

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीता लक्ष्मी, न्यायिक सदस्य एव श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 325/JP/2022
निर्धारणवर्ष/AssessmentYear : 2017-18

M/s Jeenkripa Township Private Limited, Plot No. 5 Vinoba Bhave Nagar, Tursery Circle, Vaishali Nagar, Jaipur.	बनाम VS.	ITO, Ward-1(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADCJ 4916 E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Anoop Bhatiya (C.A.)&
Shri Prean Agarwal (C.A.)
राजस्व की ओरसे/ Revenue by: Shri A.S. Nehara (Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 03/11/2022
उदघोषणा की तारीख/Date of Pronouncement: 30/11/2022

आदेश/ORDER

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

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred as NFAC], CIT(A) for the assessment year 2017-18 dated 29.07.2022 , which in turn arises from the order passed by the Income Tax Officer, Ward-1(1), Jaipur passed under Section 144 of the Income Tax Act, 1961 (in short 'the Act') dated 07.012.2019.

2. The assessee has marched this appeal on the following grounds of appeal:-

“ 1. On facts and in the circumstances of the case Ld CIT(A) has grossly erred in deciding the appeal ex-parte without affording adequate opportunity to the assessee. Assessee prays that the order passed after serving of merely two notices which unfortunately went unnoticed by the Directors of the Assessee company and could not be communicated to the AR by the Directors of assessee company being in violation of principles of natural justice deserves to be quashed.

2. On facts and in the circumstance Ld. CIT(A) has grossly erred in not condoning the delay in filing of appeal u/s 246A, on the grounds that the assessee being a company is assisted by a group of professionals, who could have provided timely advice and followed up the timely filing of appeal. Assessee prays that since no substantial work was done in the company, and the assessee being a private limited company, the affairs were completely looked after the Director and the then authorized representative (AR). Thus the reason quoted for delay in filing of appeal being, attributable to the then AR was a reasonable cause, and the non-condonation of delay by Ld. CIT(A) being unreasonable and in violation of principles of natural justice deserves to be rolled back.

3. On facts and in the circumstance Ld. CIT(A) has grossly erred in confirming the summary addition of Rs. 1,98,67,320/- without considering the obvious facts emerging from the bank statements available on records.

3.1 That the Ld. CIT(A) has erred in dismissing the appeal grossly and confirming the arbitrary addition made by ld. AO without considering the cash withdrawals made and available with the assessee for making cash deposits into the account. Appellant prays that additions so confirmed deserves to be deleted.

3.2 That the Ld. CIT(A) has further erred in confirming additions made for credit entries appearing in the bank account. Appellant prays that such credits being duly explainable deserves to be deleted.

3.3 That Ld. CIT(A) has further erred in confirming the additions made by ld. AO by invoking provisions of sec 115BBE of the Act. Assessee prays that such credits in the bank account being fully explainable, sec 115BBE do not apply and the same deserves to be dropped.

4. The appellant request s leave to add or amend any other ground before disposal of the appeal.”

3. The brief facts of the case are that the assessee is a private limited company incorporated on 27.01.2012 for undertaking Township development and liaisoning work for sale of land. Since its incorporation there was no development work carried out, thus no income generation. Since the Director had no knowledge about the legal obligations of the assessee company, the legal formalities were handled by a chartered accountant, no ITR for the year under appeal could be filed unfortunately. During the relevant financial year the assessee had launched a project for developing farm houses (termed as Jeenkripa Valley) and received certain advances for liaisoning sale of land for the farm house project from certain interested clients, also certain unsecured loans were received from friends and directors. The advances were received through banking channel, and appear as credits in the bank account. Cash withdrawals were also made by the assessee for

facilitating the said liasoning of land for the above mentioned farm-house project, as the owners of land were agriculturists and accepted payments only in cash. The same cash was again deposited in the bank account, whenever the deal could not be finalized with such agriculturists. There are no transactions in the bank account other than receipt of advances from prospective investors in farm house project, loans received from director (by cheques), corresponding withdrawals from bank to pay the prospective sellers of agricultural lands and redeposit of the cash so withdrawn (in whatever amount and whenever possible) after the deal could not be materialized.

4. The assessment was completed ex-parte vide order dated 07.12.2019 wherein addition of Rs. 1,98,67,320/- was made by invoking provisions of sec 69A/ 115BBE of the Act for the entire credit entries found in the bank statement and also the cash deposits made in the bank. But during the original assessment, while computing the tax payable post assessment the total income was inadvertently taken at an absurd figure of Rs. 7,94,69,280/- and the corresponding demand was erroneously computed at Rs. 9,76,10,119/- . Later the assessment order was rectified u/s 154 of the Act by the AO, by stating in reasons for rectification that, since in the original order though addition was made u/s 69A in the assessment order, in the computation sheet the addition was shown as made u/s 69 of the Act.

Therefore this was a mistake apparent on records and a rectification was thus required. But while passing the rectification order u/s 154 of the Act, in the tax computation sheet the total income was corrected at the true assessed income of Rs.1,98,67,320/-and tax was calculated at 60 percent and a demand was created at Rs.2,44,02,530/-as against the original incorrect huge demand of Rs. 9,76,10,119/- .

5. The then AR of the assessee company, for the reasons best known to him without the knowledge of Directors, filed no appeal against the original order passed u/s 144/147 of the Act, but the order passed u/s 154 of the Act was challenged before Ld. CIT(A). Unfortunately, again due to the mishandling of the then AR, the appeal was decided ex-parte and dismissed, and the assessee was under a bonafide belief that the then A/R would have handled the matter at his end. The assessee then preferred appeal against the order of Ld. CIT(A) before the Hon'ble Income Tax Appellate Tribunal, Jaipur bench seeking justice so that the matter can be decided on merits. Assessee also simultaneously filed an appeal before Ld. CIT(A) against the original order passed u/s 144/147 of the Act, which was obviously delayed by more than 900 days. The Hon'ble Bench vide its order dated 28.06.2022 set aside the matter to the file of Ld. CIT(A) to be decided afresh along with the appeal filed against the original order. But again to the misfortune of the assessee, the said order of the Hon'ble bench was communicated to the assessee

only in mid August 2022. In the meantime on 29.07.2022, the appeal against original order was decided, and yet again, ex-parte by merely serving two notices in a gap of less than 15 days, that could not be communicated to the AR by the assessee, as he was tied up with his other litigations in civil court, and the AR being tied up with filing of returns for July, could not login to the portal to check issuance of any notice for hearing. The present appeal is against such ex-parte appeal decided by Ld. CIT(A). Now the assessee has filed appeal before us.

6. The AO observed that the assessee's deposited huge cash in bank account during demonetization period (9th November, 2016 to 30th December, 2016) but the sources were neither explained nor such money offered for taxation the onus is on the assessee's to prove that the cash deposits made did not bear the character of income. In this case, the assessee company had failed to prove this fact that the Cash deposited during demonetization period are normal business receipts and therefore, I hold that the amount of Deposits made in the bank accounts, including Cash deposited during Demonetization period represented income from undisclosed sources. The assessee company has concealed its true income which otherwise is taxable. Further by relying upon the decision of Honble Supreme Court in the cases cited above that there was ample evidence that Cash was deposited on bank accounts, what is prima facie evidence against the assessee that the deposits are undisclosed Income on which *the Department can proceed in* absence or, good explanation. The assessee has made cash

deposits amounting to Rs. 37,50,000/- and other Credit entries appearing in bank account of Rs 1,61,17,323/- thereby total amounting to Rs. 1,98,67,323/- (Table 4 appearing in the HDFC Bank Account of the assessee company in the FY 2016-17 relevant to AY 2017-18 remained unexplained. The assessee company has not filed ITR, not declared its true income and has not paid taxes due thereon. The assessee company has not responded to notices u/s 142(1) and show cause notices issued during e-assessment proceedings (Table 2). The assessee company failed to give any explanation about the nature and source of cash deposits, hence the value of Credit entries, including Cash deposits, appearing in the bank Account as tabulated in the body of The Order (Table 4) is deemed as unexplained money under sec. 69A of the income Tax Act, 1961 and added to the total income of the assessee. The total income assessed is taxed under sec. 115BBE of the Act at the rate of 60%.

Further, penalty proceeding u/s 271 AAC of the Act in respect of unexplained income is initiated. As discussed in the body of the order, the assessee company has failed to comply with the notices u/s 142(1) of the Act issued and served upon the assessee during the course of E-scrutiny proceedings, penalty u/s 272A(1)(d) of the Act is also initiated. The assessee has not filed its Return of Income for A.Y. 2017-18, therefore, penalty u/s 271F of the Act is also initiated for failure to furnish return of income.

7. Before the Id. CIT(A), the assessee has reiterated its arguments. The Id. CIT(A) for the reasons stated in his order has rejected the arguments and submissions made by the assessee. The Id. CIT(A) has confirmed the action of the AO by observing as under:-

*“5.1.1 It is matter of record that impugned order u/s 144 was passed on 07.12.2019. This order of assessment was rectified sou-moto by the assessing officer on 24.01.2020. This rectification, as apparent from the statement of facts was restricted to only tax calculation. It is further matter of admitted fact the assessee had filed an appeal against the order of rectification before CIT (Appeal). This appeal was dismissed by the CIT appeal. It is admitted position of the assessee that he is before the tribunal against the order of CIT appeal so passed. As per doctrine of merger, considering the nature of order of rectification, the rectified assessment order so passed merges with the order of appeal passed by the CIT(A). For the simple reason that there cannot be two orders of assessment for same assessment year considering the facts and circumstances of the case. **The present appeal is therefore redundant and liable to be dismissed on this technical ground.** While arriving at this decision reliance is placed upon **Kunhayammed v. State of Kerala, (2000)6 SCC359** where in the honorable supreme court has lay down the following ratio.*

"44 where in appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put an issue before it, the decision by the sub-ordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and capable of enforcement in the eyes of law"

*5.1.2 In **Gojer Bros.(P) LTD. V. Ratan Lal Singh [1974] 2 SCC 453** The honorable supreme court had reiterated that in so far doctrine of merger was*

concern there could be no distinction in terms of application of the doctrine of merger between an appellate judgement simpliciter dismissing an appeal and appellate judgement modifying or reversing the decree of lower court.

5.1.3 More recently in A.V. Papayya Sastry v. GOVT of AP [2007]4 SCC 221The honorable apex court has lay down the following law-

"38 ... All order passed by the courts/ authorities below, therefore, merge in judgement of this court and after such judgment it is not open to any party to the judgement to approach any court or authority to review, recall or re consider the order"

This decision though pronounced in context of order passed by honorable apex court the law laid down is applicable for the entire judicial hierarchy wherein the order of lower authority shall stand merged with the order of superior appellant authority and as a consequence the order of lower authority shall cease to have its own independent legal authority and subsequent relief, as being sought in this appeal.

5.2 Without prejudice to the decision in para 5.1, In the present lis, the assessee seeks to file an appeal on 27.05.2022 against an order which was passed on 07.12.2019 the delay obviously is more than 900 days. As against the legal requirement to file appeal u/s 246A within 30 days, following the date on which the order of assessment was served on the assessee. As per form 35 the date of the service of the order was served on the assessee on 07.12.2019 itself. While filing the grounds for condonation of delay in filing of the present /is the assessee has made the following averments.

*"Here it is pertinent to note that no appeal was filed against the original order passed u/s 144 of the Act, **for the reason best known to the A/R of the assessee**, the same is now being filed before your*

honour, with an application for condonation of delay and prays that the appeal may please be admitted in view of natural justice."

5.2.2 Section 246 A (1) is worded as follows-

" Anyassessee..... aggrieved by any of the following order may appeal to commissioner appeals against-

1. an order..... or any order of assessment under sub-section (3) of section 143..... or section 144 to the income assessed, or to the amount of tax determined....."

*The Act provisions clearly casts the onus on the assessee and not his authorized representative to file the case in time. It is no the duty of A/R to file an appeal against the order on his sole discretion. It is the duty of the principal officer of the body incorporate to comply with various legal obligation. Though the assessee has not taken plea in so many words but it is apparent that he is indirectly making an argument that it cannot be presumed that he knows the income tax law. As the law laid down by honourable supreme court in the case of **Motilal Padampath Mills Ltd v. State of Uttar Pradesh [1979] 118 ITR 326 (SC)** wherein their Lordship have decided that **it** can not be presumed that every one knows the law.*

5.2.3 *The knowledge of law should therefore be presumed on case to case basis, based upon the circumstances of the assessee. Herein, the assessee is a Pvt. Ltd. company governed by an statue and administered by a board of directors. In compliance to the requirement of Indian companies Act anybody incorporate has to be assisted by a number of professionals including an auditor who has to be a chartered accountant and company secretary. Being a body incorporate the functioning of the Pvt. Ltd. company is itself governed by*

law and it requires compliance to these laws. Therefore, in such a situation ignorance of law cannot be taken as an excuse by the assessee for such inordinate delay in filing of the present appeal. Particularly in the condition that the assessee was conscious and aware to file an appeal against the rectified order u/s 144 read along with section 154.

*5.2.4 While doing so, reliance is being placed on the ratio of **Institute of self-management. v. CIT 1 Madurai [2011] 16 Tax Man. Corn. 331 (Chennai)**. In present situation it is very difficult to accept the reason offered by the assessee for condonation of delay. Rather than ignorance of law, it is found that the delay was cause because of callousness of principal of officer of the company. Such "**don't care**" attitude cannot be accepted as valid plea.*

5.2.5 The appeal filed by the assessee is therefore not admitted on the grounds of inordinate delay.

5.3 Though on the basis of the decision in para 5.1 and 5.2 no decision on merit is required in this case, it is worth examining the grounds of appeal on merit, only for academic purpose.

*5.3.1 Gr.1 On facts and in the circumstances of the case Ld. AO has grossly erred in completing the assessment **ex-parte** without affording adequate opportunity to the assessee. Assessee prays that the order passed in violation of principles of natural justice deserves to be quashed.*

The assessing officer at page 2 and 'Page 3 of his order has tabulated the no. of notices and show cause issued to the assessee. As per this table as many as seven notices in the span of two years were issued and not even a single one was compiled to. From information in this table it is concluded that the assessing officer has been more than fair in giving opportunity to the assessee. Rather, the

assessee has been recalcitrant and defiant to the legal obligation cast upon him by the notices issued by the assessing officer.

5.3.2 Gr.2 on facts and in the circumstances Ld. AO has grossly erred in making the summary addition of Rs. 1,98,67,320/- without considering the obvious facts emerging from the bank statements available on records.

2.1 That the Ld. AO has erred in making the arbitrary addition without considering the cash withdrawals made and available with the assessee for making cash deposits into the account. Appellant prays that additions so made deserves to be deleted.

2.2 That the Ld. AO has further erred in making additions for credit entries appearing in the bank account. Appellant prays that such credits being duly explainable deserves to be deleted.

2.3 That Ld. AO has further erred in making the additions by invoking provisions of sec 115BBE of the Act. Assessee prays that such credits in the bank account being fully explainable, sec 115BBE do not apply to the assessee and the same deserves to be dropped.

In absence of any facts supplied by the assessee along with supporting evidences to prove the facts in issue, The assessing officer was right to draw the conclusion he has drawn. The undersigned dismisses this ground in absence of any evidence filed by the assessee during the course of process of assessment or the process of present appeal. Which has also been highlighted in para 4.2 and para 4.3 above

5.3.3 Gr.3 That the Id. AO has grossly erred in computing incorrect demand by considering incorrect assessed income out of nowhere. Appellant prays that the computation sheet calculating the demand payable deserved to be re-visited.

5.3.3 Gr. That the Ld. AO has grossly erred in computing incorrect demand by considering incorrect assessed income out of nowhere. Appellant prays that the computation sheet calculating the demand payable deserved to be re-visited.

This ground is consequential and therefore, does not require any adjudication

5.4.4 Gr. 4 The appellant requests leave to add or amend any other ground before disposal of the appeal.

During the present proceedings the assessee has not filed any addition ground or has amended and other ground therefore is no need to adjudicate this ground.

6. The appeal filed by the assessee is dismissed.”

8. The ld. AR for assessee submitted a detailed written submissions which are as under:-

“Ground of appeal No. 1

In this ground the assessee has challenged the ex-parte order passed by Ld. CIT(A), without affording adequate opportunity to the assessee. The assessee humbly submits that merely two notices were issued, and that too within a span of 15 days by Ld. CIT(A) before deciding the appeal ex-parte. It is humbly submitted that, July being the last month to file ITRs in the case of individuals, the AR genuinely could not check the portal of assessee for any notices, as it was known that the assessee was not well educated and well versed with the faceless appellate procedures. It is submitted that deciding an appeal, which involved such huge additions, ex-parte by merely serving 2 notices within a short span of time (15 days) is in gross violation of principles of natural justice, and thus deserves to be restored back to the file of Ld.CIT(A) and the assessee prays accordingly.

Ground of appeal No. 2:-

In this ground the assessee has challenged the dismissal to admit the appeal, by not condoning the delay in filing of appeal before Ld. CIT(A)

Your Honors the delay has not been condoned on the grounds that the assessee is a private limited company, governed by a statue and administered by a board of directors. Being a body corporatethe functioning of company is itself governed by law and requires compliance to these laws. Therefore, ignorance of law cannot be taken as excuse, for such inordinate delay in filing of appeal. Particularly, when the assessee was conscious and aware to file an appeal against the rectified order passed u/s 154.

It is submitted that the assessee is a private limited company, the board of directors comprises of only two persons — Shri Jugal Kishore Meena and his wife -- Smt. Bhagwati Devi Meena. The lady director i.e. Mr. Bhagwati Devi Meena is an uneducated lady, and acts only as an inactive Director. In addition to the above two, there was a Chartered accountant, whowas single handedly handling the entire legal compliance, accounting and other financial matters. The other Director — Shri Jugal Kishore Meena isalso marginally educated till the Senior secondary, and thus does not understand the legal technicalities. Since the entire legal, accounting and financial matters were handled by his chartered accountant friend, the director merely followed whatever was instructed to him by his consultant friend. Your Honors this is a case of blind faith on the consultant, without questioning any of his decisions, due to which non filing of appeal against the original order came to the knowledge only when the assessee company consulted another counsel, and the appeal was thus filed with a delay of 901 days. The delay therefore is attributable to the misconduct of the earlier counsel, and beyond the control of assessee. The assessee places reliance on the decision of Ho'ble Apex court in the case of Collector,

Land Acquisition vs. MST. Katiji And Others (1987) 167 ITR 471(SC) and humbly prays that the delay may please be condoned and the appeal may please be decided on merits in view of principles of natural justice and oblige.

Ground of Appeal no. 3 to 3.3

In these grounds the assessee has challenged the quantum addition of Rs.1,98,67,320/- made by treating the credit entries found in the bank statement of the assessee and the cash deposited into the bank as being unexplained u/s 69A of the Act.

Briefly stating the addition was made on the basis of bank statement in possession of the Id. AO. The addition so made can be conveniently bifurcated under 3 broad headings as under:-

S. No.	Particulars	Amount
1.	Contra Credit Entries	53,79,714
2.	Other credit Entries	1,08,30,612
3.	Cash deposits	37,50,000
	Total	1,99,60,335

At the outset it is submitted that the total credit transactions appearing in the bank statement quantifies to Rs. 1,99,60,335/- as against the addition of Rs.1,98,67,320/-made by Id. AO, which may be considered as such.

Contra Entries:

Out of the above addition made for credit entries appearing in the bank statement, by Id.AO, Rs. 53,79,714/- are contra entries for cheques returned, thus no explanation is required and no addition deserves to be made for the same.

Other Credit Entries:

As regards the balance credit entries amounting to Rs. 1,08,30,621/-. Out of this an amount of Rs. 30,00,000/- were received from the Director Shri Jugal Kishore Meena, which is duly shown as 'unsecured loan from director' and is appearing as such in the books of the assessee, and thus in no manner can be income of the assessee company and the addition to that extent also deserves to be deleted. Further amount of Rs. 30,00,000/- was received as unsecured loan from 2 parties i.e. Shri Pushpendra Rs.18,00,000/- and Shri Gopal Rs. 12,00,000/- on 14.02.2017. These amounts were received as loans, for which an agreement was duly signed with both parties (copy enclosed PB page 1 to 10)The said amount is still outstanding for which both the parties have launched a case against the assessee (copy of notice received for such filing of case is enclosed PB page 7-10) Thus this further amount of Rs. 30 lacs credited on 14.02.2017 was completely unsecured loan, for which the identity, genuineness and creditworthiness of the creditors stands duly established, and the same does not bear the character of 'income' and hence deserves to be deleted.

Now as regards the balance credit of Rs. 48,30,621/-. In this regard it is pertinent to note that the assessee company had launched a Farm house development project at Chandwaji- Peelwa Road, Tehsil Amer, Jaipur (copy of such brochure and layout plan enclosed at PB page 38-39) For developing such farm houses, the company was in need of funds to acquire lands from agriculturists. So the assessee approached certain prospective buyers, who agreed to pay certain

amount as advance, for procuring land. These amounts were duly received in the bank account of the assessee (list of such advances received is enclosed in PB at pages 41 and 43) Thus these amounts are in the character of 'Trade advances' received against the farm houses to be developed by the assessee company, and do not represent 'income' of the assessee for the year under appeal. The amounts so received as advances, the assessee company withdrew the same from its bank account, for the purpose of making payments to the owners of land. These amounts had to be paid in cash, as the owners of lands were agriculturists, who had insisted for cash payments. The assessee is enclosing copies of some such agreement to sell, entered into by the assessee company with such land owners, along with their aadhar cards and affidavits confirming receipt of cash advances for the sale of land at pages 11 to 37 of the PB. Thus such trade advances received in the bank account amounting to Rs. 48,30,621/- being in the nature of advances for the year under appeal, cannot be added as undisclosed income u/s 69A of the Act, and the addition made thus deserves to be deleted.

At this juncture the assessee once again submits that this is a case of mis-handling matters by the professional expert, on whom the assessee kept blind-faith, and was betrayed. The above amounts of trade advances received do not find mention in the financial statements uploaded on the MCA website. When closely scrutinized by the subsequent counsel, it was revealed that the amounts received as advances were squared off in the balance sheet, by showing cash payments to the trade creditors. The assessee is now submitting affidavit of the Directors, whereby it is affirmed on oath that the trade creditors are outstanding as on 31.03.2017, as also the advances given to the respective land owners are the current assets of the assessee company. It is also submitted that the said farm house project, could not be developed, and the project had to be put on hold. Therefore, the

advances received from prospective buyers is the liability of the assessee company and in no manner can be termed as income. The addition thus deserves to be deleted.

Cash deposits of Rs. 37,50,000/-:

As is clear from the above submissions, the assessee had withdrawn the amount received as advance against developing of farm-houses, to make payments to the owners of land (who are agriculturists) Such amount as when there were failed deals, were deposited back into the bank account as cash deposits. The assessee is now filing a peak credit statement (fund flow statement) (PB page 44) which clearly shows the availability of ample cash, in the form of withdrawals from bank, which was utilized for making cash deposits. The maximum peak in the bank statement, which at the most could be held unexplained, is Rs. 75,000 on 18.07.2016 hence the balance deposits surely deserves to be held explained, as the source of such cash deposited into the bank account is duly established as nothing but the cash withdrawn from the advances received from prospective buyers of farm houses, and therefore the entire addition made deserves to be deleted and the assessee prays accordingly.”

9. The Id. AR for the assessee raised additional evidence which reads as under:-

“In the present case the original assessment was finalized ex-parte, as also the first appellate proceedings were finalized ex-parte, by issuing merely 2 notices of hearing within a span of less than 15 days. Also the matter was handled properly by the professional acquaintance of the director during the assessment proceedings and no documents/explanations were filed. For this reason, the assessee is now filing the following as additional evidence u/r 29 of the ITAT Rules, 1963.

Sr. No.	Particulars	Page No.
1.	Loan from Pushpendra and Gopal Sharma - Copy of Agreement receipt of loan dt. 04.01.2018 and Dt. 23.06.2018 - Copy of notice received for the case filed by creditors against assessee.	1-10
2.	Copy of agreement to sell dt. 02.01.2017 with RameshwarGurjar along with affidavit dt. 15.10.2022 and copy of his Aadhar card.	11-18
3.	Copy of agreement to sell dt. 18.01.2017 with Nanda Ram Gurjar along with affidavit dt. 15.10.2022 and copy of his Aadhar card.	19-25
4.	Copy of agreement to sell dt. 18.01.2017 with Mohani Devi along with affidavit dt. 15.10.2022 and copy of his Aadhar card.	26-31
5.	Copy of agreement to sell dt. 17.04.2018 with Hanuman Sahay along with affidavit dt. 15.10.2022 and copy of his Aadhar card.	32-37
6.	Brochure of the project "JEEN KRIPA VALLEY" for developing farm houses	38
7.	Copy of lay out plant of farm house scheme	39
8.	Affidavit of the Directors along with enclosures	40-43
9.	Working of peak credit	44

The director of the assessee company is a marginally educated person who was unaware of the legal procedures, who had complete faith on the erstwhile consultant. It is prayed that the non submission of above documents was attributable to the mis-conduct on the part of erstwhile consultant of the assessee company, and beyond the control of assessee. Thus on humanitarian grounds and in the interest of principles of natural justice, the above documents may please be admitted as additional evidences, so that the matter can be decided after considering the true and fair merits of the case and oblige.”

we have no hesitation to admit the additional evidence so that the matter can be decided after consider the true and fair merits of the case.

10. The Id. DR is heard who has relied on the findings of the lower authorities.

11. We have heard both the parties and perused the materials available on record. We observed that the substantial justice should be made to the parties in accordance with law.

The Id. AR for the assessee submitted that the appeal against the original order has now been filed before the Id. CIT(A) along with an application for condonation of delay. Taking into consideration the present facts and circumstances of the case, we find that apparently it is a case for gross negligence on the part of the assessee as during the appellate proceedings, the assessee was issued two notices within a span of less than 15 days but the same were not complied with by the assessee. Therefore, the Id. CIT(A) has decided the appeal filed by the assessee ex-parte by passing the impugned order. Now considering in the peculiar facts of the case, the Id. AR for the assessee has already filed an appeal against the order passed U/s 144/147 of the Act before the Id. CIT(A) along with an application condonation of delay. We are of the view that this appeal filed by the assessee against the impugned order passed by the Id. CIT(A) dated. 07.12.2019 also needed to be set aside to the file of Id. CIT(A) so that while deciding the appeal filed by the assessee against the original order passed u/s 144/147 of the Act, the Id. CIT(A) also taken into consideration the appeal filed by the assessee against the order rectified u/s 154 of the Act in order to maintain consistency. We are of the view that non appearance before the Id. CIT(A) in spite of repeated notices/ summons is disregard towards the Authorities and wastage of precious time on the part of the assessee. 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 Id. CIT(A) for consideration afresh, subject to cost of Rs. 5,000/- for negligent attitude during the income tax proceedings, to be deposited in the Prime Minister's Relief Fund and the proof thereof

should be produced before the Id. CIT(A). Since we have restore the matter to the file of the Id. CIT(A) for adjudicating the matter afresh after providing reasonable opportunity to the assessee. The other grounds raised have become infructuous and no need for any adjudication.

In the result, the appeals of the assesseeis allowed for statistical purposes.

Order pronounced in the open court on 30 /11/2022

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

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/11/2022

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- M/s Jeenkripa Township Private Limited, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1),Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 325/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar