

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

डा० 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. 212/JPR/2023
निर्धारण वर्ष / Assessment Year :2013-14

Narendra Nayak 13, Shivpuri Colony, Jaipur.	बनाम Vs.	Income Tax Officer Ward-1(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: CNZPN 7932 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri S.L. Poddar (Adv.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing :21/06/2023
उदघोषणा की तारीख / Date of Pronouncement: 27/06/2023

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 to as "NFAC/CIT(A)"] dated 01.03.2023 for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

"1. Under the facts and circumstances of the case the Learned CIT(A) has erred in passing the ex-parte order on 01.03.2023 without considering the

submission made by the assessee on 21.02.2023 which is also available on ITBA Portal.

2. Under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the order u/s 148/144 of the Income Tax Act, 1961 which is void-ab-initio deserves to be quashed.

3. Under the facts and circumstances of the case the Learned Assessing Officer has erred in completing the assessment without serving notice u/s 148 of the Income Tax Act, 1961.

4. Under the facts and circumstances of the case the Learned Assessing Officer has erred in completing the assessment without serving notice u/s 143(2) of the Income Tax Act, 1961.

5. Under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 22,65,837/- on account of purchase of property made by the Learned Assessing Officer without considering the submission of the assessee.

6. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

3. Brief facts of the case are that the assessee during the year under consideration, the assessee purchased an immovable property situated at Khasra No.9 at Village Jhida Samod, Tehsil Chomu, District Jaipur for consideration of Rs. 21,00,000/-. The transaction was registered with the Sub-Registrar, Chomu, Jaipur on 17.08.2012. The Sub-Registrar had adopted face value of property of Rs. 33,16,742/- for the purpose of

charging stamp duty and accordingly, Stamp Duty was charged at Rs. 1,65,837/-. As per the office records, the assessee has not filed the return of income for the relevant Assessment Year. Therefore, the aforesaid information was not open for verification with the records available with the Income-tax Department. As such, after recording the reasons and obtaining prior approval of Pr. Commissioner of Income Tax-1, Jaipur, the case was reopened under sec. 147 of the Income-tax Act, 1961 and a Notice under sec. 148 of the Income-tax Act, 1961 was issued on 20.03.2020 and served upon the assessee.

4. In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee in limine for the reason that the assessee did not appear before the ld. CIT(A) to contest the case in spite of various opportunities/notices dated 13.12.2022, 21.12.2022 and 10.01.2023 and thus finally on 17.01.2023 the assessee was issued notice to submit its reply. The extract of the order of the ld. CIT(A) is reproduced as under:-

“4.3 During the appellate proceedings, the appellant did not submit the ‘State of Facts’ in the Form No. 35. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at page no. 1 para 3. No reply whatsoever has been submitted by the appellant. Even the assessment was completed under section 148/144 of the Income Tax Act, 1961 due to non-compliance on the part of

the appellant. It can be safely presumed that the appellant is not interest in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the order of the Assessing Officer. This, the appeal raised by the appellant is dismissed.”

5. On the other hand, the ld. DR supported the order of the ld. CIT(A).

6. We have heard both sides and perused the materials available on record. From the ld. CIT(A) order, we observed that the order has not been passed on merit it has been dismissed due to non compliance on the part of the assessee. But during the course of hearing ld. AR for the assessee submitted that the during the appellate proceeding i.e. before us the ld. CIT(A) the assessee has filed reply on 21.02.2023 but the ld. CIT(A) has passed order without considering the reply filed by the assessee. Further the ld. AR for the assessee prays that the matter may be remanded back to the file of the ld. CIT(A) for a proper adjudication on merit after giving due opportunity of hearing to the assessee. The ld. DR does not have any objection but prays to direct the assessee to represent his case before the ld. CIT(A) and do not seek unnecessary adjournments. In view of such pleadings by parties and also having regard to the principle of natural justice and fair play, we deem it fit and appropriate to remand this matter back to the file of the ld. CIT(A) for a proper adjudication after giving opportunity of hearing to the assessee, uninfluenced by his earlier decision. We order accordingly, the assessee is also

directed to ensure participation in the hearings fixed by the Id. CIT(A) and do not seek unnecessary adjournments. 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 27/06/2023.

Sd/-
(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 27/06/2023

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Narendra Nayak, Jaipur.
2. प्रत्यर्था / 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. 212/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar