

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. 963/JP/2019
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Surender Jeet Singh Flat No. 302, Prabha Ashish, Residence, Near K.J. Mehta School, Sadguru Nagar, Nashik Road, Maharashtra-422101.	बनाम Vs.	The ITO, Ward-4(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BBAPS 3485 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Written submissions)
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 24/06/2020
उदघोषणा की तारीख / Date of Pronouncement: 24/06/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-II, Jaipur dated 22.03.2019 for the assessment year 2010-11.

2. None has appeared on behalf of the assessee however, the assessee has filed a petition stating that he is a Senior citizen of 72 years of age and has since shifted from Jaipur to Nashik and is not in a position to appoint any authorized representative to represent his case before the Tribunal and his written submissions may be considered for adjudicating the matter on merits.

3. At the outset, it is noted that the appeal has been filed with delay of 46 days. The assessee has filed a petition stating the reasons for the cause of delay in filing the appeal hence, considering the same, the delay is hereby condoned and the appeal is admitted for adjudication.

4. In his written submissions, the assessee has submitted that he was under the bonafide belief that his income was below the taxable limit hence, he did not file any return of income for the year under consideration. Further due to shifting of his residence from Jaipur to Nashik, he could not comply with various notices issued by the Assessing Officer however, he had requested for transfer of his file to Nashik which has still not happened. It was further submitted that though the Id. CIT(A) has issued certain notices as stated in the appellate order, given that he has shifted from Jaipur to Nashik, he didn't receive any such notices. Further, he was not in a position to incur any expenditure and appoint any authorized representative to appear before the Id. CIT(A). At the same time, it was submitted that there was no malafide intention in not attending to the hearings scheduled before the Id CIT(A). It was further submitted that he has submitted written submissions before the Id. CIT(A), sent through post, which have not been considered and the appeal of the assessee has been decided *ex-parte* by the Id CIT(A) without adjudicating on merits. It was submitted that even the *ex-parte* order should be passed judiciously considering all the material available on record.

5. It was further submitted by the assessee that he has sold a truck for Rs. 7,35,000/- out of which he had received an amount of Rs. 1,35,000/- on 10.07.2008 and thereafter he had received an amount of Rs. 5,42,315/- (after payoff of his loan amount) on 04.10.2008/- through electronic transfer in his bank account and out of the said funds, he has opened a fixed deposit of Rs. 4,00,000/- with Bank of Baroda. It was accordingly submitted that the

source of the fixed deposit is the amount received from sale of his truck. It was further submitted that being a Senior citizen, he was under bonafide impression that that his income was below taxable limit hence, he did not file any return of income. Further, in support of his claim that he has sold the truck and sale consideration has been deposited in his bank account, he has submitted a copy of the sale receipt of the truck, letter of transfer to the Regional Transport Office, Jaipur, Form No. 28, no objection letter and registration certificate in Form no. 23, insurance cover note of the Orient Insurance Company Ltd. and copy of pass book of Bank of Baroda showing receipt of sale proceeds of truck amounting to Rs. 5,42,315/- and subsequent transfer of Rs. 4,00,000/- towards opening the FDR. It was accordingly submitted that source of the fixed deposit is duly explained and the addition made by the Assessing may be deleted.

6. Per contra, the Id. DR drawn our reference to the order of Id. CIT(A) and submitted that on as many as five occasions, the assessee was provided an opportunity by the Id. CIT(A) but the assessee has not bothered even to respond to such notices and to appear before the Id. CIT(A). Further, there is nothing on record that written submissions were received by the office of Id CIT(A) and hence, the contention of the assessee cannot be accepted. 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 there is no compliance during the course of assessment proceedings and the order has been passed u/s 144 of the Act and similar situation prevailed during the appellate proceedings. Further, the assessee has filed the documents in support of his claim for the first time before the Tribunal and given that these documents were not available before the lower authorities, there is no finding which could have been recorded on verification of such documents and where

the Bench so decide, the matter may be remanded back to carry out the necessary verification. Further, Id DR relied on the order of the lower authorities.

7. 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. Normally, we would have set aside the matter to the file of the Id. CIT(A), however, in the peculiar facts of the present case where the assessee being a senior citizen, who is currently based out of Nashik, his incapacity to appoint any Counsel in Jaipur and given the current situation prevailing in the Country due to Covid Pandemic, its unlikely that he will be able to attend to the proceedings before the lower authorities in the near future, we decide to examine the matter on merits based on his written submissions and taking into account the contentions advanced by the Id DR and other material on record.

8. The limited issue under consideration relates to source of fixed deposit placed by the assessee with the Bank of Baroda and whether the assessee has provided reasonable explanation explaining the source of such deposits or not. On perusal of the statement of assessee's bank account maintained with Bank of Baroda, we find that a fixed deposit has been placed on 4.10.2008 for Rs 4,00,000/- (and not Rs 442,993/-as stated in the assessment order) and prior to that, on the same date, there is credit of Rs 542,315/-. The assessee explained that Rs 542,315/- is received out of the

sale proceeds of the Truck which was sold by him during the year and the source of such fixed deposit is therefore amount received by him towards sale proceeds of the Truck. The assessee has submitted the registration certificate of the Truck in his name, the transfer agreement with the buyer and other filings with the Transport authority for obtaining NOC, etc. We therefore find that the assessee has reasonably explained the source of funds of fixed deposit which was opened on the same date as the date of credit of part of the sale proceeds of the Truck and the said deposit doesn't remain unexplained and cannot be brought to tax in the hands of the assessee. The addition of Rs 4,00,000/- (wrongly stated as Rs 4,42,993/- in the assessment order) is hereby directed to be deleted. The remaining addition made by the Assessing officer is on account of interest of Rs 25,747/- in respect of which there is no dispute raised by the assessee and thus, no interference is called for in the findings of the Assessing officer in this regard.

In the result, appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 24/06/2020.

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:- 24/06/2020

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Surender Jeet Singh, Nashik.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 4(3), Jaipur.
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. 963/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar