

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES '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. 1288/JP/2019
निर्धारण वर्ष/Assessment Year :2011-12

Shri Annaram Prajapat S/o- Goru Ram Prajapat, Ward No. 14, Bhartiyaon Ki Dhani, Ratangarh, Churu-331022.	बनाम Vs.	The Addl.CIT, Jhunjhunu Range, Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BEMPP 3939 Q		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओर से / Revenue by : Smt. Rooni Pal (DCIT)

सुनवाई की तारीख / Date of Hearing : 23/06/2020
उदघोषणा की तारीख / Date of Pronouncement: 23/06/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-III, Jaipur dated 06.09.2019 for the assessment year 2011-12 wherein assessee has challenged the confirmation of the levy of penalty u/s 271D of the Act.

2. The Id. AR submitted that the appeal has been decided by the Id CIT(A) *ex-parte qua* the assessee without adjudicating the grounds of appeal on merit. It was submitted that the assessee belongs to a rural area and an illiterate person and the appeal has been filed through his Counsel at Ratangarh Churu and due to communication gap with the Counsel, the matter couldn't be attended before the Id CIT(A). It was however submitted that

there was no malafide intention in not attending to the hearings scheduled before the Id CIT(A). It was accordingly submitted that in the interest of justice, the matter may be heard on merits and necessary relief may be granted to the assessee. On merits, it was submitted that the Assessing officer has wrongly understood the transaction between the assessee and his father as that of loan rather the transaction was of gift of money by the father to the assessee and an affidavit of the father has also been placed on record. It was submitted that the assessee was in need of money for purchase of land and accordingly, an amount of Rs 5 lacs has been received as gift from the assessee's father. It was accordingly submitted that on such transaction of gift of money received by the assessee from his father, there is no basis for levy of penalty u/s 269SS of the Act. Further, reliance was placed on Coordinate Bench decisions in case of Haresh Kumar Becharbhai Patel vs JCIT (2019) 55 CCH 224(Ahd) and Gouran Chandra Nayak vs JCIT (2020) 77 ITR (Trib) 192.

3. Per contra, the Id. DR drawn our reference to the order of Id. CIT(A) and submitted that on as many as six occasions, the assessee was provided reasonable opportunity by the Id. CIT(A) but the assessee or his AR has not bothered even to respond to such notices and to appear before the Id. CIT(A). It was accordingly submitted that more than adequate opportunity has been provided by the Id. CIT(A) and no purposes would be served in providing further opportunity to the assessee. On merits, the Id DR submitted that where the assessee was in need of funds, he could have taken the money through cheque from his father, rather, he has received cash from his father which is in the nature of loan as pointed out by the Assessing officer and the provisions of section 269SS are therefore clearly attracted and the penalty has been rightly levied by the AO u/s 271D and confirmed by the Id CIT(A). Further, Id DR relied on the order of the lower authorities.

4. We have heard the rival submissions and pursued the material available on record. We find that the matter has been listed for hearing on couple of occasions by the Id CIT(A) and, thereafter, due to non-attendance by the assessee or his Counsel, the same has been decided *ex-parte* by the Id CIT(A). The assessee has explained the reasons for non-appearance and therefore, in the interest of justice and fair play and especially where the matter has not been decided on merits, we believe that the assessee deserves one more opportunity to put forth his arguments and contentions, and we accordingly set aside the matter to the file of the Id. CIT(A) to examine the matter afresh after providing reasonable opportunity to the assessee. In absence of findings of the Id CIT(A), we are not inclined to adjudicate on the merits of the case, and the assessee is at liberty to raise the aforesaid contentions before the Id CIT(A). The assessee is also directed to appear before the Id. CIT(A) and file the necessary information and documentation in support of his contentions, as so advised and ensure in timely completion of the proceedings.

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

Order pronounced in the open Court on 23/06/2020.

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:- 23/06/2020

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Annaram Prajapat, Churu.
2. प्रत्यर्थी / The Respondent- Addl.CIT, Jhunjhunu Range, 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. 1288/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar