

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. 76 & 77/JP/2019
Assessment Year: 2011-12

M/s New Indian Public School Samiti, Nawalgarh, Jhunjhunu.	बनाम Vs.	Addl.CIT (Exemptions), Jaipur.
PAN No.: AABTN 1432 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by :Smt. Monisha Choudhary(Addl.CIT)

सुनवाई की तारीख / Date of Hearing: 12/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 21/10/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

Both these appeals have been filed by the assessee against the separate orders of the Id. CIT(A)-3, Jaipur both dated 27/12/2018 for the A.Y. 2011-12.

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

3. Common issues are involved in both these appeals, therefore, for the sake of convenience and brevity, a consolidated order is being passed.

4. For deciding the appeals, we take ITA No. 76/JP/2019 for the A.Y. 2011-12 as a lead case. In this appeal, following grounds have been taken by the assessee:

- “1. *Under The facts and circumstance the Hon’ble CIT(A) has not given the reasonable opportunity of being heard and decided the case ex party. The AR of the assessee could not appear on the hearing date because of ill health and had appeared on the previous given date of hearings and the CIT(A) were not present on given date.*
2. *Under the facts and circumstances, the Hon’ble CIT(A) has e-filed the appeal in due time after it came to the knowledge of the AR of the assessee but the Hon’ble CIT(A) did not checked the online record before passing the order.*
3. *Under The facts and circumstance, the imposition of penalty for a sum of Rs. 340000 u/s 271D of the Act is bad in law and must be deleted.*
4. *That on facts and law, the initiation of proceeding U/s 271D are time barred, invalid and void ab initio.*
5. *The assessee may crave to amend, alter, modify or raise any other ground of appeal.”*

5. At the time of hearing, none has appeared on behalf of the assessee. From the record, we observe that the Id. CIT(A) had decided the case of the assessee ex parte and the matter may be restored back to the file of the Id. CIT(A). The Id. DR has raised objection for remanding the matter and submitted that the assessee has not appeared before the Id. CIT(A) after giving several opportunities for appearance. It was submitted that the assessee is not interested in pursuing his case, therefore, no opportunity should be given to the assessee and the appeal of the assessee may be dismissed with cost.

6. Having heard the contention of the Id DR and perused the material available on record. It is undisputed fact that the appeal of the assessee was dismissed by the Id. CIT(A) ex parte. The Id. CIT(A) has stated in his order that initially the case was fixed for hearing on 09/08/2018, 18/09/2018, 14/11/2018 and the Id. CIT(A) issued notice fixing the case for hearing on 26/12/2018 by issuing a letter and stated that "On verification of record, it is found that you have not filed e-appeal. The I.T. Rule 45(1) amended from 01/03/2016 but you have not filed the e-appeal. Therefore, you are requested to file an e-appeal, otherwise your appeal filed manual will be treated as unrest." On the above dates neither the assessee appeared nor any adjournment application on behalf of assessee was filed. Even before the Tribunal, none has appeared on behalf of the assessee. It was the bounded duty of the parties i.e. assessee as well as the Department to appear before the Revenue authorities at all stages. Since, this was the assessee's appeal, therefore it was all the more important for the assessee to appear before A.O. as well as before the Id. CIT(A). However, the assessee had not acted with due diligence. Nevertheless, the principles of natural justice demand that the lis between the parties should be decided on merits after providing due opportunity of hearing to both the parties. Accordingly, in the facts and circumstances of the case and in the interest of justice, we decide to give one more opportunity of hearing to the assessee and remand the matter

back to the record of the Id. CIT(A) for deciding the issue afresh on merits after giving an opportunity of hearing to the assessee subject to cost of **Rs. 2,000/-** to be paid by the assessee in the account of **Prime Minister's National Relief Fund/Prime Minister's Care Fund** within 30 days from the date of receipt of this order. 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.

7. Now we take ITA No. 77/JP/2019 for the A.Y. 2011-12.

In this appeal also, the assessee has not appeared either before the Id. CIT(A) and before the ITAT, therefore, our findings given in ITA No. 76/JP/2019 shall apply mutatis mutandis in this appeal also.

8. In the result, both these appeals of the assessee are allowed for statistical purposes only.

Order pronounced in the open court on 21st October, 2021.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 21/10/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s New Indian Public School Samiti, Jhunjhunu.

2. प्रत्यर्थी / The Respondent- The Addl.CIT (Exemptions), Jaipur.
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. 76 & 77/JP/2019)
आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar