

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 366/JP/2022
निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Bhagwanti Devi Agarwal C/o Baba Enterprises 215, Mukunah Colony, Near City Centre Gali Sansar Chandra Road, Jaipur	बनाम Vs.	The ITO Ward 1(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARPA 5202 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 14/11/2022
उदघोषणा की तारीख / Date of Pronouncement: 15/11/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] dated 10-08-2022 for the assessment year 2009-10 raising therein following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law the Id. CIT(A) has grossly erred in passing order ex-parte i.e. without affording adequate opportunity of being heard. Appellant prays that

the order so passed is against the principle of natural justice and deserves to be quashed.

2. On the facts and in the circumstances of the case and in law the ld. CIT(A) has grossly erred in confirming the action of the AO in completing the re-assessment proceedings without service of notice u/s 148 of the Act, thus the entire re-assessment proceedings deserves to be held void-ab-initio and the addition made deserves to be deleted.

Without prejudice to ground of appeal No. 1 and 2 and in the alternative:

3. On the facts and in the circumstances of the case and in law the ld CIT(A) erred in confirming the action of AO in completing the assessment without giving assessee opportunity of being heard as the notice u/s 142(1) was issued to some different address and thus could not be complied with. Appellant prays that the addition may please be deleted.

4. On the facts and in the circumstances of the case and in law the ld. CIT(A) has grossly erred in confirming the addition of entire amount of Rs.5,95,580 (being value u/s 50C) on account of sale of plot without allowing any cost of acquisition against the same. Appellant prays that computation of capital gain as done by AO is not in accordance with law and thus addition made deserves to be deleted.

4.1. That the ld.CIT(A) has further erred in confirming the action of the AO in holding the transaction of sale pertaining to the year under appeal by ignoring the fact that the same was executed in earlier year when the subject property was sold through agreement to sale and power of attorney was executed which is evident from the registered sale deed, thus the entire addition made deserves to be deleted.”

2.1 Brief facts of the case are that the assessee is an individual. The assessee has not filed return of income for the year under consideration. The AO initiated proceedings u/s 147 and completed as ex-parte assessment u/s 144 r.w.s. 147 of the

Act on 8-09-2016 by making an addition of Rs.5,95,576/- on account of short term capital gains.

2.2 In first appeal, the ld. CIT(A) has confirmed the addition by observing as under:-

“7.1 In the absence of written submission in support of appellant’s claim during the appellate proceedings, I dispose this appeal based on the material available on record. I have gone through the assessment order, statement of facts and grounds of appeal, it is observed that the appellant had sold an immovable property in the year under consideration and not file her return of income. In this regard, the ld. AO has reopened the case and called for clarification on income received on sale of immovable property. Though after adequate opportunities provided by the AO, the appellant has not responded and accordingly the AO concluded the assessment ex-parte. During the appellate proceedings also, neither the appellant nor the AR of the assessee filed any written submission in support of appellant’s claim. Accordingly, I don’t find any fault with the AO’s action in treating the income earned on sale of immovable property as short term capital gain to the extent of Rs.5,95,576/- and accordingly, the order of the AO is confirmed.

8. In the result, the appeal filed by the appellant alongwith grounds of appeal is dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee submitted that the AO completed the assessment without giving assessee an opportunity of being heard as the notice u/s 142(1) was issued on some different address and thus could not be complied with. Hence, the addition made by the AO deserves to be deleted.

2.4 On the other hand, the ld. DR supported the order of the lower authorities and also submitted that in spite of sufficient opportunities the assessee had not intentionally cooperated or appeared before the revenue authorities to settle the issue. Hence, the order of the ld. CIT(A) deserves to be upheld.

2.5 After hearing both the parties and perusing the materials available on record, it is noted from the ld. CIT(A)'s order at para 6.1 wherein the assessee submitted his contentions before him as under.

“6.1 During the year under consideration, assessee had filed return of income declaring income at Rs.1,35,166/- u/s 139(1). Subsequently, vide notice u/s 148 dated 18-03-2016, case was reopened. However, the notice was never served upon the assessee, thus the same could not be complied with. In fact, only notice u/s 142(1) was served upon some different address. Accordingly, assessment was completed ex-parte u/s 144 by making addition of Rs.5,95,576/- under ‘Capital Gain’ and thus assessing total income at Rs.5,95,576/-. Aggrieved of the order of ld. AO, assessee has preferred this appeal.”

From the entire conspectus of the case, the Bench finds that the notice issued by the AO u/s 142(1) of the Act was on some different address and thus the assessee could not comply with the notice of the AO and deprived off an opportunity of being heard by the AO. In this situation, the Bench feels that it will be in the interest of equity and justice to restore the issue to the file of the AO to decide it afresh but by providing adequate opportunity of being heard to the assessee and assessee is directed to submit the documents/papers concerning the issue in

question to contest the case before the AO. Hence, the appeal of the assessee is allowed for statistical purposes.

3.0 In the result, the appeal filed by the assessee is allowed for statistical purposes..

Order pronounced in the open court on 15/11/2022.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/11/2022

*Mishra

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

1. The Appellant- Smt. Bhagwanti Devi Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(4), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 366/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar