

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

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No. 346/Jodh/2018
(ASSESSMENT YEAR-2004-05)

Smt. Gulab Devi Khant, W/o Late Shri Natwar Lal Khanat, Khantwara, Banswara (Raj.)	Vs	The ACIT, Chittorgarh
(Appellant)		(Respondent)

Revenue By	Sh. P.K. Singi, DR
Assessee By	None
Date of hearing	3.05.2019
Date of Pronouncement	07.05.2019

ORDER

This is an appeal by the widow of the deceased assessee against the order dated 24.4.2018 of Ld. Commissioner of Income Tax (Appeals)- 1, Udaipur.

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

1. The Ld. Commissioner Appeals was sent the required documents for the appeal.

2. *The grounds of appeal is as per the grounds filed for the appeal to the Commissioner Appeals.*

3. *The Appellant Lady is a widow & earning her bread & butter by working in the houses of others. She is a maid servant.*

4. *She is unaware of the rules of the Income Tax Act and had not done any offence.*

5. *The appellant reserves the right to add / delete any grounds of appeal.*

3. The facts of the case in brief are that the Assessing Officer issued noticed u/s 148 of the Income Tax Act, 1961 (in short 'the Act') for the reasons that the assessee had not shown capital gain on the land sold for Rs. 17,68,000/- on 16.2.2004. In response to the notice u/s 148 of the Act, the return was filed on 2.3.2006 declaring a loss of Rs. 9,91,081/-. However, the assessment was framed at an income of Rs. 17,68,000/- which included the addition of unexplained new cash creditors of Rs. 15,90,000/- and short term capital gain of Rs. 64,918/-. The Assessing Officer also initiated penalty proceedings u/s 271 (1) (c) of the Act and levied the penalty of Rs. 5,47,700/-.

4. Being aggrieved, the matter was taken to the Ld. CIT(A) who dismissed the appeal ex-parte by observing as under:-

"2.1 The form of appeal before the CIT (Appeals) and time limit for filing of appeal are laid down in Section 249 of the Act.

2.2 As per sub section (1) of Section 249, the appeal shall be in the prescribed form, verified in the prescribed manner, and, in case of an

appeal made to the CIT (Appeal), on or after 01.10.1998, shall be accompanied by fee as prescribed in the said sub section. The prescribed form is Form No. 35, which is required to be accompanied by copy of order appealed against and the notice of demand in original.

2.3 In the instant case notice of demand in original was not enclosed with Form 35. Challan for payment of appeal fees of Rs.250/-, payable u/s 249(1), was also not filed with Form 35.

3. In view of the defects in filing of appeal, as noted in the preceding para, the appeal is prima facie non maintainable. However, in the interest of natural justice, the appellant was given an opportunity to remove the above defects by various letters issued during the instant proceedings, details of which are given in the table below-

<i>S.No.</i>	<i>Date of Issue of</i>	<i>Mode of service</i>	<i>Date of submission of</i>	<i>Remarks</i>
<i>1.</i>	<i>20.05.2016</i>	<i>By Reg. post</i>	<i>Within 10 days of receipt</i>	<i>No compliance</i>
<i>2.</i>	<i>11.10.2017</i>	<i>By Speed post No. ER640239308IN dt. 13.10.2017</i>	<i>Within 5 days of receipt</i>	<i>No compliance</i>
<i>3.</i>	<i>20.04.2018</i>	<i>By Speed post No RR547663978IN dt. 20.04.2018</i>	<i>27.04.2018</i>	<i>No compliance</i>

but the appellant failed to remove the defects in the appeal filed by her. In these circumstances, I have no option but to hold the appeal non maintainable.

For statistical purposes, the appeal will be treated as dismissed"

5. Now the legal heir of the deceased assessee is in appeal.

6. During the course of hearing, the Ld. Sr. DR supported the orders of the authorities below and the legal heir of the deceased assessee moved an application for seeking the adjournment, however, no reason has been assigned, therefore, the said application was rejected.

7. In the present case, it is noticed that the Ld. CIT(A) dismissed the appeal in limine. She mentioned that deficiency letter was issued but there was no compliance. However, it is not mentioned to whom the deficiency letter was served when the assessee has already expired. 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.

8. 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