

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 443/JP/2024
निर्धारण वर्ष/Assessment Year : 2012-13

Hanuman Sahay S/o Bhura Ram Sharma, Ward No. 5 VPO Nangal Purohitan Via Harmada Jaipur – 302 013	बनाम Vs.	The ITO Ward 7(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: EUCPS 8119 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Chaudhary Addl. CIT

सुनवाई की तारीख / Date of Hearing : 16/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 28 /05/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 07-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 raising therein following the grounds.

“1. That the order of the Id. CIT(A) is wrong on the facts as he has misappreciated the facts as available on record while deciding the appeal.

2. Without prejudice to Ground No. 1, the instant order of the ld. CIT(A) deserves to be set aside to the AO for reconsideration of the matter on account of the reason that the appellant could not make submission before the AO and the ld. CIT(A) on account of his illiteracy.’’

2.1 At the outset of the hearing, the Bench noted that there is delay of 1 day in filing the appeal by the assessee for which the assessee aged about 85 years old has filed an affidavit praying therein that the assessee is an illiterate person and does not know the papers typed in English by the Advocate and thus the delay of 01 day occurred to make understand the documents to be produced before the Tribunal

2.2 On the other hand, the ld.DR submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 After hearing both the parties and perusing the documents placed before the Bench, it is noted that there is merit in the submission of the assessee . Hence, the delay is condoned.

3.1 At the outset of the hearing, the Bench noted that the ld. CIT(A) dismissed the appeal of the assessee on account of non-appearance and not substantiating any documentary evidence at the time of hearing of the appeal. The narration as made by the ld. CIT(A) in his order is reproduced as under:-

‘’ 4.5 However, in the interest of natural justice, the case of appellant was examined on merit in the light of grounds of appeal and Statement of Facts filed. It is found that the issues raised by the appellant through various grounds of appeal have

been considered by the A.O during the assessment proceedings, but the same could not be contested or rebutted during the appeal proceedings in view of the fact that the appellant has failed to avail of the opportunities provided. The appellant did not file any response to notices except for one request for adjournment on 17.11.2021. In the absence of any substantiation or any documentary evidence filed in support of grounds of appeal, it can only be concluded that the appellant has no evidence or explanation to offer in respect of the additions made in the assessment order that is the subject matter of appeal. Accordingly, being thus found to be without substance all the grounds of appeal are dismissed.

5. In the result, the appeal is dismissed.”

3.2 During the course of hearing, the ld.AR of the assessee mainly prayed that the assessee being an aged person of 85 years as well as illiterate person could not advance his submissions before both the authorities and thus the assessee may be given one more opportunity to substantiate his claim before the AO and also put forth his submission with a view to settling the dispute of addition made by the AO.

3.3 On the other hand, the ld. DR supported the orders of authorities below.

3.4 The Bench has heard both the parties and perused the materials available on record. The Bench noticed that the assessee was ex-parte before the AO as well as before the ld. CIT(A). It is also noticed that the assessee was granted several opportunities but the assessee neither cooperated nor responded and not offered any explanation before the lower authorities to justify its claim. The Bench is of

the view that the appellant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about judicial proceedings pending with the Income Tax Authorities against him or initiated at his instance. After filing the appeal or requesting for adjournment, the litigant cannot go off to sleep and not respond to the notices at all. In this regard, the Bench rely on the decision of Hon'ble Delhi High court in Moddus Media Pvt vs M/s. Scone Exhibition Pvt. Ltd. (RFA 497/201 dated 18th May,2017). It is noted that the Hon'ble Supreme Court in Basawaraj vs. The Spl Land Acquisition Officer (Civil Appeal No. 6974 of 2013, dated 22.08.2013) observed as under (emphasis supplied):

"13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale... An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches."

Be that as it may, considering the fact that the assessee is a senior citizen aged about 85 years and as contended being an illiterate agriculturist and not aware about the strict provisions of Income Tax Act, the Bench is of the view as far as possible that lis between the parties be decided on merits. Hence, adhering to the principles of Audi Alteram Partem, equity and justice, the matter is restored back

to the file of the AO to decide it afresh by providing opportunity of hearing to the assessee. Thus, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings and the appeal of the assessee is allowed for statistical purposes.

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

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

Order pronounced in the open court on 28 /05/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /05/2024

*Mishra

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

1. The Appellant- Shri Hanuman Sahay, Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward – 7(4), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.443/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar