

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (SMC), JODHPUR**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No. 411/Jodh/2018
(ASSESSMENT YEAR-2011-12)

Shri Kishan Lal Sargara, Near Sharma Nursing Home, Adarsh Colony, Nimbahera, Chittorgarh (Raj.)	Vs	The ITO, Ward-2, Chittorgarh
(Appellant)		(Respondent)
PAN: CJTPS7537L		

Revenue By	Sh. P.K. Singi, DR
Assessee By	None, (written submissions by Shri Amit Babel, CA)
Date of hearing	03.05.2019
Date of Pronouncement	07.05.2019

ORDER

This is an appeal by the assessee against the order dated 3.2.2017 of Ld. Commissioner of Income Tax (Appeals)-1, Udaipur.

2. During the course of hearing, Ld. counsel for the assessee has moved an application dated 1.5.2019 stating therein as under:-

"Re: Mr. Kishan Lai Sargara, Tehsil- Nimbaheda (Raj.)
Appeal No. 411 /Jodh/2018

With reference to the above mentioned case we would like to draw your kind attention towards the fact that as we were not being heard in the appeal and neither our submissions were considered, the order was made ex-parte. Kindly request you to please set aside the case.

The date of hearing of the case of Mr. Kishan Lal Sargara is fixed on May 3rd , 2019, due to certain unavoidable reasons, the undersigned will not be able to be present on that date, so request you to either set aside the case or provide adjournment of the same to any other day. Please do the needful and oblige.

Thanking you in anticipation.

*Yours faithfully,
For M/s J.S. Babel & Co.
(Chartered Accountants)*

*Sd/-
CA, Amit Banel
(Partner)*

3. Following grounds have been raised in this appeal:-

1. The learned Income tax officer, Ward-2 , Chittorgarh has erred in treating the cash sales deposited in the bank, as income from undisclosed sources. The deposits represents the sales proceeds. Hence the addition is unjust, unreasonable and unwarranted. The addition made should be deleted and / or the order passed u/s 143/144 should be set aside as proper opportunities were not given to the assessee. The penalty order imposed U/S 271 (1) (c) should also be quashed.

1.

2. The commissioner of Income-tax (Appeals)-I, Udaipur has also erred in not considering the facts of reply submitted and dismissed the appeal of your Appellant.

3. *Your Appellant should be allowed to add, amend or delete any ground or ground of Appeal.*

4. The facts of the case in brief are that the assessee electronically filed the return of income on 30.9.2011 declaring an income of Rs. 2,24,590/- which was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'the Act'). Later on, the case was selected for scrutiny. the Assessing Officer framed the ex-parte assessment and made the addition of Rs. 45,54,200/- on account of cash deposits with ICICI bank.

5. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who sustained the addition made by the Assessing Officer by passing an ex-parte order.

6. Now the assessee is in appeal.

7. The Ld. Sr. DR supported the orders of the authorities below. The Ld. counsel for the assessee in his written submissions has stated that the assessee was not heard and even the submissions were not considered while framing the ex-parte order by the Ld. CIT(A).

8. In the present case, it is noticed that the Ld. CIT(A) passed the ex-parte order by observing that the notices of hearing were issued to the assessee for various dates but nobody attended. She also pointed out that the last notice for hearing on 23.1.2017 was issued on 6.1.2017 by registered post but neither anybody attended nor any application for adjournment was

filed. However, nothing is brought on record to substantiate that any notice of hearing was served upon the assessee. It is well settled that nobody should be condemned unheard as per the maxim “*audi alteram partem*”. I, therefore, by keeping in view the principles of natural justice, deem it appropriate to set aside this case back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 07.05.2019)

Sd/-
(N.K. SAINI)
Vice President

Dated : 07.05.2019

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
सहायकपंजीकार/ Assistant Registrar