

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

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No. 221/Jodh/2018
(ASSESSMENT YEAR-2013-14)

Sh Nainai Ram, S/o Dhanna Ram Bheel, 271, Hatam Ki Dhani, Ramseen Road, Jalore (Raj.)	Vs	The ITO, Ward-1, Jalore
(Appellant)		(Respondent)
PAN: AYIPR6983P		

Revenue By	Sh. P.K. Singi, DR
Assessee By	None
Date of hearing	01.05.2019
Date of Pronouncement	06.05.2019

ORDER

This is an appeal by the assessee against the order dated 01.01.2018 of Ld. Commissioner of Income Tax (Appeals)-2, Jodhpur.

2. During the course of hearing, nobody was present on behalf of the assessee. I, therefore, proceeded ex-parte and the appeal is decided after hearing the Ld. Sr.DR.

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

(1) That on the facts, in the circumstances of the case & in view of evidence on record the Ld. CIT (Appeal) II Jodhpur have wrongly & erroneously passed the appeal order dated 01.01.2018 which is without any proper opportunity and same is bad in law.

(2) The assessment order under appeal u/s section 147/ 148/ 143(3) dated 09.12.2016 is bad in law, bad in facts and without jurisdiction of the Ld. AO, amongst other the reopening jurisdiction of the Ld. AO was acquired in violation.

(3) That on the facts, in the circumstances of the case & in view of evidence on record the Ld. CIT (Appeal) II Jodhpur have wrongly & erroneously confirmed the addition of Rs. 13,55,607/- in respect of Short Term Capital Gain whereas the entire income is business activity and falls under the income from business and where the provision of section 43CA is applicable from Assessment year 2014-15.

(4) That assessee craves leave to add, amend, alter, modify or substitute any of the grounds of appeal at the date on or before hearing.

4. The main grievance of the assessee vide ground No.1 relates to the ex-parte order passed by the Ld. CIT(A) without affording opportunity of being heard.

5. The facts of the case in brief are that the Assessing Officer received AIR information that the assessee had sold two plots of lands during the year under consideration and had not disclosed the profits thereon. He, therefore, issued notice u/s 148 of the Income Tax Act, 1961 [in short' the Act']. In

response to the said notice, the assessee stated that the return filed on 27.5.2014 may be treated as return filed in response to the said notice. During the course of assessment proceedings the Assessing Officer was not satisfied with the cost of acquisition declared by the assessee. He worked out the short term capital gains by taking the value of the DLC rate and made the addition of Rs. 13,55,607/-.

6. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who disposed off the appeal ex-parte by observing that the notice dated 23.11.2017 fixing the date of hearing as on 5.12.2017 was sent to the assessee but the same returned back by the postal authorities with the remarks that "the receiver did not found". He also observed that the assessee or his local Authorized Representative did not bother to approach the office in order to check the status of the appeal. The Ld. CIT(A) confirmed the addition made by the Assessing Officer. Now the assessee is in appeal.

7. The Ld. Sr. DR strongly supported the orders of the authorities below.

8. I have considered the submissions of the Ld. DR and perused the material available on record. In the present case it is noticed that the Ld. CIT(A) himself has admitted that the notice for hearing sent by him returned back unserved by the postal authorities. He, thereafter, did not make any effort to serve the notice of hearing 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, appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 06.05.2019)

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

Dated :06.05.2019

"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