

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. 601/JP/2024
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Bodhu Ram Sharma Bakando Ki Dhani, Mithila Vihar-II Manoharpura, Jagatpura, Jaipur	बनाम Vs.	The ITO Ward- 6 (5) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:FYBPS 5479 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 24/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. Addl. CIT(A)-9, Delhi dated 29-12-2023 for the assessment year 2012-13 raising therein following grounds of appeal.

"1. The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal ex-parte on the ground that assessee is not interested in pursuing his appeal without issuing the notice of hearing at the communication address at which notice is to be sent provided in Form No.35.

2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.13,68,265/- by treating the source of investment in agricultural land as income from undisclosed sources ignoring that source of investment is out of gift received from father from the agricultural land sold by him.

2.1 At the outset of the hearing, the Bench noted that there is delay of 71 days in filing the appeal by the assessee for which the assessee has filed an application for condonation of delay dated 01-05-2024 and mainly submitted as under:-

“.....it is to submit that the ld CIT(A) has passed the order on 22-12-2023. However, the order came to the notice of assessee on 02-04-2024 as stated in the affidavit (enclosed). Thus, there is no delay in filing the appeal from the date of communication but there is delay of 71 days from the date of order. The said delay is for a reasonable cause as explained in the affidavit of assessee. It is, therefore, requested to kindly condone the delay and admit the appeal for hearing.

The assessee Shri Bodhu Ram Sharma, has also filed an affidavit praying therein to condone the delay in filing the appeal who also deposed the reason for such delay.

2.2 On the other hand, the ld DR objected for such delay in filing the appeal by the assessee but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 The Bench has heard both the parties and perused the materials available on record. The Bench noted that there is a merit in the submission of the assessee for late filing of appeal which is allowed.

3.1 As regards the main appeal of the assessee, the Bench noted that the assessee was ex-parte before the AO as the assessee did not furnish any reply before the AO who passed the assessment order u/s 144 of the Act by making addition of Rs.13,68,265/- and treating the source of investment in agricultural land as income from undisclosed sources. In first appeal, the ld. Addl CIT(A) as mentioned at para 3 of his order provided 4th opportunities to the assessee but the assessee did not furnish any document. Hence, in the absence of any supporting document as well as not pursuing the case on the date of hearing, the ld. Addl. CIT(A) dismissed the appeal of the assessee upholding the order of the AO.

3.2 During the course of hearing, the ld. AR of the assessee has filed following written submissions praying to delete the addition.

“1. It is submitted that Ld. CIT(A) has issued notices at the e-mail id registered on the ITBA portal, i.e. brijm9866@gmail.com. This e-mail id is inoperative and therefore the notices so issued were not received by assessee and thus could not be responded. In Form No.35, at Column No.17- Address to which notices may be sent to the appellant, the e-mail id mentioned is rpradhancompany@gmail.com. However, no notice was issued at this e-mail id. Thus the notices issued by Ld. CIT(A) never came to the knowledge of assessee and hence could not be responded. Hence order passed by the Ld. CIT(A) stating that the assessee has not effectively perused the appellate proceedings is incorrect.

2. On merit it is submitted that the source of investment in purchase of agricultural land is out of the amount received by the assessee and his 3 brothers from the sale of agriculture land by their father Nanu Ram who has sold his agriculture land vide sale agreement dt. 07.04.2011 (**PB 15-18**) for Rs.66,01,100/- to Sh. Dinesh Sharma. The father of assessee has

gifted Rs.55 lacs to all his four sons out of the agricultural land sold by him. Thus source of investment is fully explained.

In view of above, addition confirmed by Ld. CIT(A) be deleted.

3.3 On the other hand, the ld. DR supported the order of the ld.CIT(A).

3.4 The Bench has heard both the parties and perused the materials available on record. The Bench noted that it is an admitted fact that the assessee is ex-parte before the AO and also before the ld. CIT(A). Therefore, the assessee could not put forth his defence. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is noticed that various opportunities were provided to the assessee for settling the issue but the assessee remained lethargic and unserious in pursuing her case for which a cost of Rs.2.000/- is imposed upon the assessee which will be deposited by the assessee in the Prime Minister Relief Fund. However, I am of the view that lis between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of being heard to the assessee. Hence, the matter is restored to the file of the AO 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. Thus the appeal of the assessee is allowed for statistical purposes.

3.5 Before parting, the Bench makes it clear that its 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.

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

Order pronounced in the open court on 10/07/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/07/2024

***Mishra**

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

1. The Appellant- Shri Bodhu Ram Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 6 (5), 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. गार्ड फाईल / Guard File (ITA No. 601/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar