

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 451/JP/2023  
निर्धारण वर्ष/Assessment Years : 2011-12

Narender Singh Shekhawat B-120, Acharya Vinobha Bhawe Nagar, Vaishali Nagar, Jaipur	बनाम Vs.	The Income Tax Officer, Ward 1(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BCHPS 5451 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sumer Singh Shekhawat  
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 19/10/2023  
उदघोषणा की तारीख / Date of Pronouncement: 09/11/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 11/05/2023 [here in after (NFAC)/ Id. CIT(A) ] for assessment year 2011-12 which in turn arise from the order dated 29.10.2018 passed under section 144/147 of the Income Tax Act, by ITO, Ward 3(5), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

*"1. The Learned A.O, erred to avoid facts as under  
The Assessee after filing Appeal to The CIT (Appeals) on 02.11.2018 against the order of the ITO Ward 3 (5), Jaipur Dated 29.10.2018 and after Ward in response to the Scheme of Department, Opted « VIVAD SE VISHWAS SCHEME, 2020» having duly fulfilled get availed Form. 1 and Form 2 on 27.01.2021, Copies of the Same are furnished herewith on 23.02.2021 having obtained certificate No. 271778880230221 from Hon'ble PCIT, Jaipur-1, Assessee Deposited Rs. 34526 by Form No. 4 BSR Code of Bank 0014431 on 31.10.2021 Challan No. 00474 of Rs. 34526 Thereafter to issue. The Form No. 5 was "The Action only to taken by the Department, and they did not issued that in due course'*

*2. The Learned Assessing officer erred to make addition of Rs. 4,58,612 against the Provision of Law in lack of Submission of Form No. 5 which was only to generated by Department itself and Assessee is not at all defaulter for the action not being taken by I. T. Department in due course*

*3. The Assessee craves to make a addition, modification, Alternation, correction in grounds of Appeal on or before last date fixed for hearing of the Appeal."*

3. Succinctly, the fact as culled out from the records is that the assessee filed his return of income for A.Y. 2011-12 u/s 139(1) of the IT Act, 1961 on 30.07.2011 vide acknowledgement No.262144070300711 declaring total income at Rs. 4,94,978/-. The case was reopened u/s 147 after recording reasons and notice u/s 148 of the IT Act, 1961 was issued after getting prior approval from the competent authority. Notice u/s 148 was issued to the assessee on 28.03.2018 and was duly served upon the assessee through registered post on 29.03.2018. The assessee did not file his return of income in response to notice u/s 148. Notice u/s 142(1) along with detailed questionnaire were issued. In response thereto, the

assessee furnished information / documents called for and ultimately the assessment order is passed on u/s. 144 of the Act determining the income of the assessee at Rs. 9,54,524/- vide order dated 29.10.2018.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.2 I have carefully gone through the grounds of appeal, facts of the case, assessment order passed by the AO. In this appeal no proper grounds of appeal were raised. On perusal of records, it is noticed that during the course of appellate proceedings, appellant had not filed or uploaded any response/written submissions in spite of four notices were issued to the appellant. The notices u/s 250 the Act was issued to the appellant on 19/02/2021 requiring compliance on 08/03/2021, on 08/07/2021 requiring compliance on 23/07/2021, on 08/11/2021 requiring compliance on 25/11/2021. However, no reply/submissions were uploaded in this office. The case was again fixed for hearing by issuing notice u/s 250 on 28/04/2023 requiring compliance on 08/05/2023 and again there is no response as yet. However, the appeal is being decided on merit as under:

4.3 In this case notice u/s 148 was issued to the appellant after taking prior approval from the competent authority on 28.03.2018. Appellant has not filed any return of income in response to the notice u/s 148. Further, no response was either filed by the appellant against the statutory notice issued u/s 142(1). Hence, income of the appellant was assessed u/s 144/147 of the Act after making the addition of Rs. 4,58,612/- as short term capital gain on sale of flat and Rs. 934/- as income from other sources. From the ground of appeal filed, though it is not proper, it appears that appellant is challenging the addition of Rs. 4,58,612/- on account of capital gain made to the total income of the appellant.

4.4 I have carefully gone through the grounds of appeal, facts of the case, assessment order passed by the AO. AO has calculated the capital gain after duly considering the sale deed dated 16/11/2009 uploaded by the appellant along with the Form 35 and after duly taking into account the cost of construction of flat as well as appropriate cost of land @ Rs.4,95,000/-. Therefore, in view of the elaborate discussion/analysis and conclusion of the A.O. in the Assessment order, and in absence of any response received from the appellant, I find no reason to interfere in the finding of the A.O. Appellant has not submitted anything

either during the course of assessment proceedings or appellate proceedings to substantiate and rebut the finding of the AO. Hence, A.O. has rightly calculated the capital gain on sale of flat at Rs. 4,58,612/-. Thus the addition of Rs. 4,58,612/- is upheld and Ground no. 1 of the appeal is dismissed.

5.0 In the result, the appeal of the appellant is dismissed.”

5. As the appeal of the assessee was dismissed without the opportunity of being heard to the assessee the assessee has challenged the order of the Id. CIT(A) on the grounds as reiterated here in above. The Id. AR of the assessee in support of the grounds so raised submitted that the assessee has opted for Vivad Se Viswas scheme 2020. Having duly eligible availed the benefit of the scheme and stage of issue of form no. 1,2,3 & 4 has been reached. The PCIT, Jaipur-1 has issued certificate no. 271778880230221 and the assessee has paid the taxes as per the scheme on 31.10.2021 vide challan no. 00474. The form no. 5 ultimately not received so far and therefore, the assessee remained non-compliant before the Id. CIT(A). The Id. AR of the assessee submitted that these facts are not examined by the Id. CIT(A) and if given a chance the assessee would like to plea these contentions before the Id. CIT(A) and based on these arguments he prayed to set aside the issue to the file of the Id. CIT(A).

6. On the other hand, the Id. DR did not raise any specific objection to the prayer of the assessee and at the same did not placed on record as to why the form no. 5 is not issued to the assessee.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the appeal of the assessee dismissed without affording the opportunity of being heard to the assessee. Before us the Id. AR of the assessee submitted that the assessee has opted for Vivad Se Viswas scheme 2020, having so eligible have also filed the form no. 1,2,3 & 4. Even the PCIT, Jaipur-1 has issued certificate no. 271778880230221 and the assessee has paid the taxes as per the scheme on 31.10.2021 vide challan no. 00474. The form no. 5 ultimately not received by the assessee and therefore, the assessee could not submit that information to the Id. CIT(A). The Id. AR of the assessee submitted that these facts are not examined by the Id. CIT(A) and if given a chance the assessee would like to plead these contentions before the Id. CIT(A) and based on these arguments he prayed to set aside the issue to the file of the Id. CIT(A). On the other hand, we found that the Id. DR did not raise any specific objection to the prayer of the assessee and not disputed the contentions so raised. Therefore, we are of the considered view that the assessee is deprived of justice. Based on these set of facts we are inclined to accept the request of the Id. AR of the assessee to set aside the case to the file of the Id. CIT(A), to decide the case of the assessee after giving proper opportunity of being heard to the assessee. At the same time, the

assessee is directed to represent and present all the facts before the Id. CIT(A) and should not ask for adjournment of phlanderer's grounds. At this stage, we remand back the matter without commenting upon the merits of the case and Id. CIT(A) is directed to pass an appropriate order in accordance with law.

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

Order pronounced in the open court on 09/11/2023.

Sd/-

( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/11/2023

\*Ganesh Kumar, PS

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

1. The Appellant- Narendra Singh Shekhawat, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(3), 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. 451/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar