

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. 1470/JP/2018
निर्धारण वर्ष / Assessment Year :2011-12

Isaq Khan C/o Mahendra Gargieya & Associates, Advocates & Tax Consultants, 537-539,5 th Floor, Mahima's Trinity, Near Jyoti Rao Phule College, New Sanganer Road, Jaipur	Vs.	I.T.O. Ward-4(5), Jaipur
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: ANOPK8648F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya, Advocate, Id.AR
राजस्व की ओर से / Revenue by : Smt. Roshanta Meena, JCIT, Id.DR

सुनवाई की तारीख / Date of Hearing : 16/04/2019
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)-2, Udaipur dated 19/09/2018 for the A.Y. 2011-12 in the matter of an order passed U/s 144/147 of the Income Tax Act, 1961 (in short the Act).

2. Rival contentions have been heard and record perused. In this case by passing order u/s. 144/147 of the Act the AO had made addition on account of unexplained expenditure of Rs. 13,81,000/- in the new residential house and declined deduction of Rs.24,90,150/- u/s. 54F. The AO also made addition of Rs.3,00,000/- in respect of amount deposited in the bank. The

AO did not accept the assessee's agricultural income of Rs. 12,85,628/-. By the impugned ex parte order the Id. CIT(A) has confirmed this action of the AO.

3. In support of the contention of reasonable cause for non appearance before the Id. CIT(A), the Id. AR also filed an affidavit, which reads as under:

"I, Mohammed Ishaq Khan S/o Shri Muneer Khan aged 67 years, R/o 551, New Jalupura, Shastri Nagar, Jaipur (Rajasthan) do hereby solemnly affirm on oath, as under:

1. That I am I.T assessee having PAN AONPK8648F and is fully aware with the facts of the present case.

2. That Id. CIT(A)-II, Udaipur, had decided an appeal ex-parte vide its order dated 19.09.2018 in appeal no. 10149/2017-18.

3. That with a view to prepare and argue the appeal before the Id. CIT(Appeals), I had engaged one Shri G.M. Khan adv. And Shri Prashant Sharma, CA of Jaipur, who prepared the appeal and also filed the same.

4. That although on a few occasions, they appeared before the Id. CIT(A), Jaipur however no compliance was made on 23.07.2018 and 12.09.2018 as appears from the order of the Id. CIT(A)-II, Udaipur.

5. That the undersigned deponent having engaged the counsels, remained under bonafide impression that the counsels must be taking care of this appeal and was not aware of the fact of non-compliance before the Id. CIT(A)-II, Udaipur.

6. That being completely unaware of the development, the deponent came to know of the fact of passing of the impugned order on dated 19.09.2018 only later on and of the fact that the Id. counsels did not make appearance on the last two occasions, resulting into ex-parte appellate order.

7. That the undersigned was interested in prosecuting the matter, has made the payment of the profession fees, paid the filing fees and the non-appearance was beyond the control of the deponent who had exercised due diligence by appointing the counsels. Now it was on the part of the counsels to make compliance.

8. That after the non-appearance by the counsels on two occasions, the office of the Id. CIT(A) did not send any notice giving final opportunity nor any other communication was made to the deponent and of the fact of non-appearance."

4. I have gone through the orders of the authorities below as well as the said affidavit as filed by the assessee before me. In the said affidavit, the assessee has explained the reasons for non appearance before the Id. CIT(A). However, restoring the matter back to Id. CIT(A) will not serve the end of justice in so far as the disallowances have been made by the AO by passing an order u/s.144 after re-opening of assessment u/s. 147. In the substantial interest of justice, I restore the matter back to the file of the AO for deciding the matter afresh. The assessee is also directed to appear before the AO and to produce all the documents in support of claim u/s. 54 of the Act. The assessee is further directed to produce the evidences of investment of Rs.13,81,000/- made in the new residential property and source of amount of deposited in the bank account. Nature of agricultural income shown by the assessee also require documentary evidence(s) so as to reach at the conclusion that income so offered is actually agricultural income not liable to tax. The assessee is directed to appear before the AO within 60 days from receipt of this tribunal order. In case of failure of assessee, the AO is at liberty to pass order afresh after considering the material available on record/on merits.

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

Order pronounced in the open court on .23rdApril, 2019.

Sd/-

(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- Isaq Khan, C/o Mahendra Gargieya & Associates, Advocates & Tax Consultants, 537-539, 5th Floor, Mahima's Trinity, Near Jyoti Rao Phule College, New Sanganer Road, Jaipur
2. प्रत्यर्थी / The Respondent- The I.T.O. Ward 4(5), Jaipur
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. 1470/JP/18)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar