete the penalty of Rs. 10,000/-.

12. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 10th April, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 10th April, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Virendra Kumar Meena, Bundi.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 2(3), Kota.
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. 41 to 43/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar