

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 428/JPR/2023
निर्धारण वर्ष / Assessment Years : 2016-17

Pink City Arts and Crafts Plot No. 08, Raghu Vihar Colony, Durgapura, Tonk Road, Jaipur.	बनाम Vs.	ACIT, Circle-7, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAGFP 9509 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 03/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/11/2023

आदेश / ORDER

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

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 08.06.2023 [here in after "Id.CIT(A)/NFAC"] for assessment year 2016-17, which in turn arise from the order dated 27/12/2018 passed under section 143(3) of the Income Tax Act, by the AO.

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

“1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in passing order ex parte, i.e. without affording assessee with adequate opportunity of being heard. Appellant prays that order so passed is against the principle of natural justice and deserves to be set aside.

2. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the addition of Rs.1,26,11,719/- made by Id.AO under the head Short term capital gains, by passing ex parte order, i.e. without providing adequate opportunity of being heard.

3. That, Id. CIT(A) has further erred in confirming the action of Id.AO in assessing profit on sale of building/ shade etc. as short term capital gain by grossly ignoring the fact that assessee could not commence business activities on such building/shed. Appellant prays that such building/ shed could not be put to use for the purposes of business and accordingly was not eligible for depreciation, thus profit on sale of such building deserves to be assessed as Long Term Capital Gain and consequent addition deserves to be deleted.

4. 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 fact of the case are that the assessee M/s Pink city Art and Crafts, being partnership firm, is engaged in the business of trading others. The assessee filed its return of income for the impugned assessment year 2016-17 u/s 139(4) of the Act belatedly on 13.02.2017, declaring total income of Rs. 2,06,84,250/- under the head of long term capital gain. Subsequently, the assessee filed a revised return of income u/s 139(5) of the Act on 09.03.2018, declaring total income of Rs. 2,06,84,250/-. However, the said revised return of income filed by the assessee is non-est in law inasmuch as, the original return of income was not filed within the

due date specified u/s 139(1) of the Act and therefore, the assessee is not entitled to file revised return of income u/s 139(5) of the Act.

3.1 In view of the above, the Revised return of income filed by the assessee has no locus standing in so far as processing of the return of income u/s 143(1) of the Act and subsequent assessment proceedings initiated u/s 143(3) of the Act. Accordingly, the original return of income filed by the assessee on 13.02.2017 was processed u/s 143(1) of the Act and selected for limited scrutiny under CASS, for the purpose of examining the following issues:

- (i) Whether capital gains/loss is genuine and has been correctly shown in the return of income; and
- (ii) Whether duly drawback received has been correctly shown in return of income.

Pursuant to selection of case for limited scrutiny, the AO issued the statutory notices 143(1) and 142(1) of the Act, calling for various details and documentary evidence and, in response thereto the ld. AR of the assessee filed requisite details and documentary evidence. Thus, after having considered the submissions made by the ld. AR of the assessee, the AO completed the assessment proceedings, vide order u/s 143(3) of the Act

dated 27.12.2018, determining the total income of the assessee at Rs. 3,10,06,150/-. While doing so, the AO re-computed the capital gains arising from sale of property and arrived at short term capital gain of Rs. 1,26,11,719/- and long term capital gain of Rs. 1,83,93,771/-, aggregating to Rs. 3,10,06,150/-, as against LTCS disclosed by the assessee of Rs. 2,06,84,250/-.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that notices were issued on 20.11.2019, 02.11.2022 and 28.04.2023 requiring the assessee to file the details in support of grounds taken by the assessee except seeking adjournment on one occasion i.e. 26.12.2020. Since the assessee has not complied with the notices issued by the Id. CIT(A) therefore, he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“6.20 In view of the above, as per the details and documentary evidence gathered by the AO during the course of assessment proceedings, prima facie, the assessee treated the factory building as depreciable asset. On the other hand, it is the contention of the assessee that though it constructed a factory building the same was not put to use since the business was not commenced even as on the date of transfer of property under reference i.e., 07.09.2015. The assessee further contended that investment made in construction of factory building was treated as long term investment in the books and reflected in the balance sheet accordingly.

6.21 At this juncture, it may be noted that, as highlighted by the AO in the impugned assessment order, in the original return of income filed by the assessee for the immediate AY 2015-16 on 31.08.2015, the assessee did not disclose any long term investment in property in the balance sheet. Similarly, in the returns of income filed by the assessee for the AY 2012-13 and 2013-14 also, the assessee did not disclose the investment in the factory building as long term investment in balance sheet.

6.22 In this regard, it is also important to note that the assessee did not file any return of income for the AYs 2001-02 to 2011-12. On the other hand, for the AY 2015-16, the assessee filed a revised return of income on 31.03.2017, wherein for the first time the assessee disclosed investment made in construction of factory building as long term investment in balance sheet.

6.23 As seen from the aforementioned factual matrix of the case, I am of the considered opinion that, subsequent to sale of property under reference on 07.09.2015 and, after having filed the original return of income for the impugned AY 2016-17 on 13.02.2017, the assessee filed the revised return of income for the immediate AY 2015-16 on 31.03.2017, for the purpose of changing the nature of asset i.e., factory building, from depreciable asset to long term investment with a mala fide intention to reduce the tax liability.

6.24 Under the circumstances, I concur with the finding of fact recorded by the AO that pro rata sale consideration attributable to sale of factory building is subject to tax under the head LTCG by virtue of provisions of section 50A of the Act, rather than under the head STCTG. Accordingly, I don't find fault with the AO in splitting the income arising from transfer of property into two components i.e., LTCG of Rs.1,83,93,771/- and STCG of Rs.1,26,11,719/-, aggregating to Rs.3,10,06,150/-, in place of the assessee's computation of LTCG of Rs.2,06,84,250/-. Thus, the ground of appeal raised by the assessee on this issue is dismissed.

7.0 In the result, the appeal filed against the order u/s.143(3) of the Act for AY 2016-17 is dismissed.”

5. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) 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. CIT(A) in the interest of equity and justice.

6. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

7. We have heard the rival contention and perused material available on record. The bench observed that the Ld. AR submitted that the assessee has not been provided adequate opportunity of being heard at the first appellate stage, the assessee could not attend the hearing, which has led to the passing of ex-parte order by Ld. CIT(A). Further, the Ld. AR prays that the matter may be remanded to the file of 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 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 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 Ld. CIT(A) and do not seek unnecessary adjournments.

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

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 अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Pink City Arts and Crafts, Jaipur.
2. प्रत्यर्था / The Respondent- ACIT, Circle-7, 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. गार्डफाईल / Guard File ITA No. 428/JPR/2023)

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar