

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-B, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 315/JP/2019  
निर्धारण वर्ष/Assessment Year :2015-16

Shri Bhawani Prasad Agarwal, Anand Kunj, Kisan Colony, Jhunjhunu	बनाम Vs.	The Income Tax Officer, Ward-1, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEP2636D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri S. C. Jain (CA)  
राजस्व की ओर से/ Revenue by : Shri A. S. Nehra (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 21/05/2019  
उदघोषणा की तारीख/ Date of Pronouncement: 22/05/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 30.01.2019 wherein the assessee has taken the following grounds of appeal:-

"1. That the learned Assessing Officer had erred at law as well as on facts in dismissing the appeal despite admitting that on the date of hearing i.e. 22.01.2019 an adjournment application was filed. The learned CIT(A) further erred in not adjudicating any of the grounds of appeal also.

2. That the learned Assessing Officer had erred at law as well as on facts in rejecting the objections and resorted to complete the assessment u/s 148 read with section 147 not on his own belief but on the borrowed belief.

3. *That the learned Assessing Officer had erred at law as well as on facts in taking the long term capital gain on sale of shares exempt u/s 10(38) as taxable and thereby further erred in making addition of Rs. 1,30,45,679/- to the income u/s 68 of the IT Act."*

2. At the outset, the Id. AR submitted that the appeal of the assessee has been dismissed by the Id. CIT(A) *ex-parte qua* the assessee. It was submitted that the assessee has moved adjournment applications before the Id. CIT(A) on 02.01.2019 and thereafter on 22.01.2019 stating therein that the Authorized Representative is not keeping good health but suffering from illness and therefore, the case may be adjourned. The Id. CIT(A) had accepted the adjournment application filed on 02.01.2019 and thereafter the matter was adjourned on 22.01.2019. However, in respect of adjournment application filed on 22.01.2019, neither the application was rejected nor any communication was given except that the Authorized Representative's assistant was asked to file the application in his office which was done by him. It was submitted that filing of application seeking adjournment clearly indicates the compliance on the date of hearing on 22.01.2019 before the CIT(A), however, Id. CIT(A) in para 5 of his order has stated that the assessee has filed adjournment application with frivolous reasons. It was submitted that Id. CIT(A) had concluded himself that the reasons given in the adjournment application are frivolous without having any evidence to state how the same are frivolous or the reasons specified therein are wrong. It is submitted that AR was suffering from various diseases and was undergoing treatment with different doctors in different hospitals and in support of it, copies of the medical prescriptions are placed on record and perusal of these documents indicate that right from 28<sup>th</sup> Dec, 2018 till date, the AR's treatment is going on and the condition was severe till 1<sup>st</sup> Feb, 2019. It was submitted that the conclusion drawn by the CIT(A) of giving frivolous reasons is totally incorrect and wrong and is being

based upon his own imagination which as per powers given under the Act to the CIT(A) as to decide the appeal is totally unjustified and incorrect and against the statutory provisions of the law. Further, reliance was placed on the Co-ordinate Bench decision in case of Swati Pawa vs. DCIT (*ITA No. 3098/DEL/2016 vide order dated 05.02.2019*), Ravi Ramnani vs. ITO, Tonk (*ITA No. 220/JP/2018 vide order dated 20.06.2018*) and Om Prakash Saini vs. ITO, Jaipur (*ITA No. 114/JP/2018-19 vide order dated 20.03.2019*). It was accordingly submitted that given that the appeal has not been decided on merits by the Id CIT(A), the same may kindly be restored to file of the CIT(A) for adjudication on merits.

3. The Id. DR is heard who referred to the order of Id. CIT(A) and submitted that as many as 5 opportunities were given to the assessee which have either not been complied with or the assessee has filed adjournment letters with frivolous reasons and therefore, the Id CIT(A) was justified in dismissing the appeal. At the same time, he fairly submitted that since the appeal has not been decided on merits, the Revenue has no objection where the matter is set-aside to the file of the Id CIT(A).

4. We have heard the rival contentions and gone through the material available on record. It is no doubt true that the Id. CIT(A) has granted as many as five opportunities to the assessee, at the same time, the assessee has moved the adjournment applications and the Id. CIT(A) has granted the adjournment except in respect of matter listed on 22.01.2019 wherein the AR has given the reasons for non attendance on account of ill health and going to Delhi for medical treatment as advised by the Doctor. We find that non-appearance on account of medical ground is a reasonable cause for non appearance on part of the authorized representative and therefore, the assessee deserves one more opportunity to represent its case before the Id.

CIT(A). In view of the same and given that the matter has not been decided on merits, we hereby set aside the matter to the file of Id. CIT(A) who shall decide the appeal on merits after giving reasonable opportunity to the assessee.

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

Pronounced in the Open Court on 22/05/2019.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/05/2019

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Bhawani Prasad Agarwal, Jhunjhunu
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1, Jhunjhunu
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 315/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

