

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 196/JP/2022
Assessment Year : 2011-12.

Shri Rodu Ram Jat, Deshwalo Ki Dhani, Devliya, Bhankrota S.O., Jaipur.	बनाम Vs.	Asstt. Commissioner of Income Tax, Holding Charge of ITO Ward 7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. BVIPJ 4397 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anoop Bhatia (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 21.06.2022.
घोषणा की तारीख / Date of Pronouncement : 28/06/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), National Faceless Appeal Centre, Delhi (NFAC) dated 30.04.2022 confirming the ex parte assessment under section 144 read with section 147 of the I.T. Act, 1961 made by the AO thereby assessing the income of the assessee at Rs. 66,00,000/- on account of his share in the land sold by the assessee along with other persons. The grounds raised by the assessee are as under :-

1. On facts and in the circumstances of the case, Id. CIT (A) has erred in deciding the appeal ex parte. Appellant prays that the appellant being not savy with the faceless proceedings and communications sent through e-mails and sms, a fair chance may kindly be allowed to consider the case on merits.
2. On facts and in the circumstances of the case, Id. CIT (A) has grossly erred in conforming the total income at Rs. 66,00,000/- assessed by treating the sale consideration received on sale of agricultural land as the income of the assessee. Appellant prays that the said land being outside the purview of definition of 'capital asset' as defined u/s 2(14) of the Act, the income so confirmed being bad in law deserves to be deleted.

Without prejudice to above :-

3. On facts and in circumstances of the case and in law Id. CIT (A) has grossly erred in not allowing the Cost of Acquisition of the land sold and treating the entire sale consideration of Rs. 66,00,000/- as undisclosed long term capital gain. Appellant prays that cost of acquisition of the land deserves to be allowed.
4. On facts and in the circumstances of the case the Id. CIT (A) has further grossly erred in not allowing the exemption u/s 54B which is duly allowable to assessee as he has reinvested the sale consideration in purchase of agricultural lands as is required for the purpose under the provision of the Act. Appellant prays that such exemption being duly allowable, the addition made deserves to be deleted.
5. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

2. Briefly the facts of the case are that the assessee is an Individual. As per the information available with the Assessing Officer, that the assessee along with other persons have sold land bearing Khasra Nos. 698, 699, 700,

704, 705, 706, 707, 708, 709, 710, 712, 716, 717 & 718 situated at village Harchandpurawas, Devliya, Patwar Halka Bhambhoria, Tehsil Sanganer, Jaipur at Rs. 3,73,50,000/- through Sale Deed which was executed by the Sub Registrar-II, Jaipur on 17.02.2011 and received his share amounting to Rs. 66,00,000/-. The Tehsildar, Sanganer has certified that the land bearing above Khasra Numbers situated at village Harchandpurawas, Devliya, Patwar Halka Bhambhoria, Tehsil Sanganer, Jaipur is situated 1.4 KM from Bagru Municipality vide his office letter No. S.No./LR/16/5731 dated 04.10.2016. The AO treated the above immovable property as a capital asset within the meaning of section 2(14) of the Income Tax Act, 1961. On going through the office record, the AO found that the assessee has not filed his return of income for the assessment year 2011-12 under section 139(1) of the IT Act. Therefore, the AO issued notice under section 148 of the IT Act on 21.03.2018 after recording reasons for escapement of income in writing after approval/sanction of the competent authority, which was duly served on the assessee. Since the assessee has failed to file his return of income, sufficient opportunities were afforded to the assessee by way of issuing notices under section 142(1) to attend the hearing before the AO on the dates fixed. Since the assessee did not comply with the notices, the AO completed the assessment ex parte under section 144 of the IT Act, at an income of Rs. 66,00,000/-. On appeal by the assessee, the Id. CIT (A) after affording reasonable opportunities to submit the written submissions/documents, which

the assessee did not avail, passed the order under section 250 of the IT Act, thereby confirming the order of the Assessing Officer. Against the said order, now the assessee is in appeal before the Tribunal.

3. We have heard the rival submissions and perused the material available on record. At the very outset, the Id. A/R appearing for the assessee has drawn our attention to ground no. 1 of the appeal wherein it was specifically pleaded by the assessee that the case of the assessee was decided ex parte under section 144 of the IT Act by the AO and thereafter the assessee challenged the order of assessment before the Id. CIT (A). However, the Id. CIT (A) also decided the case ex parte and thus now the assessee has challenged the order of the Id. CIT (A) before us. From the record, we noticed that the Id. CIT (A) while deciding the appeal of the assessee has categorically in para 4 of his findings has recorded that notice in the case of assessee was issued on 21.01.2021 for furnishing written submissions/documents on or before 10.03.2021, wherein it was specifically stated that in case no submission or information/documents were received within the stipulated time period, in that event it would be presumed that the appellant has nothing to say in the matter and the department may proceed ahead based on the material available on record. Since there was no compliance on the part of the assessee, therefore, another notice was again issued on 09.12.2021 to the assessee to furnish the written submission etc.

on or before 17.12.2021 wherein also it was specifically stated that if the notice is not complied within the stipulated time, in that eventuality it would be presumed that the assessee has nothing to say in the matter and the appeal would be decided on merits on the basis of material available on record. This time again the said notice was not complied with by the assessee. Therefore, another notice was issued on 20.12.2021 to the assessee to furnish written submission/documents etc. on or before 27.12.2021. Thereafter, again another notice was issued on 14.03.2022 for compliance on 21.03.2022 but still the assessee failed to comply with the repeated notices. Therefore, the Id. CIT (A) decided the appeal filed by the assessee on the basis of Form 35 and copy of assessment order and dismissed the appeal as there was no material on record to warrant interference in the order of the Assessing Officer.

3.1. On further verifying the records, we also noticed that during the assessment proceedings, show cause notice along with the notice under section 142(1) was issued by the AO on 26.09.2018 fixing the case for hearing on 03.10.2018. However, on the said date also neither anybody attended nor any application for adjournment was filed on behalf of the assessee. Therefore, again another notice was issued under section 142(1) along with show cause notice to the assessee on 22.10.2018 and served the same upon the assessee through Speed Post or through personally. In the

said notice it was specifically mentioned that in case of non compliance, order under section 144 shall be passed. Thereafter, the case was fixed for hearing on 29.10.2018 and even on the said date of hearing none appeared on behalf of the assessee. Therefore, the order of assessment was passed under section 144/147 of the IT Act on 30.11.2018 thereby making the addition.

3.2. From the entire sequence of events and the conduct of the assessee in non compliance of the repeated notices, it appears gross negligence on the part of the assessee and wastage of precious time. In our considered view, non compliance of notice issued by the Authorities and non appearance before the Authorities inspite of repeated notices/summons is dis-regard towards the Authorities. Be that as it may, without going into merits, considering the interest of natural justice, one more opportunity is granted to the assessee, and the file is restored back to the AO for consideration afresh, subject to cost of Rs. 5,000/- for negligent attitude during income tax proceedings, to be deposited in the Prime Minister's Care Fund and proof thereof should be produced.

4. Since we have restored the matter to the file of the A.O. for adjudicating the matter afresh after providing reasonable opportunity to the assessee, the other grounds raised have become infructuous and need no adjudication.

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

Order pronounced in the open Court on 28/06/2022.

Sd/-
(राठौड़ कमलेश जयंतभाई,)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2022.

das/

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

1. अपीलार्थी / The Appellant- Shri Rodu Ram Jat, Jaipur.
2. प्रत्यर्थी / The Respondent-The ACIT, Jaipur holding the charge of ITO Ward 7(2), 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. 196/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar