

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, AM

आयकर अपील सं./ITA No. 1287/JP/2018
निर्धारण वर्ष / Assessment Year :2010-11

Shri Bishan Lal S/o Shri Ladu Lal Ji, Farkiya Road, Kheda Srinagar, Ajmer	Vs.	I.T.O., Ward 2(3), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:ADSPL7823R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Satish Sibnani, CA, Id.AR

राजस्व की ओर से / Revenue by : Smt. Roshanta Meena, JCIT, Id.DR

सुनवाई की तारीख / Date of Hearing : 15/04/2019

उदघोषणा की तारीख / Date of Pronouncement : 23/04/2019

आदेश / ORDER

This is an appeal filed by the assessee against the ex parte order of Id.CIT(A), Ajmer dated 25/07/2018 for the A.Y. 2010-11 in the matter of an assessment order passed u/s. 144 r.w.s 147 of the Income Tax Act, 1961 (in short the Act).

2. I have heard the rival contentions and carefully gone through the orders of the authorities below and found that after re-opening of assessment the AO made addition on account of cash deposits in the bank account of Rs. 13,24,650/-. The assessee filed appeal before the Id.CIT(A), which was delayed by 30 days. Before the Id. CIT(A) the assessee explained the reasons for delay, however, the Id. CIT(A) did not

agree with the same and dismissed the appeal of assessee by observing that the assessee did not have sufficient cause for not furnishing the appeal within the period specified u/s. 249(2) of the Act. It was contended by the Id. AR that the assessee is a villager. Befroe the Income Tax Authorities the assessee could not furnish submission due to not allowing proper time for submission, it is seen in the body of the assessment order which is passed by the learned ITO in which the case was transferred from ITO, W-1(1), Ajmer on 31/08/2017. Due to change of incumbent, notice u/s. 142(1) was issued on 04/09/2017 to the assessee for fixing the case for hearing on 13/09/2017 which was served upon the assessee through speed post. In compliance thereto none attended nor any reply filed by the assessee. Further a letter dated 25/09/2017 was issued through speed post no. ER 617946939IN for fixing the case for hearing on 09/10/2017 which was served on 28/09/2017, but no response was received. One another letter dated 25/09/2017 was also issued through speed post on assessee's another address i.e 283, Kumawat Mohalla, Srinagar, Tehsil-Nasirabad, Ajmer which was also served upon the assessee on 28/09/2017. The AO has passed order u/s. 144 and he has not applied law of natural justice, he has not allowed basic exemption, etc.

3. It was further submitted by him that the assessee has no taxable income therefore he was not liable to file income-tax return u/s. 139(9) of the I.T. Act, 1961. The AO has issued notice u/s. 148 the information is

passed to him through other agency. As per decision of “ Nirmala Agarwal vs. ACIT [2018] 64 ITR (Trib.)658” in which the tribunal declared the validity of re-assessment proceedings has to be judged with the material available with the AO and opinion are strictly based on documents and information in possession of the AO and no reopening can be made in mechanical manner. Reopening cannot be based on borrowed satisfaction of the AO is the basic necessity and other decisions are also in favour of assessee. The Id. CIT(A) has not considered the facts of the case and declared appeal has not been admitted. The Id.AR further submitted that the assessee is a villager he is not aware of the Income Tax Laws, etc; therefore, he has prayed before the Id.CIT(A) to allow delay condone. There is a decision in favour of assessee – The Hon’ble Supreme Court in the case of Collector, Land Acquisition vs. M.S.I Katiji & Ors [167 ITR 471(1987)]. Please consider the matters sympathetically for delay condonation.

4. The Id.DR, on the other hand, relied on the orders of the authorities below.

5. I have considered the rival contentions and gone through the orders of the authorities below and found that the assessee is owner of two trucks (No. RJ 01-GA 3315 and RJ 06-GA 2282]. During the year under consideration the assessee had derived receipt from these trucks and deposited the amount in the saving bank account. As per section 44AE of the I.T Act, 1961 Rs.3500/- per month for one truck for heavy

goods the assessee had two trucks therefore his income is presumed to (Rs.3500x2x12= Rs.84,000/- P.A). Rs. Eighty Four Thousand Only. The assessee is also owner of agricultural land and he has been growing crops and its income is near about Rs.15,000/- P.A. On the analysis of saving account, it appears that the closing balance on dated 30/03/2010 is Rs.30,514/-, the assessee is depositing cash and withdrawing cash from bank for the transportation of truck, etc. However, by passing ex-parte order, the AO has confirmed the addition. In the substantial interest of justice, I restore back the matter to the file of AO for deciding the matter afresh after considering the above facts. I also direct the assessee to appear before the AO within 60 days from receipt of this order. Grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 23rd April, 2019.

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

जयपुर / Jaipur
दिनांक / Dated:- 23 April, 2019

***PP/SPS**

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

1. अपीलार्थी / The Appellant- Shri Bishan Lal
S/o Shri Ladu Lal Ji, Farkiya Road, Kheda Srinagar, Ajmer
2. प्रत्यर्थी / The Respondent-The ITO, Ward 2(3), Ajmer.
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. 1287/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar