

जेम आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 38/JPR/2023
निर्धारण वर्ष / Assessment Years : 2012-13

Shri Nand Lal Village- Thada Via Seethal, Tehsil Tijara, Alwar.	बनाम Vs.	ITO, Ward- Bhiwadi, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGIPL 6688 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing 28/02/2023
उदघोषणा की तारीख / Date of Pronouncement : 15/03/2023

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"], dated 01.12.2022 for the assessment year 2012-13.

2. The assessee has raised the following grounds:-

"1. The Ld. CIT(A),NFAC has erred on facts and in law in deciding the appeal without providing reasonable opportunity of hearing and service of notice at the address specified in Form No. 35.

2. The Ld. CIT(A),NFAC has erred on facts and in law in confirming the addition of Rs. 27,11,514/- under the head long term capital gain arising on sale of agricultural land without allowing the deduction of transfer expenses of Rs. 42,000/- and deduction u/s 54 of Rs. 25,07,565/-

3. The appellant craves to alter, amend and modify any ground of appeal.

4. Necessary cost be awarded to the assessee.”

3. The brief facts of the case are that assessee along with his two brothers and other sellers have sold 2 properties situated at village thada, Tehsil Tijara, Alwar to Topwell consultants Ltd. The assessee sold his share in both the properties for 27,11,514/- (8,78,889+18,32,625). As no return was filed by the assessee, proceeding u/s 147 was initiated and notice u/s 148 was issued to assessee on 26.03.2019 which was sent through Speed Post on 27.03.2019 requiring to furnish return of income but no compliance was made. Further notices u/s 142(1) dated 09.07.2019, 29.08.2019 & 04.10.2019 were issued to assessee but again no compliance was made by the assessee. Accordingly, AO framed the assessment u/s 147 r.w.s. 144 of the Act by making addition of Rs. 27,11,514/- under the head long term capital gain. Against the assessment order assessee filed an appeal before Ld. CIT(A). Notices

dated 10.01.2021, 03.11.2022 & 04.11.2022 were issued to the assessee but no compliance was made. Accordingly, Ld. CIT(A) confirmed the addition made by AO.

4. The ld. AO observed that the assessee has not complied the notice issued u/s 142(1), therefore, penalty u/s 271(1)(b) also initiated for non compliance of notice dated 09.07.2019 & 29.08.2019. As per proviso 3 of section 139(1) every assessee is required to furnished on or before the due date the return in respect of his income or loss in every previous year. It is failure on the part of the assessee to disclose the aforesaid income. Therefore, penalty proceedings u/s 271F for not filing the return of income with the time prescribed as per provisions of section u/s 139(1) of the act are initiated separately.

With the above remarks, total income is computed as under:-

1.	Returned income (no ITR filed)		0
2.	Add		27,11,514/-
	1. Addition as discussed in para 3 above	27,11,514	
3.	Total income		27,11,514/-
		R/o	27,11,510/-

5. The assessee has filed the appeal before the ld. CIT(A) who after hearing the contention of the assessee dismissed the appeal of

the assessee by giving his following relevant findings on the issues:-

“ 4. During the course of appellate proceedings vide notice dated 10.01.2021, 03.11.2022 and 04.11.2022. The appellant was requested to file reply. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings, did not comply with the notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.

4.1 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.

5. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed an income of Rs. 27, 11,514/- under the head Long Term Capital Gain. Since the appellant failed to substantiate appellant's claim and addition made by the Assessing Officer of Rs. 27, 11,514/- is hereby confirmed.

6. Ground Nos. 1 to 4 of the appeal are dismissed.”

6. Being aggrieved by the ld. CIT(A) order, the assessee is in appeal before us. Before us the ld. AR for the assessee submitted a detailed written submissions which are as under:-

“1. It is submitted that notice u/s 148 dated 26.03.2019 was received by the assessee through Speed Post. After receipt of such notice assessee went to CA Shankar Sharma, Bhiwadi to get himself registered on e-filing portal. As

the assessee was illiterate and was not having his own e-mail id, CA Shankar Sharma put his own e-mail id 'casharma4@gmail.com' on the e-filing portal of assessee. The assessee did not receive any of the notices issued u/s 142(1) as the same was not communicated to the assessee by CA. Thereafter, on the opinion of CA Shankar Sharma assessee get his property valued on 04.11.2019 at Rs.26,98,889/- on the basis of which CA Shankar Sharma filed the return of income on 21.11.2019 declaring long term capital gain at Rs.1,49,324/- after claiming deduction of transfer expenses of Rs.42,000/- and deduction u/s 54F at Rs.25,07,565/-. However, before filing the return on 21.11.2019 AO passed the assessment order on 20.11.2019. Against the assessment order assessee filed an appeal before Ld. CIT(A). The hearing notices issued by Ld. CIT(A) were also not received by the assessee as he has left CA Shankar Sharma and thus the same remain uncomplished with. Affidavit of assessee stating the above facts is enclosed.

2. It was further submitted that in Form No.35 assessee has specifically mentioned the address to which notice be sent as CA K.K. Khandelwal, 62-A, Arya Nagar, Alwar-301001, Mobile No.- 9829096290, Email Address-kk.caalwar@gmail.com. However, notices were not given at this address. Further notice dt. 10.01.2021 was issued during Covid time and notice dt. 04.11.2022 is an enablement window. Thus, effectively only one opportunity was given to assessee which cannot be construed as reasonable opportunity. The appeal of assessee's two brothers is also pending before Ld. CIT(A).

In view of above, order passed by CIT(A) without providing opportunity of hearing by not sending notices at the address mentioned in Form No.35 is bad in law and therefore the matter be send back to AO to decide the issue afresh.”

7. Per contra, the ld. DR relied on the order of the lower authorities and further submitted that ld. DR does not have any

objection on the prayer of the ld. AR to direct the assessee to represent his case before the ld. AO.

8. We have heard both the parties, perused materials available on record. It is noted that the appeal of the assessee has been decided without providing reasonable opportunity of hearing to the assessee and service of notice at the specified address in Form 35 was not issued. During the assessment proceedings, the ld. AO has recorded that the assessee has not complied with the notice issued u/s 142(1) of the Act and initiated penalty, but the Bench noted that the notice which was not issued to the address mentioned in Form 35 and to the fact that the assessee has filed an affidavit for non compliance of the notices before the Ld. AO as well as ld. CIT(A). Both the ld. AO as well as ld. CIT(A) has not passed the order on merit and it was ex-parte order, the Bench feels that the assessee has not been provided adequate opportunity of being heard on merit. The assessee himself prays that the matter may be remanded back to the file of the ld. AO for proper adjudication on merit after giving due opportunity of hearing to the assessee.

9. Looking to the peculiar facts of the case and as agreed by both the parties and having regard to them we feels that in the interest of justice

and fair play, we deem it fit an appropriate to remand back the issue to the file of the ld. AO for proper adjudication after giving opportunity of hearing to the assessee, uninfluenced by his earlier decision. We order accordingly, the assessee also direct to ensure the participation in the hearing fixed by the ld. AO and do not seek unnecessary adjournment. Thus, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 15 /03/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 15/03/2023.

***Santosh**

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

1. अपीलार्थी / The Appellant- Shri Nand Lal, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-Bhiwadi, Alwar.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 38/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar