

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 No. 278/JP/2019
निर्धारण वर्ष / Assessment Year : 2010-11

Kalu Ram Kumawat, C/o- S Khemka & Co., 402, Pink Tower, Behind Sahara Chambers, Tonk Road, Jaipur-302015	बनाम Vs.	I.T.O., Ward 4(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: BISPK 5310 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vivek Bhargava (FCA)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 29/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 02/05/2019

आदेश / ORDER

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

This is an appeal filed by the assessee against the ex parte order of Id.CIT(A), Ajmer dated 27/12/2018 for the A.Y. 2010-11 in the matter of order passed U/s 147/144 of the Income Tax Act, 1961 (in short the Act).

2. In this appeal, the assessee is aggrieved for addition of Rs. 29,11,550/- U/s 69A of the Act by passing ex parte order by the Id. CIT(A). At the outset, it was contended by the Id AR of the assessee that the notice U/s 148 of the Act was issued at the address given on the PAN number of

the assessee whereas assessee was not living there, therefore, notice could not be served on the assessee. Even before the Id. CIT(A), various notices issued by the Id. CIT(A) was not served on the assessee. The assessee also filed an affidavit confirming the non-receipt of notice of hearing from the Id. CIT(A), accordingly, it was prayed that the matter may be restored back to the file of the A.O./Id.CIT(A).

3. On the other hand, the Id DR has strongly opposed the prayer for restoration of matter by pleading that the notice was issued as per the address given by the assessee in Form No. 35 but there was no compliance by the assessee.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the notice u/s 148 issued on 29/03/2017 was not served on the assessee due to incorrect address and subsequent letter dated 14/07/2017 by the A.O. was not served on the assessee due to incorrect address/poor postal services. The assessee received the notice u/s 142(1) dated 13/10/2017 and letter dated 1³/10/2017 on 20/11/2017 for the first time. Thereafter the assessee engaged a counsel and attended but no sufficient opportunity was provided by the A.O. to present the facts and explain the credits in bank account. On 04/12/2017 the

counsel sought adjournment of few days but case was fixed for 05/12/2017. The counsel attended on 05/12/2017 and sought few days time to submit documents but the case was fixed for 06/12/2017. The assessee could not make compliance due to lack of opportunity. Hence, assessment was completed U/s 144/147 and entire credits of Rs. 29,11,550/- in ICICI bank account, were added U/s 69A of the Income Tax Act, 1961.

5. We also observe that the assessee is residing in a small village Devthala Niwana, Chomu, District Jaipur. The postal services are poor in rural areas. Sometimes the postman delivers the post and sometimes the post is returned by the post office. The counsel of the assessee CA Shri Shailesh Jain informed the assessee that appeals filed in January, 2018 were being fixed for hearing and he should also receive the notice of hearing. The assessee visited his area post office on 07/01/2019 to enquire about any letter from department. The postman handed over one envelope which contained the order of the Id. CIT(Appeals) dismissing the appeal.

6. In view of the above facts and circumstances and considering the affidavit filed by the assessee and in the substantial interest of justice, I restore the matter back to the file of the A.O. for deciding

the issue afresh after giving due opportunity of hearing to the assessee. The assessee is at liberty to file additional evidence if any in support of his claim. The assessee is also directed to appear before the A.O. within a period of 60 days from the date of receipt of this order. I direct accordingly.

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

Order pronounced in the open court on 02nd May, 2019.

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

जयपुर / Jaipur

दिनांक / Dated:- 02nd May, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Kalu Ram Kumawat, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-4(1), 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. 278/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar