

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 1200/JP/2018
निर्धारण वर्ष / Assessment Years : 2010-11

Mr. Daljeet Singh Bedi 49-B, New Colony, Gumanpura, Kota.	बनाम Vs.	ITO, Ward-1(1), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPB 7905 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri A.S. Nehara (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 25/08/2022
उदघोषणा की तारीख / Date of Pronouncement : 26/09/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals), Kota [hereinafter referred to as 'CIT(A)'] dated 08.02.2018 for the Assessment year 2010-11.

2. At the outset of hearing, the Bench observed that there is delay of 183 days in filing the appeal by the assessee for which the ld. AR of the assessee filed an application dated 31.01.2019 for condonation of delay with following prayers.

“We submitted memorandum of appeal u/s 253(1) of the Income — tax Act. 1961 against the order of the CIT(A) Kota relating to the assessment year 2010-11 u/s 250 of the Act. The appeal should have been filed in the office of the Tribunal on or before 08/04/2018 counting the period of sixty days from the date of communication of the order but it could not be so failed.

Further in this case CA Vinod Toshiwal and Ashok kumar gupta advocate took the appellate order from the office of CIT (A) kota on 16/02/2018 on behalf of appellant and the said appellate order was placed in some other file of his client and when appellant asked him about filling of appeal before ITAT then he trace out the said appellate order and delivered to assessee.

The assessee after receiving appellate order from CA Vinod Toshiwal. The assessee approached the undersigned (S.L. Jain) to prepare and file appeal before Hon'ble ITAT, Jaipur Bench Jaipur and accordingly the said appeal was submitted in the office ITAT on 16/10/2018.”

To this effect, the Id. Counsel Shri Ashok Kumar Gupta has filed an affidavit praying therein that the said appellate order was placed in some other file of my client and when the assessee called me about filing the appeal before the ITAT then I traced out the said appellate order and delivered to the assessee.

3. During the course of hearing, the Id. DR has no objection to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the case.

4. We have heard the DR and perused the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 183 days has merit and we concur with the submission of the assessee. Thus the delay of 183 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. MSt. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. Now we take up the appeal of the assessee for adjudication wherein the assessee has raised the following grounds of appeal.

"1. That on the facts and in the circumstances of the case Ld. CIT(A) Kota has grossly erred in law and facts in confirming addition of Rs. 30,50,000/- as income from undisclosed sources u/s 69A of the income tax Act 1961. The assessee has received the mines sales advances Rs.30,50,000/-.

2. (a) That on the facts and in the circumstances of the case Ld. CIT(A) Kota has grossly erred in law and facts in confirming long term capital gain Rs. 1,02,91,401/- on account of sale of residence plot no. A-479, Indra Vihar, Kota to Shri Dilip Kumar Lalwani, Shri Manoj Kumar Lalwani, Vijay Kumar and Vipin Railan of Rs.30,00,000/- (Rs.Thirty Lakhs) on dated 01/09/2009.

(b) That on the facts and in the circumstances of the case Ld. CIT(A) Kota has grossly erred in law and facts in treating Plot No. A-479, Indra Vihar, Kota as commercial and revised DLC value as adopted by sub-register has been upheld.

3. *That on the facts and in the circumstances of the case Ld. CIT(A) Kota has grossly erred in law and facts in not allowing the capital loss of plot against the "capital income of sale of plot".*

4. *That on the facts and in the circumstances of the case Ld. CIT(A) Kota has grossly erred in law and facts in charging interest u/s, 234B).*

5. *The appellant has reserved a right to add, amend or alter any grounds of appeal on or before the appeal hearing."*

6. None appeared on behalf of the assessee when this appeal was called out for hearing despite notices of hearing were sent through RPA. Accordingly, we propose to dispose off the appeal ex-parte based on the material available on record.

7. Apropos Ground No.1, the facts as emerges from the order of the ld. CIT(A) are as under:-

'As regards Grounds of appeal no 1 & 3, the filing of a revised balance sheet 1 & P&L account was neither permissible, nor justifiable in the appellant's case. If he had done any changes to his return u/s 139(5) then it would be permissible. No assessee can keep changing his financials in view of the queries raised in assessment proceedings/scrutiny proceedings. The initial return was filed on 31.07.2010 and the revised balance sheet/ P&L account was filed in March 2013 after the scrutiny proceedings were initiated in 2011 and notices u/s 143(2) & 142(1) dated 22.11.12 issued again on change of incumbent A.O. Thus, the claim made by the assessee in respect of his disclosures as per the revised documents could not be entertained under law & has rightly been rejected by the A.O.

On a perusal of the details related to the amount of cash deposits in the bank account, the assessee tried to change his stance during the assessment proceedings to establish the cash being sourced from advance against mine sale which was never materialized. To match it he had created bogus creditors of loans initially in the Balance Sheet but on detection he tried to submit a revised balance sheet under all sorts of pretexts like illiteracy, mental disturbance etc. This claim of mine sale advance was also never established by producing the potential buyer or any other documentary evidences in support. Hence, the arguments of the assessee are neither proved, nor carry on evidentiary weight. The additional Ground taken in appeal (which is actually also included in original grounds) related to the mine sale advance claimed being Rs.30,50,000/- and the balance amount deposited in bank accounts as discussed in the assessment order also, being from Cash in hand, can however be considered as acceptable in fairness that the appellant had both business income as well as possibility of rotation of earlier funds in this regard which could be used for the said difference amount of deposit.

The addition of Rs. 35, 20,000/- made by the A.O. u/s 69A is therefore, restricted to Rs. 30, 50,000/-. The balance amount of Rs. 4, 70,000/- is to be deleted.’’

8 During the course of hearing, the ld. DR supported the order of the ld. CIT(A)

9 After hearing the ld. DR and perusing the materials available on record, the Bench noted that the assessee has not advanced any arguments/submission controverting the order of the ld. CIT(A). In this situation, the Bench has no other alternative except to confirm the action of the ld. CIT(A). Thus Ground No.1 of the assessee is dismissed.

10 Apropos Ground No. 2 (a) & b), the facts as emerges from the order of the Id. CIT(A) are as under:-

‘‘As regards Ground of appeal no. 4 related to long term capital gains from sale of plot at A-479, Indira Vihar, the issue of revised valuation done by the SVA and used by the A.O. to calculate the capital gains on the same, is under consideration by the Tax Board Ajmer on appeal filed by the assessee against the increase made by SVA & upheld by DIG (Stamps), Kota.

It is seen that the appellant has filed a copy of order dated 26.09.2017 in another case where the tax Board has not held the plot to be covered under the 'commercial' property and held that Registrar had no powers to change the residential value to commercial. However, the cited case is of Rajeev Gandhi Nagar and is not directly linkable to the appellant's case.

Under the circumstances where neither there was any revisionary order in the assessee's favour, nor did he show the capital gains in his return of income or the sale of other plots against which he could claim capital loss, the matter decided by the SVA in the second valuation remains finally adjudicated. However, the appellant is free to approach the A.O. u/s 155(15) if he has the decision of the tax Board in favour. Till then, the computation of the capital gain done by the A.O. does not require any interference and is upheld.

This ground of appeal is dismissed.’’

11. During the course of hearing, the Id. DR supported the order of the Id. CIT(A)

12. After hearing the Id. DR and perusing the materials available on record, the Bench noted that the assessee has not advanced any

arguments/submission controverting the order of the Id. CIT(A). In this situation, the Bench has no other alternative except to the confirm the action of the Id. CIT(A). Thus Ground No. 2 (a & b) of the assessee is dismissed.

13. Apropos Ground No. 3, the facts as emerges from the order of the Id. CIT(A) are as under:-

“As regards Ground of appeal no. 6, in the absence of any cogent materials regarding the loss incurred on account of plots as claimed, the A.O has rightly not allowed any set off against the capital gains (Ground 4) related sale receipts. This ground of appeal is therefore not upheld and is dismissed.”

14. During the course of hearing, the Id. DR supported the order of the Id. CIT(A)

15 After hearing the Id. DR and perusing the materials available on record, the Bench noted that the assessee has not advanced any arguments/submission controverting the order of the Id. CIT(A). In this situation, the Bench has no other alternative except to the confirm the action of the Id. CIT(A). Thus Ground No. 3 of the assessee is dismissed.

16 Ground No. 4 of the assessee is regarding charging of interest u/s 234B of the Act which is not required to adjudicate upon as it is consequential in nature.

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

Order pronounced in the open Court on 26/09/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26/09/2022.

***Santosh**

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

1. अपीलार्थी / The Appellant- Mr. Daljeet Singh Bedi, Kota.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Kota.
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. 1200/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar