

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

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.11/Jodh/2019
(ASSESSMENT YEAR-2009-10)

Shri Murari Lal, S/o Shri Bihari Lal Sharma, Near Aachar Factory, Polo Ground, Ward No.14, Sikar (Raj.)	Vs	The ITO, Ward -1, Churu
(Appellant)		(Respondent)
PAN: AMCPS5155N		

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

ORDER

This is an appeal by the assessee against the order dated 29.10.2018 of Ld. Commissioner of Income Tax (Appeals)-3, Jaipur

2. The grievance of the assessee vide Ground Nos. 1 to 4 relates to the ex-parte order passed by the Ld. CIT(A) without providing reasonable opportunity of being heard to the assessee.

3. The said grounds read as under:-

1. *That, the Learned Commissioner of Income Tax (Appeals) - III, Jaipur (hereinafter to be referred as Appellate Authority) has grossly erred on the facts and on the law in rejecting the appeal ex-parte without jurisdiction of law and passed the impugned order without considering the facts of the case in a proper manner as the assessee-appellant is living in Sikar (Rajasthan) and posted at Ladnu in Nagaur Distt. (Rajasthan), and there is no any relevancy of Churu (Rajasthan), Hence, the impugned appellate and assessment both orders are against the facts of the case, provisions of the Act, and against the principles of natural justice. Hence, the impugned appellate and assessment both orders are liable to be quashed, therefore, the same may kindly be quashed'*

2. *That, the Learned Appellate Authority has grossly erred on the facts and on the law in rejecting the appeal ex-parte and passed the impugned order without considering the facts of the case in a proper manner Hence, the impugned appellate order is against the facts of the case and principles of natural justice. Hence, the impugned appellate and assessment both orders are liable to be quashed, therefore, the same may kindly be quashed.*

3. *That, the learned appellate authority has grossly erred on the facts and on the law on account of non filing of appeal electronically as per requirement of rule 12 of the Income tax Rules, 1962. However, the requirement to file appeal under rule 12 is for the returns relevant for the Assessment Year 2017-18. Hence, the impugned order is contrary to the provisions of rule 12. Therefore, the impugned appellate and assessment order both are liable to be quashed, the same may kindly quashed.*

4. *That, the learned appellate authority has grossly erred on the facts and on the law in sustaining the it impugned assessment order passed by the Income Tax Officer, Ward-Ist,*

Churu (Assessing authority) without providing reasonable opportunity of being heard and making addition of Rs. 4,00,000/- in the returned income of Rs. 3,00,616/-, hence, the impugned appellate and assessment both orders are illegal, unjustified, arbitrary, and against the principles of natural justice, hence, liable to be quashed, and addition of Rs. 4,00,000/- and the tax thereon and the tax including E. cess imposed of Rs.1,18,642/-, and interest thereon Rs. 1,13,393/- may kindly be deleted.

4. Facts of the case in brief are that the assessee filed the return of income on 5.6.2009 declaring an income of Rs. 3,00,616/-. However, the assessment was framed at an income of Rs. 7,06,016/- by making the addition of Rs. 4 lacs considering the same as on-money of the assessee paid to the seller for purchase of plot.

5. Being aggrieved, the assessee carried the matter to the Ld. CIT(A) who dismissed the appeal ex-parte by observing that the notice was issued for hearing on 13.7.2018, on the said date, staff of the authorized representative attended and the case was adjourned to 26.10.2018 but on the said date, nobody was present and the case was adjourned to 13.9.2018 but nobody appeared on the said date.

6. Now the assessee is in appeal.

7. Nobody was present on behalf of the assessee . I have considered the submissions of the Ld. Sr. DR. In the present case, it is noticed that

the Ld. CIT(A) although mentioned that the notice was issued for hearing on 13.9.2018, however, nothing is on record to substantiate that the said notice 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 ld. 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 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

