

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA Nos. 375 & 376/JPR/2024
निर्धारण वर्ष/Assessment Year : 2011-12 & 2013-14

Veena Sharma 106 Mahadev Nagar, Near Akshardham Temple Vaishali Nagar, Jaipur	बनाम Vs.	Income Tax Officer, Ward 7(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BCPPS 8572 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Saurav Harsh, Adv.
राजस्व की ओर से/ Revenue by : Sh. Anoop Singh, Addl. CIT (V.C)

सुनवाई की तारीख/ Date of Hearing : 10/07/2024
उदघोषणा की तारीख/Date of Pronouncement: 16/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M

These two appeals filed by assessee arise out of the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 23/01/2024 [here in after NFAC/ Id. CIT(A)] for assessment years 2011-12 & 2013-14 which in turn arose from the order dated 24.11.2018 & 26.03.2022 respectively passed under section 147 r.w.s 144 of the Income Tax Act, by AO.

2. At the outset, the Id. AR has submitted that the matter in ITA No. 375/JPR/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in disputed. The Id. DR did not raise any specific objection against taking that case as a lead case.

3. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed / added in each year. Therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order. For the purpose of the present discussions, the case of ITA No. 375/JP/2024 is taken as a lead case.

4. There is a delay of 04 days in filing of the appeal by the assessee. Ld. AR of the assessee presented an application for condonation of delay on the following grounds:

“The humble assessee appellant applicant respectfully prays for the condonation of delay in filling of Appeal before the Hon'ble Income-tax Appellate Tribunal for the following reason:

1. That the Id. Assessing officer passed his order on 23.01.2024 which was served upon the counsel of the assessee appellant email id i.e advsauravharsh@gmail.com.

2. That during the limitation period the counsel of the assessee Shri Saurav Harsh could not be communicated with the assessee appellant because assessee migrated to Gurugram Haryana and due to which the counsel lost the communication with the assessee appellant.

3. That assessee during the end of the limitation period, the counsel after many efforts succeed in communication with the assessee appellant after seeks instruction from the assessee, he assessee filed the appeal without any further delay with this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and due to unavoidable circumstances.

That in these circumstances we request your honour's to kindly condone the delay and oblige."

5. During the course of hearing, the Id. DR did not object to assessee's application for condonation of delay and prayed that Court may decide the issue as deemed fit in the interest of justice as delay is of four day's only.

6. We have heard the contentions of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of four days has merit and we concur with the submission of the assessee. Thus, the delay of four 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 was prevented from filing appeals by “sufficient cause”.

7. Before moving to the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 375/JP/2024 on the following grounds;

“1 Ground!. That on the facts and circumstances of the case and in law the Id. CIT(E) grossly erred in passing the ex-parte order and confirming the addition made by the Id. assessing officer.

2 That on the facts and in the circumstances of the case the Id. Assessing Officer grossly erred in issuing Notice u/s 148 and in making a reassessment of the assessee when there was no basis for reopening and proceeding are unjustified and bad in law.

3. That on the facts and circumstances of the case the Id. Assessing Officer grossly erred in making addition of Rs 60,00,000/- u/s 69C as unexplained investment which was never made by the assessee appellant

4. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”

8. Succinctly, the facts as culled from the records are that in this case, return of income was filed by the assessee u/s 139(1) of the Income Act 1961 on 26.07.2011 declaring total income of Rs.1,92,250/-. Subsequently, on possession of Information regarding purchase of capital assets and luxuries car during the year by the assessee, necessary reasons were recorded and after obtaining approval of Pr.CIT-1, Jaipur on 27.03.2018, the case was

re-opened and notice u/s 148 was issued on 31.03.2018 by the ITO, Ward-3(5), Jaipur which was served upon the assessee through Regd. Post and the assessee was required to furnish return of income within the stipulated time but compliance of the same was not made. Thereafter, upon change of incumbent and in order to complete the proceedings, notice u/s 142(1) was issued on 20.09.2018 fixing the case for hearing on 26.09.2018 but compliance of the same was not made. Another notice u/s 142(1) was issued on 05.10.2018 fixing the case for hearing on 15.10.2018 but compliance of the same was also not made. Therefore, in order to afford final opportunity to the assessee the Id. AO issued notice u/s 144(1) of the IT. Act, 1961 was issued on 13.11.2018 fixing the case for hearing on 16.11.2018, which was served upon assessee through Regd. Post. On the date of hearing fixed on 16.11.2018 neither the assessee attended personally or through an authorized representative nor furnished any written submission, therefore, the case was completed u/s 144 of the I.T. Act 1961 on the basis of material available on record.

8.1 As per information available on record the assessee has incurred expenditure in purchase of various luxurious cars and

purchase of agriculture land for Rs.60,00,000/-. Based on this report, necessary verification was made and it was found that the assessee had filed ROI for the relevant period, but not disclosed the transaction for taxation purpose. Therefore, the case was completed u/s 144 as ex-parte case under the I.T. Act 1961. Considering the facts of the case, Rs.60,00,000/- was treated as unexplained investment u/s 69 of the I.T. Act 1961 and was added to the total income of the assessee.

9. Aggrieved by the order of the Assessing Officer passed ex-parte, assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) issued the assessee notices on almost five occasions, and only on one occasion, the assessee sought adjournment and rest all notices were not complied with. Therefore, Id. CIT(A) noted that the Assessing Officer made the addition based on information available to him. Since the assessee did not produce any evidence, in the appellate proceeding on the grounds so raised before him, he confirmed the addition stating that the assessee had not filed any material so as to deviate from the finding of Assessing Officer. The relevant finding of the Id. CIT(A) is reproduced below:

“7. As noted from the facts of the case and material available on record, it is seen that the Assessing Officer made the above additions, based on materials available on record, after according proper and adequate opportunity to the appellant and after marshalling the facts. The appellant did not produce any evidence in support of his claim or made any response against the various notices issued from time to time during the entire appellate proceedings. There is no materials before me to deviate from the order of the Assessing Officer. Hence, it is held that the assessment order passed by the Assessing Officer u/s 147 r.w.s 144 of the Act, resulting into the assessed Income amounting to Rs. 43,21,000/-, based on his findings and proper adjudication, is quite in order, and the same is hereby confirmed. Accordingly, Grounds of appeal of the appellant are dismissed. ”

10. Before us, the Id. AR of the assessee sought time on three occasions praying that they are in the process of collecting records from the file by the Assessing Officer as well as from the assessee so as to controvert the finding and relevant details as alleged in the order of Assessing Officer. The Bench noted that though the assessee remained non-compliant before both the lower authorities but since she voluntarily filed the return of income for the year under consideration u/s 139(1) of the Act, assessee was aware of her obligation under the IT. Act. As argued by Id. AR of the assessee, there may be compelling circumstances for non-appearing of the assessee, she being lady. Ld. AR of the assessee prayed that the assessee has merit in her case and since both the

orders of authorities below proceeded ex-parte, one more opportunity may be given to represent the facts of the case by her.

11. Per contra, the Id. DR relied on orders of Id. CIT(A) and pointed out the assessee was given sufficient opportunity. The Id. DR at the same time did not controvert the prayer of the assessee but prayed to the Bench that the assessee may be given a chance to plead her case subject to costs.

12. We have heard the rival contentions and perused the material placed on record. The Bench notes that the assessee filed her return of income voluntarily. The revenue got information about the sale of property and purchase of luxuries cars by the assessee whereupon the only addition, being the entire sale proceeds of the property, was made to her income. The assessee having already filed her ITR voluntarily, but having not complied with the re-assessment proceedings for compelling reasons, and considering the prayer of the assessee based on the facts, we are of the view that if the assessee is given one more chance in the interest of justice, there will be a substantial justice in assessing

income of the assessee. We order accordingly. At the same time Id. Assessing Officer is directed to examine the claim of the assessee and pass order a fresh after giving sufficient opportunity of being heard to the assessee. However, the assessee will not seek any adjournment on frivolous ground and shall remain cooperative in the proceedings before Id. AO.

As the assessee remained non-compliant before the lower authority the Bench feels that the assessee should pay Rs. 1000/- for each year to the "Prime Minister Relief Fund". The assessee shall produce proof of payment of cost before Id. AO.

In the result, the appeal filed by the assessee in ITA No. 375/JP/2024 is allowed for statistical purposes.

13. The facts of the case in ITA No. 376/JP/2024 are similar to the case in ITA No. 375/JP/2024. We have heard both the parties and perused the material available on record. The Bench has noticed that the issues raised by the assessee in this appeal No. 376/JP/2024 are similar on the same set of facts and grounds. Therefore, it is not imperative to repeat the facts and various

grounds raised by both the parties. Hence, the Bench feels that the decision taken by us in ITA No. 375/JP/2024 for the Assessment Year 2011-12 shall apply mutatis mutandis to the case of Ms. Veena Sharma appellant in ITA No. 376/JP/2024 for the Assessment Year 2013-14.

In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 16/07/2024

Sd/-

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 16/07/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Veena Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 7(3), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 375 & 376/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar