

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. 432/JPR/2023
निर्धारण वर्ष / Assessment Years : 2009-10

Arman Fatma 7366, Hameed Nagar, M.I. Road, Jaipur.	बनाम Vs.	ITO, Ward-2(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADVPF 4681 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Manish Agrawal (C.A.)
राजस्व की ओरसे / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 04/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/11/2023

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 04.07.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2009-10.

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

"1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in dismissing appeal of assessee in limine, without considering the submission made and without providing adequate opportunity of being heard.

1.1 That, the Ld. CIT(A) further erred in dismissing the appeal by holding the same defective, solely for the reason that appeal was filed in paper form instead of online mode. Appellant prays that order has been passed by Ld. CIT(A) without providing opportunity to rectify the defect in appeal filed, thus, order so passed is against the principles of natural justice and deserves to be quashed.

2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Rs. 12,50,000/- made by Ld. AO arbitrarily and by completely brushing aside the submission made and evidences adduced. Appellant prays addition so confirmed, deserves to be deleted.

3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

3. Brief facts of the case are that the assessee is an uneducated and pardanashin lady, and is not receipt of any taxable income, therefore, does not hold PAN. That the assessee had in the F.Y. 2002-03 purchased a property for a total consideration of Rs. 10,00,000/- out of which Rs. 6,00,000/- were paid at the time of purchase and remaining amount was paid to the bank towards outstanding loan. That some disputes hasarise with the seller of the property with regard to registry of the property after getting the bank dues cleared. According, FIR was registered against seller and the matter went to Court. Thus, the transaction stands evidenced by the Court and police records. That the said property was sold by the assessee during the year under appeal, in two parts, for a total consideration of Rs. 15,00,000/-. Thus, after deducting the indexed cost of acquisition of Rs. 13,28,054/-, the resultant capital gain arrived at Rs. 1,51,946/-, which being below taxable limit

was not offered for taxation. However, vide the impugned ex-parte assessment order, the AO has assessed the capital gain at Rs. 12,50,000/- and made addition accordingly by treating the entire sale consideration as capital gain, without allowing any deduction of cost of acquisition. Further, the addition of Rs. 14,610/- was made on account of interest income.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“2. It is seen that the appeal has not been filed electronically by the appellant. As per record, the appeal has been filed manually on 16.11.2017 in form No. 35 Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioner of Income Tax (Appeals) with effect from 01.03.2016. It is seen from the records that the appeal of the appellant has been filed against the order dated 14.12.2016 passed u/s 144 r.w.s. 147 of the Act in paper form on 16.11.2017 whereas the same was required to be e-filed as per Rule 45. Accordingly, the manual appeal filed by the appellant is treated as non est.

3. In the result, the appeal of the appellant is treated as dismissed for statistical purpose.”

5. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) and the AO has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided

one more opportunity to advance his arguments/submissions before the ld. AO in the interest of equity and justice.

6. Per contra, the ld. DR supported the orders of the lower authorities.

7. We have heard both the parties and perused the materials available on record. The bench noted from the order of ld. CIT(A)'s that the appeal of the assessee is dismissed by the ld. CIT (A) for want of non-prosecution of the appeal. The assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessee completed ex-parte assessment u/s 144 of the Act on 14.12.2016. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that *“That, the Ld. CIT(A) further erred in dismissing the appeal by holding the same defective, solely for the reason that appeal was filed in paper form instead of online mode. Appellant prays that order has been passed by Ld. CIT(A) without providing opportunity to rectify the defect in appeal filed, thus, order so passed is against the principles of natural justice and deserves to be quashed.”* However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the lower authorities and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue

in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the Id. AO.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

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

Order pronounced in the open court on 30/11/2023.

Sd/-

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

दिनांक / Dated:- 30/11/2023

*Santosh

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

1. The Appellant- Arman Fatma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(2), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 432/JPR/2023)

Sd/-

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

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar