

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 589/JPR/2023
निर्धारण वर्ष / Assessment Years : 2010-11

Kailash Chandra Sharma 190 Chotiyo Ki Dhani, Niwaru Jaipur	बनाम Vs.	ITO, Ward-3(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BADPS 9194 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Gorav Sharma (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 31/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 19/12/2023

आदेश / ORDER

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

This appeal is filed by the assessee against the order of Id. CIT(A) dated 14.10.2022, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2010-11.

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

"1. Under the facts and circumstance of the case, the learned AO has errned in making addition of Rs. 7,21,000/- on account of long term capital gain without any basis and not justified.

2. The appellant craves leave to add, delete or modify all or any of the above ground at the time of hearing."

3. At the outset of hearing, the Bench observed that there is delay of 280 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

"The appellant assessee is an individual. The appellate order passed by the Learned CIT(A) on 14.10.2022 was not received by the assessee. Assessee has a short hand on computer and does not operate his E-mail Id on regular basis, Initially the appeal to the CIT (A) was filled manually on 8 Jan 2018, thereafter first notice of hearing was received on 20.09.2019 and 28.05.2019 which the CIT (A) adjourned the case thereafter the appeal was migrated to the NFAC, due to new rules and regulation of receiving notice and we have received hearing notice in COVID period, and there after but some how the name of the assessee was not mentioned in list of appeal file list maintained by us, further the undersigned also forgot to follow up for the same

In the circumstances it is submitted that it was because of the bonafide mistake on the part of my office that we did not inquire about the service of notice. The appeal could not be filed in time. It is submitted that for something which happened due to inadvertence and beyond the control. Hence it is the prayer of the assessee as well as of the counsel that the Hon'ble Bench may kindly condone the delay and admit the appeal."

To this effect, the assessee has filed an affidavit as to the condonation of delay in filing the appeal.

3.1 The ld. AR of the assessee appearing in this appeals submitted that the assessee is serious on the duties and the delay of 280 days is on account of the technical glitches resulted delay. Considering the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

3.2. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

3.3 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 280 days has merit and we concur with the submission of the assessee. Thus the delay of 280 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

4. Brief facts of the case are that the assessee is an individual and only have income under the head income from other sources, the assessee help his father in agricultural related work and is small property dealer and only enjoy income from commission and brokerage. The AO has passed an assessment order u/s 144/147 of the Income Act for the assessment year 2010-11 dated 07.12.2017 by making addition of Rs. 7,21,000/- by treating the entire sale proceeds as income from head capital gain, the AO has treated the complete sale proceeds of the plot as capital again in absence of any information on record.

5. 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:-

“4. Accordingly, notice u/s 250 of the Act was issued on 21.01.2021 asking the appellant to file its submission on or before 12.02.2021. Thereafter, under the new faceless appeal scheme, notice u/s 250 was issued on 19.07.2022 & 22.08.2022 asking the appellant to file its submission on or before 27.07.2022 & 06.09.2022 respectively. However, no reply has been filed till date. Hence, I have no option but to decide the appeal on the basis of material available on record.

5. In this case, the AO has stated that no return of income has been filed for this year. The assessee has sold immovable property during the year for Rs. 7,21,000/-. Since no submission has been made during assessment and appeal proceedings, I uphold the action of the AO to assessee the total income at Rs. 7,21,000/- (under the head capital gains).

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

6. The ld. AR of the assessee filed additional evidence under Rule 29 of the Tribunal Rules which is reproduced as under:-

“This is with reference to above subject we would like to submit the following documents as additional evidence because the assessment was completed u/s 147/144 of the income tax act, 1961 without providing opportunity to the assessee to file explanation regarding purchase and construction value while calculating the capital gain, the evidence filed are the roots and basis of calculation of capital gain, now we are filling evidence regarding the same as additional evidence which may be admitted to provide justice to the assessee :-

1. During the course of assessment proceedings due to non-providing of reasonable opportunity by the lower authorities we could not submit the necessary documents. i.e. explanation regarding purchase cost of land and construction cost without which we cannot come to fair calculation of capital gain. The Lower Authorities (AO and NFAC)has acted in capricious and biased manner by passing the order u/s 144 without giving sufficient opportunity to the assessee. Therefore to adjudicate the grounds of appeal taken by the assessee it is necessary and in the interest of justice to admit all additional evidence submitted by assessee. These documents are relevant and necessary to adjudicate our appeal.

2. The assessee was prevented by sufficient cause from producing the same before the learned AO because no proper opportunity was provided. Therefore we pray for admitting the above evidence as additional evidence under rule 29 of ITAT rules. The admission of these evidence is essential for imparting justice.

3. It is submitted that technicalities are pitched against the substantive discharge of justice, the later has to prevail in a case where the bonafides are not in doubt (Maruti Civil Works vs. ITO [2011] 136TT) 448(Pune). It is further submitted that all the judicial institution - the Hon'able ITAT being one of them are respected not on account of its power to legalize injustice on technical grounds but because these are capable of removing injustice.

4. CIT vs. Text Hundred India (p) ltd 351 ITR 57(del) the additional evidence could be admitted in the interest of justice.

5. The following Additional evidence should be admitted which is root and basis of this case:-

- a. copy of allotment of land, receipt of payment, side plan from sindhi co-operative housing society limited.
- b. Agreement with Shri Rameshwar Khumawat contractor for construction of house with ID proof.
- C. Copy of bank statement for the period.
- d. Affidavit of Kailash Chandra Sharma assessee.
- e. Affidavit of Rameshwar Khumawat contractor
- f. Computation of income of the assessee.

In view of the aforesaid fact and decisions your honor it is requested to admit additional evidence and decide the case accordingly.”

7. 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 Id. AO in the interest of equity and justice.`

8. Per contra, the Id. 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 Id. CIT(A) should be sustained.

9. We have heard both the parties and perused the materials available on record. The Bench observed that the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the ld. CIT(A) and ld. AO as mentioned in his order. 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 order. Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of several notices it is evident in the ld. CIT(A) order. Before us, ld. AR for the assessee submitted evidence to support his claim. 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 admit the additional evidences before us and 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 ld. AO.

10. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. 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 ld. AO independently in accordance with law.

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

Order pronounced in the open court on 19/12/2023.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2023

*Santosh

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

1. The Appellant- Kailash Chandra Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(1),Jaipur.
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 589/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar