

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 180/JP/2019
निर्धारण वर्ष / Assessment Year :2011-12

M/s Shri Ram Borewell & Construction Company, 537-539, 5 th Floor, Mahima's Trinity, Near Jyoti Rao Phule College, New Sanganer Road, Jaipur.	बनाम Vs.	A.C.I.T., Circle- Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABSFS 7272 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Hemang Gargieya (Adv)
राजस्व की ओर से / Revenue by : Shri P.P. Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 30/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 03/06/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-IV, Jaipur dated 04/12/2018 for the A.Y. 2011-12 in the matter of order passed U/s 143(3) read with Section 254 of the Income Tax Act, 1961 (in short, the Act).

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee, a partnership firm, is a civil contractor, engaged in civil construction work. The return of income was filed

declaring total income of Rs. 16,69,040/-. The A.O., however, completed the assessment at total income of Rs. 1,74,70,140/- U/s 143(3) r.w. Section 254 of the Act.

3. Against the order of the A.O., the assessee approached to the Id. CIT(A). In its order at page 3 and 4, the Id CIT(A) observed that on three occasions, the assessee has asked for adjournment and on 03/12/2018, the Id. CIT(A) dismissed the appeal for non-prosecution.

4. It was prayed by the Id AR of the assessee that no sufficient opportunity was given to the assessee. He has invited our attention to the fact that on first time, the case was fixed before the Id. CIT(A) on 31/10/2018, which was decided by him on 03/12/2018. On all the earlier three occasions, the assessee has asked for adjournment on reasonable and valid grounds. Accordingly, it was prayed that the matter should be restored to the Id. CIT(A) for deciding on merit.

5. On the other hand, the Id DR has relied on the orders passed by the lower authorities.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the Id. CIT(A) has passed ex parte order on 03/12/2018 by alleging that on given opportunities, no compliance was made by the assessee.

However, we found that on all three occasions, the assessee has requested for adjournment and the same was granted. The reasons for adjournment appear to be reasonable and justified. It is also clear from the order of the Id. CIT(A) that within two months from the first date fixed for hearing, he decided the appeal by dismissing the same. Even final opportunity was not given by the Id. CIT(A) asking the assessee for passing ex parte order in case of non-compliance. We found that since the assessee was collecting details and preparing the submissions, adjournment were sought by him. It is also not a case of complete non-compliance. We also found that even the Id. CIT(A) has not adjudicated the grounds raised by the assessee on merits. As per provisions of Section 250(6) of the Act, the Id. CIT(A) is required to pass a speaking order in writing giving reasons for reaching to the conclusion. However, the order passed by the Id. CIT(A) are not in terms of Section 250(6) of the Act. Therefore, in the substantial interest of justice, we set aside the ex parte order of the Id. CIT(A) and restore the matter back to the file of the Id. CIT(A) for deciding the issue afresh on merits. The assessee is also directed to appear before the Id. CIT(A) within two months from the date of receipt of this order. In case of any failure on the part of the assessee, the Id. CIT(A) is at liberty to pass order after considering the material placed on record.

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

Order pronounced in the open court on 03rd June, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03rd June, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Shri Ram Borewell & Construction Company, Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle- Sikar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 180/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar