

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. 841/JP/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Deepak Jain 41-A, Jain Vihar, Keshupura Kamla Nehru Nagar, Ajmer Road Jaipur	बनाम Vs.	The ITO Ward 2(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFCPJ 8653 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shailesh Mantri, CA.
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 22/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Addl. Id. CIT(A)-5, Mumbai dated 15-05-2024 for the assessment year 2011-12 raising following grounds of appeal.

“1. The Id.CIT(A) has rejected the application for of delay in filing the appeal and passed the order without considering the merit which is illegal, arbitrary and invalidation of the principles of natural justice and hence needs to be quashed.

2. That the Id.CIT(A) has erred in facts and in law in confirming the addition of Rs.11,42,150/- considering the deposit in the bank as unexplained.

3. That the ld.CIT(A) has erred in facts and in law in confirming the addition of Rs. 8,51,289/- considering the sales value as long term capital gain without allowing the benefit of index value of purchase cost and exemption u/s 54.

2.1 At the very outset after perusal of the case file, the Bench noticed that the appeal of the assessee has been dismissed ex-parte by the ld. CIT(A) as the same was filed beyond the period prescribed under the law.

2.2 The ld. AR appearing on behalf before the Bench submitted that the assessee was not aware about the delay in filing the appeal before the ld CIT(A) and, therefore, he could not file any formal application. Moreover, the ld. CIT(A) by rejecting the appeal of the assessee has not provided any opportunity to the assessee regarding the delay in filing the appeal. The assessee has filed an affidavit to condone the delay of 614 days which took place in filing the appeal before the ld. CIT(A) and thus prayed therein as under:-

“4. That when I came to know about the demand, I tried to communicate to the consultant but he was not responding then I communicated to other consultant and discussed the whole case and thereafter filed the appeal before the ld CIT(A) on 06-08-2020. This resulted in a delay of 614 days in filing the appeal. The reason behind the delay was that I had appointed a consultant to handle my income tax case; however the consultant failed to file the appeal within the stipulated time. Moreover, the e-mail address and phone number quoted on the income tax appeal portal belonged to the consultant and to the nature of job I was not in town and hence I was not aware of the orders and notices passed by the AO or further notices issued on me.

5. That this delay was purely unintentional and beyond my control.

6. That I humbly pray that the Hon'ble Income Tax Appellate Tribunal to provide me an opportunity to produce the documents for verification for general natural justice.”

2.3 On the contrary, the ld. DR relied upon the orders of the lower authorities.

2.4 After hearing both the parties at length and perusing the materials available on record including the orders of the ld. CIT(A) and AO. It is noticed that the assessee was ex-parte before the AO and ld. CIT(A). It is also noticed from the records that the submissions as made by the assessee in his affidavit has merit and in view of the submissions of the assessee, the delay is condoned. The Bench further noticed that it will be in the interest of equity and justice to restore the matter to the file of the AO to decide the appeal of the assessee afresh by providing one more opportunity of being heard to the assessee. Be that as it may since it is an admitted fact that the assessee is ex-parte before the AO and also before the ld. CIT(A). Therefore, he 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 his 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 submit the necessary documents before the AO to contest the case and 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.

2.5 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.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes with no orders as to costs.

Order pronounced in the open court on 07/08/2024.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 07 /08/2024

*Mishra

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

1. The Appellant- Shri Deepak Jain. Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2 (1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 841/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar