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

डा॰ 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. 198/JPR/2024
निर्धारणवर्ष / Assessment Year : 2012-13

Kartar Singh Near Shree Sai Property Mansa Chowk UTI, Sec.-1/248 Bhiwadi, The-Tijara, Alwar.	बनाम Vs.	ITO, Ward, Bhiwadi.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: GCYPS4834L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Hemang Gargieya (Adv.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 02/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 27/05/2024

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the ld. CIT(A) dated 19.01.2024, National Faceless Appeal Centre, Delhi [herein after referred to as"CIT(A)/NFAC"] for the assessment year 2012-13, which in turn arise from the order dated 29.11.2019 passed under section 144/147 of the Income Tax Act,1961 (hereinafter "Act") by the ITO, Ward, Bhiwadi.

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

"1.1 The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 144 r.w.s 147 dt. 29.11.2019 also kindly be quashed.

1.2. The impugned order u/s 144 r.w.s 147 dt. 29.11.2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. The Id. CIT(A) erred in law as well as on the facts of the case in passing the impugned order in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, hence the same kindly be quashed or alternatively berestored to the file of the Id. CIT(A).

3.1. Rs. 4,00,20,000/-: The CIT(A) erred in law as well as on the facts of the case in confirming the impugned addition made by the AO of Rs. 4,00,20,000/- on account of long term capital gain by considering the whole amount (which was adopted for DLCpurpose) as sales consideration, ignoring that there was no"transfer" as such took place in view of a family settlement hence,there was no question of Capital Gain. The addition so made and confirmed by the CIT(A), being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

3.2. Alternatively, and without prejudice to above, the ld.CIT(A) erred in law as well as on the facts of the case in confirming the impugned addition made by the AO of Rs.4,00,20,000/-by considering the entire deemed sale consideration u/s 50C of the Act without even reducing the cost of acquisition and other expenditures as mandated by the law. The addition so made and confirmed by the CIT(A), being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

4. Rs. 22,259,542/- The Id. AO erred in law as well as on the facts of the case in charging interest u/s 234A, 234B & 234C of the Act. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

5. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

3. Brief facts of the case are that the assessee is an agriculturist and 75 years of age. During the year under consideration the assessee derived income from rent and income from agriculture. In the present year, the assessee went into a family settlement of an agriculture land situated at village Khijuriwas, Tehsil-tijara wherein his land was distributed among the close relative of the assessee i.e. Smt. Murti Devi, Smt. Bhagwani Devi and Smt. Sunita. The ld. AO issued noticed u/s 148 and also issued various notices u/s 142(1) of the Act. However, due to old age 80 years (appros) and ill health, the assessee could not attend these hearing. Consequently, the ld. AO framed the assessment order u/s 144 at an income of Rs. 4,00,20,000/- by considering DLC as sales consideration and made addition u/s 50C of the Act.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) observed that various notices were issued to the assessee and requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued the ld. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the ld. CIT(A) is reproduced as under:-

“7. Grounds of Appeal no. 3 is of general in nature and grounds of appeal Nos. 2 is of consequential in nature. The appellant has also not submitted any detailed submission on the grounds during appellate proceedings, hence, these grounds of appeal are dismissed.

8. Ground of Appeal No. 1:- In this grounds of appeal, the appellant has taken a plea that the AO has erred in making addition of Rs. 4,00,20,000/- on account of long term capital gain by considering that whole amount which was adopted for DLC purpose as sales consideration.

8.1 I have gone through the assessment order wherein the AO has observed as under:-

"1. The brief facts of the case are that as per information received in respect of property transaction, it is noticed that the assessee has sold an immovable property situated at Village- Khijurivas, Tehsil- Tijara (Alwar) to Smt. Moorti W/o Sh. Chhajju, Village- Milakpur Gurjar, Bhiwadi for a consideration of Rs.2,00,00,000/- on 04.01.2012. The Sub-Registrar- Bhiwadi has adopted the value of property at Rs.4.00,20,000/- for stamp duty purposes. Hence, as per the provision of section 50C of the Income Tax Act, the value of sales consideration was considered as Rs. 4,00,20,000/-. On verification of record, it is seen that the assessee has not filed his ITR for the year under consideration. Request letters to file reply regarding transaction mentioned above was issued to assessee but assessee has not made any compliance. Thereforeassessee's share of capital gain arises on the above transaction has not been offered for taxation.

Shri Kartar Singh Order u/s 144/147 A.y. 2012-13

Therefore, proceedings u/s 147 of-the Act initiated after recording proper reasons and notice u/s 148 was issued to assessee on 22.03.2019 after obtaining the prior approval of the Pr. CIT, Alwar which was sent through Speed Post to the assessee on 23.03.2019, requiring to fumish return of income for the year under consideration but no compliance was made. Further, notices u/s 142(1) dated 04.07.2019 & 16.08.2019 were issued to the assessee on the address available for furnishing requisite details/information wherein hearing were fixed on 15.07.2019 & 02.09.2019, but again no compliance was made by assessee.

Since no compliance was made by the assessee, a final show cause letter u/s 144 of the Act dated 30.10.2019, fixing the date of hearing on 14.11.2019 alongwith notice u/s 142(1) of Act-was issued to assessee to furnish his explanation, as to why sale consideration of Rs.4,00,20,000/- should not be treated as s income under the head capital gain.

Since, no communication of above notices have been received till date which only substantiate that the assessee has nothing to say in this regard. The assessment is time barring and sufficient opportunities have been provided. Hence, there is no option but to complete the assessment ex-parte u/s 144 of the IT Act on the basis of material/information available on record.

In this respect, a copy of relevant Sale Deed was gathered from the Sub-Registrar-Bhiwadi, Alwar, wherefrom it is gathered that the assessee has sold an immovable property situated at Village Khijurivas, Tehsil- Tijara (Alwar) to Smt. Moorti Wo Sh. Chhajju, Village Milakpur Gurjar, Bhiwadi for a consideration of Rs.2,00,00,000/- on 04.01.2012. The Sub-Registrar- Bhiwadi has adopted the value of property at Rs.4,00,20,000/- for stamp duty purposes. Therefore, in view of the provision of section 50C of the Income Tax Act, the total sales consideration of immovable property is treated as Rs. 4,00,20,000/-.

On perusal of registered sale deed, it is found that the land so sold as mentioned in sale deed is situated at Village- Khijurivas, Tehsil Tijara, Alwar which comes under the municipality limit of Bhiwadi. That means the aforesaid land falls under the category of capital assets u/s 2(14) of the I.T. Act, 1961 and capital gain is arisen on the sale of such type of land. Since, the assessee has not filed any submission, therefore, it is quite clear that the assessee had eamed capital gain of Rs.4,00,20,000/-, therefore, the same is hereby added into the total income of the assessee under the head Long Term Capital Gain. In the absence of any explanation & evidence regarding cost of acquisition, no deduction can be allowed on account of cost of acquisition.

-[Rs.4,00,20,000/-1"

8.2 During the course of appeal proceedings, the appellant has filed no reply despite having sufficient opportunities. However, the 'Statement of Facts' given in Form No.35 while filing the appeal is reproduced as under:-

"Appellant is agriculturist and 75 year of age. During the year under consideration the assesse derived income from Rent and income from agriculture. During the year under consideration by virtue of family settlement, agriculture land situated village Khijurnwastehsil Tijara settled in favour his close relative Smt. Murti Devi. Smt. Bhagwani Dev and Smt. Sunita. In this settlement there was no transaction of any consideration.

The ITO ward Bhiwadi issued notice under section 148 and also issued notice under section 142(1) of IT Act. Due to ill health it was not possible for the appellant to attend the office of Income Tax officer on the date fixed for hearing. The Ld. ITO ward Bhiwadi

framed an assessment order under section 144 at an income of Rs. 40020000/- by considering whole sales consideration which was adopted for the purpose of DLC as Long term capital gain. The Ld. ITO ward Bhiwadi also initiated penalty under section 271(1)(b),271F and 271(1)(c) of ITAct."

8.3 Held:-During the course of appeal proceedings, no reply hasbeen filed by the appellant. I have perused the order of the AssessingOfficer and considered the facts of the case. The Assessing Officer has passed a speaking order with detailed discussion on the issues involved therein. The appellant has not pursued the appeal. No details, documents or submissions have been provided by the appellant substantiating its grounds of appeal. Moreover, mere facts mentioned in Form No. 35 cannot be considered in the absence of any supporting documentary evidence and submissions.

The AO has passed a reasoned order considering all the facts and the circumstances of the case. Also, the appellant has failed to bring anything on record to support its grounds of appeal and to counter the additions made by the AO. Therefore, there is no reason to interfere with the order passed by the AO. Accordingly, the ground of appeal no. 1 is also dismissed.

9. In result, the appeal is dismissed."

5. As the assessee did not receive any relief from the order of the ld. CIT(A), assessee preferred the present appeal. The ld. AR for the assessee has filed a detailed submissions in support of the grounds so raised and is reproduced hereinbelow:-

"Brief General facts:The appellant - assessee is an agriculturist and 80 years(approx.) of age. During the year under consideration the assesse derived income from Rent and Agriculture.Inthe present year,theassessee went into a family settlement of an agriculture land situated at village Khijuriwas,Tehsil - Tijara wherein the land was distributed among the close relative of the assessee i.e. Smt. Murti Devi, Smt. Bhagwani Devi and Smt. Sunita. The ld. AO issued notice u/s 148 and also issued various noticesu/s 142(1) of the Act. However, due to old age – 80 years (approx.) and ill health, the appellant - assesseecould not attend these hearings. Consequently, the ld. AO framed the assessment order u/s 144 at an income of Rs. 4,00,20,000/- by considering DLC as sales consideration and made addition u/s 50C,without appreciating the following points:

i. It was a family settlement among the family members & not sale consideration being transferred.
ii. The subjected property was an agricultural land, falling under the definition of capital assets u/s 2(14) of the Act.

Hence this appeal.

Submissions:

1. No adequate opportunity:

1.1 The ld. CIT(A) erred in law as well as on the facts of the case in passing the impugned order in a haste on dated 19.01.2024 without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, kindly be quashed or alternatively be restored to the file of the ld. CIT(A), as would appear from the following date chart:

Chart Showing Different notices and compliances:

S.NO.	Date of issuance of notice	Due date of hearing	Compliance by assessee	Remark
1.	12.01.2021	18.03.2021	Response dt. 03.02.2021 and 22.02.2023	Covid Period
2.	02.11.2023	09.11.2023	NIL	1 week time given
3.	04.01.2024	11.01.2024	NIL	1 week time given

1.2 A bare perusal of the above chart shows that the so-called many opportunities granted by the CIT(A) to the appellant, is illusionary and shall reveal an interesting fact that the first notice was given on 12.01.2021 in response assessee filed submission which was duly complied with. However, there was a long silence and after a long gap of almost 2 years, 9 months, 3 weeks the ld. CIT(A) woke up and issued a notice on 02.11.2023 and 04.01.2024 giving a week's time only.Immediately thereafter on 19.01.2024 he passed the ex-parte order. The appellant is a layman engaged in the farming. He comes from a rural background and naturally does not understand the complexities of tax laws.

1.3 Undisputedly, there has been a paradigm shift so far as the service of notices and orders are concerned in as much as under the pre-amended law, the assessee/AR used to get hard copies of the notices/orders which are now being uploaded on the portal and sent on email. The question is that when the authority sends the notice after such a long gap it may be difficult for the recipient to check his e-mail/portal every next day throughout the period of 8-10 months. Not only the assessee but also the tax consultant who are also practicing in small towns are not sound with the technical knowledge and infrastructure, it is quite basic for them to have lost sight of such communication if any sent by the department. Another aspect to take note of is that COVID-19 was still prevalent at that time and activities did not resume with full force and it was only in March 2022, the normalcy could have been said to be restored as evident from the order of Apex court passed on dated 23.03.2020 in Suo motu Writ Appeal (Civil) No. 3 of 2020 on the issue of law of limitation holding as under:

> *"...The period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."*

In the meanwhile, the Central Government was continuously relaxing the time limits for taking actions/making compliance through TOLA.

1.4 In these circumstances there appears no justified reason at all as to why the ld. CIT(A) was issuing notices for such a short period of 7-10 days only. Also there was no urgency to pass the appellate order hastily. Therefore, there is no hesitation to say that the ld. CIT(A) just to show a disposal on his part, passed the impugned order in complete disregard to principles of natural justice i.e., *Audi alterampartem.*

1.5 Hence, to do substantial justice, the appeal kindly be decided in favour of the assessee or alternatively restored to the file of the ld. CIT(A).

2. Reason of Non-Compliance:

2.1 It is submitted that on the face though appears that there has been non-compliance from the side of the Appellant however the factual background was not properly appreciated rather ignored in as much as, at that point of time the appellant was not conversant and compatible with the fast technological developments, which were taking place and continuously being adapted by the Income Tax Department as well.

2.2 Further, after the introduction of the amended Rule 127A, notices are required to be issued electronically i.e. they are uploaded on the registered account of the assessee or sent through

emails etc. Therefore, the recipient assessee is supposed to have that much of technical knowledge and infrastructure facilities to come to know/ information that some notice, order or communication has been sent by the Department. On the other hand, however, the Appellant was seriously lacking of technological knowledge, which resulted into the ignorance of the fact of the receipt of notices depriving the Appellant for making due compliance.

3. CIT(A)/NFAC did not act as per Law:

3.1 The CIT(A) has not decided the appeal on merits which is contradictory to the mandate of Section 250(6). The same is reproduced here under for your ready reference:

> *"(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."*

A bare perusal of above provision makes it clear that the CIT(A) is bound to dispose of the appeal before him on merits. Merely because the assessee didn't turn up, he cannot dismiss the appeal in Limine. The law contained u/s 250(6) & 251 do not at all contemplates the CIT(A) passing an appellate order in this manner. There are judicial guidelines to support this contention.

3.2. Supporting Case Laws:

3.2.1. Corporate International Financial Services V ITO ITA No. 2147/Del/2017 held as:

> *"Further, it is well-settled that powers of Ld. CIT(A) are coterminus with powers of the Assessing Officer. Useful reference may be made to order of Apex Court decision in CIT vs. Kanpur Coal Syndicate 53 ITR 225 (SC) in which it was held that the first appellate authority, the Ld. CIT(A) in the case before us, has plenary powers in disposing off an appeal; that the scope of her power is co-terminus with that of the ITO, that she can do what the ITO can do and also direct him to do what he failed to do. In this context, useful reference may also be made to Hon'ble Apex Court's decisions in the cases of CIT vs. Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC) and CIT vs. B.N. Bhattachargee 118 ITR 461 (SC) for the proposition that an assessee having once filed an appeal, cannot withdraw it and even if the assessee refuses to appear at the hearing, the first appellate authority can proceed with the enquiry and if he finds that there has been an underassessment, he can enhance the assessment. Just as, once the assessment proceedings are set in motion, it is not open to the Assessing Officer to not complete the Assessment Proceedings by allowing the Assessee to withdraw Return of Income; it is similarly, not open for Ld. CIT(A) to not pass order on merits by dismissing the appeal in limine, whether on account of non-prosecution of appeal by the Assessee or due to the Assessee seeking to withdraw the appeal or if the assessee does not press the appeal.*

When the Commissioner (Appeals) dismisses the appeal of assessee in limine for non-prosecution of appeal by the assessee; in effect, indirectly it leads to same results as withdrawal of appeal by assessee. When the assessee is not permitted to withdraw the appeal filed before the first appellate authority, the first appellate authority is duty bound to not allow a situation to arise, through dismissal of appeal in limine for non-prosecution of appeal before the first appellate authority; in which, in effect, indirectly the same results are obtained as arise from withdrawal of appeal by the assessee. What cannot be permitted in law to be done directly, cannot be permitted to be done indirectly either, as is well settled. In view of the foregoing discussion; it is amply clear that Ld. CIT(A) was in error in dismissing the appeal in limine for non-prosecution of appeal by the assessee. We draw support from order of Hon'ble Bombay High Court in the case of CIT vs. Premkumar Arjundas Luthra (HUF) [2016] 240 taxman 133 for the proposition that Ld. CIT(A) is required to apply her mind to all issues which arise from impugned order before her whether or not same had been raised by appellant before her; and further, that CIT(A) is obliged to dispose of the appeal on merits.

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In view of the foregoing, we hold that the Ld. CIT(A) erred in dismissing the appeal of the Assessee in limine for non-prosecution of appeal by assessee. We set aside the impugned order of the Ld. CIT(A) and we direct the Ld. CIT(A) to pass denovo order as per law, in accordance with Sections 250 and 251 of I.T. Act."

3.2.2 CIT vs. Premkumar Arjundas Luthra (HUF) [2016] 240 taxman 133 it was held that:

"8……..It is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(l)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it dear that while considering the appeal, the CTT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact, the CIT(A) is obliged to dispose of the appeal on merits. In fact, with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing

Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CTT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CTT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply dear from the Section 251(l)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

3.2.3 The decision of Shri Onkar Mal in ITA No. 1262/JP/2018 followed in Shri Ram Borewell & Construction company V ACIT ITA No. 180/JP/2019 it was held as:

"As per provisions of Section 250(6) of the Act, the ld. CIT(A) is required to pass a speaking order in writing giving reasons for reaching to the conclusion. However, the order passed by the ld. CIT(A) are not in terms of Section 250(6) of the Act. Therefore, in the substantial interest of justice, we set aside the ex parte order of the ld. CIT(A) and restore the matter back to the file of the ld. CIT(A) for deciding the issue afresh on merits. The assessee is also directed to appear before the ld. CIT(A) within two months from the date of receipt of this order. In case of any failure on the
part of the assessee, the ld. CIT(A) is at liberty to pass order after considering the material placed on record."

4.1The impugned assessment is not a best judgment assessment as contemplated by law: It is submitted that the AO also did not meet with the requirements of making a "best judgment assessment". It is submitted that while making an assessment u/s 144 the AO does not have blind and arbitrary powers to make the assessment, the way he wants. On the contrary, the law enjoins upon him a more onerous duty in such a circumstance in as much as he has to act in the capacity of quasi-judicial authority, who is supposed to take a best judgment, while making a fairest possible assessment of the income of an assessee.

4.2 Fair estimation required- Judicial Guideline: For a better appreciation, a reference may kindly be made to the commentary by the ld. Authors ChaturvediPethisaria Vol. 3 Edition V at page 4932, reproduced hereunder verbatim: -

"*Best Judgment assessment – how to be made– In making a best judgment assessment the Assessing Officer must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair*

estimate of the proper figure of assessment, and for this purpose he must be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assesseeand all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work [CIT Vs. LaxmiNarainBadridas , (1937) 5 ITR 170, 180 (PC), reversing (1934) 2 ITR 246 (Nag); CIT Vs. S. Sen, (1949) 17 ITR 355 (Orissa); Singh Engineering Works Vs. CIT , (1953) 24 ITR 93 (All); M.A. Rauf Vs. CIT, (1958) 33 ITR 843 (Pat); MohanlalMahribal Vs. CIT, (1982) 133 ITR 683 (MP) ; Ganga Prasad Sharma Vs. CIT, (1981) 132 ITR 87 (MP) & (1981) 127 ITR 27 (MO); BalchandUdairam Vs. State of Sikkim, (1989) 180 ITR 530, 553 (Sikkim); K.T. Thomas Vs. Ag ITO, (1990) 184 ITR 561, 565 (Ker.)].

In making a best judgment assessment the Assessing Officer does not possess absolutely arbitrary authority to assessee at any figure he likes and that although he is not bound by strict judicial principles he should be guided by rules of justice, equity and good conscience [Abdul Qayum& Co., Vs. CIT, (1933) 1 ITR 375, 378 (Oudh)]. A best judgment assessment is not by way penalty for non-compliance [Jot Ram Sher Singh Vs. CIT, (1934) 2 ITR 129 (All) and it cannot be made capriciously in utter disregard to the material on record [GundaSubbayya Vs. CIT, (1939) 7 ITR 21, 26-7 (Mad-- FB); CIT Vs. S. Sen, (1949) 17 ITR 355 (Orissa)]."

4.3 A decision is in the case of CIT v/s Gotan Lime KhanizUdyog (2002) 256 ITR 243 (Raj):

4.4 However, your honor shall find that the lower authorities in the present case have not conformed to these settled principles by the courts, while making the impugned assessment u/s 144. Hence, the impugned order kindly be quashed or alternatively be set-aside to the AO to be made afresh or alternatively to the ld. CIT(A).

4.5 Hence, to do substantial justice, keeping all the facts and circumstances and considering the same sympathetically the impugned order therefore deserves to be quashed. Alternatively, it is therefore humbly prayed that the matter may kindly be set aside andrestored to the file of the ld. CIT(A) or AO for consideration and decision afresh and oblige."

6. During the course of hearing, the ld. AR for the assessee prayed that the Id. CIT(A) and the AO both have 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 on merits as the orders of the both the authority are ex parte, and the assessee prayed to grant one chance to provide the details in connection with the merits of his case and the additional evidence to support the contention will reduce the liability of tax substantially and therefore, in the interest of equity and natural justice the assessee praying for the one chance before the ld. AO to advance the argument on the merits of the case.

7. Per contra, ld. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the ld. AO and CIT(A) both stage and now there are praying for equity and justice. Therefore, in that case if the Bench feels the matter may be restored to the file of the Assessing Officer, then with fine may be sent back to the file of the ld. AO.

8. We have heard both the parties and perused the materials available on record. The bench noted from the order of ld. CIT(A) that the appeal of the assessee was 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 assessment completed ex-parte assessment u/s 144/147 of the Act on

29.11.2019. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that " *The Id. CIT(A) erred in law as well as on the facts of the case in passing the impugned order in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, hence the same kindly be quashed or alternatively be restored to the file of the Id. CIT(A).*" Looking to these aspect of the matter the Bench feels that the assessee could not advance their arguments / submissions to contest the case before the ld. CIT(A) 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. Considering that aspect of the matter we hold to remand back the matter to the file of the ld. AO as the order of assessment is also ex parte. Thus, the ld. AO will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

9. 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 27/05/2024.

Sd/-	Sd/-
(राठौड़ कमलेश जयन्तभाई)	(डॉ.एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- **27**/05/2024
*Santosh
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Kartar Singh, Bhiwadi.
2. प्रत्यर्थी / The Respondent- ITO, Ward, Bhiwadi.
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 198/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar