

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1516/JP/2018

Assessment Year: 2013-14

Shri Sunder Lal Advani, Prop. of M/s Mahalaxmi Enterprises, B-157, Indra Vihar, Near Global School, Kota.	बनाम Vs.	I.T.O., Ward 1(1), Kota.
PAN No.: AEZPA 8220 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurabh Harsh (Adv)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 05/10/2020
उदघोषणा की तारीख / Date of Pronouncement : 05/10/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the assessee against the order of the Id. CIT(A), Kota dated 05/10/2018 for the A.Y. 2013-14.

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The Id. AR of the assessee has reiterated the same arguments as were raised before the Id. CITA(A) and he has further submitted that the Id. CIT(A) has dismissed the appeal of the assessee summarily while

passing the ex parte order without giving appropriate opportunity of hearing to the assessee. Thus, the Id. AR has pleaded that the matter may be set aside to the record of the Id. CIT(A) for deciding the appeal of the assessee afresh after giving an opportunity of hearing.

4. On the other hand, the Id. DR has submitted that the Id. CIT(A) has given reasonable opportunity of hearing to the assessee but the assessee is not serious about the prosecution of the appeal, therefore, in those circumstances, the Id. CIT(A) was left with no option but to decide the appeal ex parte. She has relied upon the order of the Id. CIT(A).

5. Having considered the rival submissions as well as careful perusal of the impugned order, we note that that the Id. CIT(A) has passed the impugned order ex parte and dismissed the appeal of the assessee summarily as under:

"I have gone through assessee's submission and AO's findings.

In the present case, the appeal was filed 2¹/₂ years earlier & subsequently, three adjournments over the last two months have been asked on one pretext or other. Under the circumstances, it is concluded that the appellant is not serious about the prosecution of the appeal. The same is therefore being decided on the available facts on record.

Ground no. 1 is general in nature, hence not being adjudicated.

As regards Ground no. 2, the basis of calculating the ALV of the property by the A.O. appears cogent & has not been controverted in the

appellate proceedings. The factual aspect of rent being for 10 86 not 12 months as claimed is not evidenced by any documents etc. In the light of the above, I see no reason to disagree with the stand taken by the A.O. The addition of Rs. 83,300/- is therefore being upheld.

This ground of appeal is dismissed.

As regards Ground No. 3, since the evidence of accounting of the receipt of interest by the recipient or any deduction of tax at source is not found available before the A.O. or in the course of the appellate proceedings, the stand taken by the A.O. cannot be faulted. The disallowance of Rs. 43,385/- made u/s 40a (ia) is upheld.

This Ground of appeal is dismissed.

As regards Ground of appeal no. 4, the A.O. has dealt with the issue based on the financial statements presented by the assessee himself. According to section 50 of Income tax Act, if an assessee has sold a capital asset forming part of block of assets (building, machinery etc) on which the depreciation has been allowed, the income arising from such capital asset is treated as short term capital gain. Once the block of assets did not exist at the beginning of the year, the WDV the asset has to be treated as zero. The capital gains thus calculated by the A.O. are found to be correct & no additional facts have been brought out in the appeal to controvert the findings or to supplement the Grounds of appeal by the appellant.

The addition relating to Capital Gains of Rs. 15 lakhs is accordingly upheld.

This ground of appeal is dismissed.

Ground No. 5

This ground pertains to charging of interest which is consequential in nature and requires no adjudication.

In the result, the appeal of the assessee is dismissed.”

It is clear from the impugned order that the Id. CIT(A) has not decided the appeal of the assessee on merits by discussing the relevant facts but

the appeal of the assessee was dismissed on the ground of absence of any submission by the assessee. He relied upon the facts mentioned in the assessment order. Accordingly, in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the Id. CIT(A) and remand the matter back to the record of the Id. CIT(A) for deciding the appeal afresh on merits after giving an opportunity of hearing to the assessee. The assessee is also directed to cooperate with the Id. CIT(A) in deciding the appeal on merits and without any sufficient reason, not to take further adjournments. If the assessee takes adjournment without any sufficient and plausible reason, then the Id. CIT(A) is at liberty to pass order in accordance with material available on record.

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

Order pronounced in the open court on 05th October, 2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 05/10/2020
*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Sunder Lal Advani, Kota.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 1(1), Kota.
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. 1516/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar