

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

Shivram Bairwa Village: Rajgarh Distt. Dausa (Raj)	बनाम Vs.	The ITO Ward Dausa Dausa
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGSPJ 7351 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.K. Gogra, CA
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 25/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 20 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 21-12-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2012-13 raising following grounds of appeal.

‘1. That Ld AO has grossly erred in facts & in law and all the allegations as made out in the assessment order are not accepted to appellant and are denied outright and further Ld CIT(A) has further erred in confirming same without going into merits of the case and without ascertaining the factual position of the case.

2. That Ld AO has erred in passing of ex parte assessment u/s. 147 r.w.s.144 of I.T. despite of fact that appellant has submitted adjournment application to Ld AO stating about his medical illness and has also produced medical certificate, but despite of submission of same of before Ld AO, passing of ex-parte order is lacking opportunity of being heard and same may please be declared as illegal and be deleted.

3. That Ld AO has grossly erred by treating entire DLC value of Rs.4045,844/- as sale consideration whereas there is no such sale consideration has been received by appellant, rather this being a compensation transaction and is beyond scope of levy of capital gain.

4. That Ld CIT(A) NFAC has stated that opportunities were provided but no such real opportunity of being heard has ever been provided. No notice from the local Jurisdictional assessing officer through post has ever been provided for appeal hearing. All communication might have been made through Income tax e portal and appellant being illiterate lady could not understand the intricacies therefore could not respond to these notices. Thus entire proceedings were undertaken ex-parte and without looking for merits of the case and same may please be held as illegal and unjustified and be set aside.

5. That the Id. AO has erred in levying of interest u/s 234A, 234B and 234C which being consequential in nature and may please be deleted.”

2.1 At the outset of hearing of the appeal, the Bench noticed that there is a delay of 100 days in filing the appeal for which the assessee has filed an application for condonation of delay with following prayer.

“2. That the appellant belongs to bare remote village area. That appellant is not much literate and is engaged in doing the agricultural work and other miscellaneous income activities in village. That do not have any access to the Income tax portal and do not check any regular messages as received on mobile phone.

3. That once a while at time of check of Income tax portal on dt. 14.5.2024 and it has gathered for the first time that appeal order dt.21.12.2023 has been passed and then appellant took all the steps for filing of appeal against the appeal order dt.21.12.2023.

To this effect, the assessee has submitted an affidavit deposing the above facts

2.2 On the other hand, the ld. DR objected such inordinate delay and 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 materials available on record and affidavit of the assessee, the Bench noted from the condonation of application of the assessee that there is a merit and sufficient cause in condoning the delay. Hence, the delay is condoned.

3.1 During the course of hearing the ld.AR of the assessee has filed an application under Rule 29 of ITAT Rules 1963 for allowing to submit additional evidences which the assessee has mentioned at assessee's paper book pages 5 to 7.

The contents mentioned in the application are as under:-

“1. Most respectfully the humble appellant do hereby seeks leave of the Hon'ble Bench for allow to submit Additional Evidences in support of the case which are quiet essential and crucial for decide of the case. That additional evidences which are being submitted are consisting of below documents:-

S.No	Particulars/ Details of documents
1.	Sale deed (impugned sale deed) dt.26.03.2012 wherein consideration is mentioned of Rs.37,50,000/- of converted commercial Land with construction (land Khasra no.: 852/658, Bilona Kalan, Mahua)
2.	Purchase deed of agricultural Land Khasra no.: 852/658, Bilon Kalan, Mahua
3.	Joint business agreement dt. 13.10.2009 between (i) Mr. Shivram Bairwa and (ii) Ms. Sonu, Ms. Shikha, Mr. Rajesh, Mr. Govind, Ms. Madhuri
4.	Settlement deed dt. 26.03.2012 between all above parties
5.	Capital Account, Balance Sheet for f/year 2009-10, 2010-11, 2011-12
6.	Bank statement and other evidences of Ghanetwal family with regard to evidence of getting construction on Land owned by Mr. Shivram Bairwa

That all above documents could not be submitted before the Ld AO during course of assessment proceedings due to medical illness for which medical certificate dt.29.11.2019 which is issued by Government Medical Doctor wherein he was advised to take rest for 21 days which comes to 20.12.2019 and assessment order is passed on dt.12.12.2019. Copy of Medical certificate dt.29.11.2019 issued by Medical Incharge is enclosed and marked as Annexure-1. Therefore assessee was deprived for submission of all above documents before Ld AO during course of assessment.

2. That against the impugned order the appellant has submitted appeal against the impugned assessment order dt. 12.12.2019 before CIT (Appeals) and which was filed on dt.09.01.2020 (i.e. within stipulated time) and thereafter the mechanism for conduct of appeal was changed by Government from manual appeal to faceless appeal, the assessee was totally unaware and under erroneous impression that physical notice (as per earlier procedure) might be issued by Income tax department. He could not check up the regular message on mobile number.

3. That assessee was not having any access to e-mail Id and that e-mail Id was not of assessee himself. That IT Portal data showing therein mobile number and e-mail id is enclosed herewith and marked as Annexure-1. That e-mail id of person who used to submit IT returns of assessee je. advoffice26@gmail.com and that person has not communicated about receiving of any notice on e-mail Id also. Therefore the notice as well as appeal order which might be received on e-mail Id was not communicated by consultant to assessee and thus due to mistake on part of the consultant, the appellant has never come to know about any notice and appeal order.

4. That once a day on dt.06.05.2024 Mr. Govind/ Rajesh Ghanetwal has contact him and let him know that appeal order of Smt. Sonu has passed, then immediately, Mr. Shivram got check up his IT Portal with help of consultant and then on dt. 14.05.2024 is the vary first day, when appellant has came to know that appeal order is passed and then he took all immediate steps for filing of appeal against the appeal order and deposited

appeal fee challan on dt. 15.05.2024 and filed appeal on dt. 29.05.2024. Therefore under genuine impression that appeal case is going on and all these documents will be submitted as soon as appeal will be fixed for hearing.

5. That application for condonation of delay u/s.5 of Limitation Act is separately filed. The screen shot of mobile message as shared by Mr. Govind/Rajesh to appellant is enclosed and marked as Annexure-2. That looking to all these changed mechanism of faceless working and looking to appellant rural background, and being remained dependent on his consultant, he could not submit all above documents before CIT (A), NFAC and which may please be considered and additional evidences may please be allowed to be submitted in the interest of equity and justice and oblige.

6. That the Hon'ble Tribunal has discretionary powers to entertain the additional evidence and for which it is humbly requested to kindly consider and allow additional evidence on record. That in support of our contention below judgements are being submitted.

(i) That Hon'ble ITAT, Jaipur Bench in the case of Rajendra Pathak Vs. Asstt. DIT (2015-124-DTR-337) has held that "Whatever evidences filed along with the prayer go to the root of the cause, we consider that these documents are required to be filed and to be considered for disposal of this appeal" and thus additional evidences as filed by the appellant are allowed.

(ii) That Hon'ble Delhi High Court in the case of CIT Vs. Text Hundred India Pvt. Ltd. (2013-351-ITR-page 57 - Delhi High Court). The Hon'ble Delhi High Court in para no. 10 has observed as under:-"We may in this connection referred to the scope of the powers of Tribunal under rule 29 of the Tribunal Rules. In R.S.S. Shanmugam Pilai and Sons Vs. CIT (1974-95 ITR-109). This Court had occasion to go into the question of the powers of the Tribunal to entertain or reject of evidence, while accepting that the Tribunal has got a wide discretion to admit or reject documents at the stage of appeal, it was pointed out that such a discretion can not be exercised in an arbitrary

manner, that if the Tribunal found that the document filed are quiet relevant for the purpose of deciding this issue arising before, it would be well within its powers to admit the evidence, consider the same or remit the matter to the lower authorities for such consideration." The Hon'ble Delhi High Court has referred and relied upon the various decisions of the difference High Courts and have also relied upon the decision of the Hon'ble decision of Supreme Court reported in K. Venkatramaiah Vs. A. Seetharam Reedy, AIR-1963- S.C.-1526. This judgment of the Hon'ble Supreme Court is placed by the Hon'ble Delhi High Court in their judgment in para 12.

(iii) National Thermal Power Co. Ltd. Vs. Commrr. Of Income tax (1998-229-ITR-page 383) - Supreme Court That in the case it has been held by Hon'ble Supreme Court that

"Undoubtedly, the Tribunal will have the discretion to allow or not a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

(copy of above judgments are enclosed herewith)

The humble appellant request to kindly allow the additional evidences in the interest of equity and justice & oblige.''

3.2 However, the Id. DR objected to such additional evidence raised by the Id.AR of the assessee.

3.3 The Bench has heard both the parties and perused the materials available on record. The additional evidence as raised by the Id. AR of the assessee has merit

and it is in the safeguard of the interest of the assessee. Thus the additional evidences are admitted and allowed.

4.1 As regards the grounds of appeal of the assessee, the facts as emerges from the order of the Id. CIT(A) wherein the Id.CIT(A) has passed an ex-parte order by dismissing the appeal of the assessee. The narration as made in his order is reproduced as under:-

‘5.2 Submission of the appellant:- The appellant has filed appeal with grounds of appeal. No separate submission is uploaded despite many opportunities were given to the appellant.

5.3 Decision:- The statement of facts, grounds of appeal and the material on record have been considered.

.....From the assessment order³, it is evident that there was non-compliance of notices before the AO as well and therefore, the AO had to pass the order. During the appellate proceedings, the appellant has not availed of the opportunities given. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

5.4 In the case of Anil Goel vs CIT [2008] 306 ITR 212 (Punjab & Haryana), the Hon’ble Court held as under:-

It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 ITR 577, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority

has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority."

5.5 Accordingly, I agree with the reasons given by the AO and confirm the addition made by the AO. Ground Nos. 1 to 3 are hereby DISMISSED.

6. GROUND NO. 4 :- In this ground the appellant has requested to allow to add or amend any ground of appeal. No such option was exercised by the appellant and, as such, this ground is treated as dismissed.

7. In the result, the appellant's appeal is dismissed.

4.2 After hearing both the parties and perusing the materials available on record, it is noted that the assessee has not filed any submissions and evidences relating to the case before the ld. CIT(A) and thus the ld.CIT(A) has no other alternative except to confirm the action of the AO being the assessee remained ex-parte before the AO. It is also noted that the ld. AR of the assessee prayed for one more chance to contest the case before the AO while as the ld. DR relied on the order of the ld. CIT(A). The Bench feels that one more chance may be given to the Assessee to contest the case before the AO for afresh adjudication and the assessee will submit the necessary documents / evidences / additional evidences concerning the above mentioned appeal. However, for lethargic and negligent action on the part of the assessee, a cost of Rs.2,000/- is imposed on the assessee and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the assessee is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing.

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.

4.3 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.

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

Order pronounced in the open court on 20/08/2024.

(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20 /08/2024

*Mishra

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

1. The Appellant- Shri Shiv Ram, Bairwa, Dausa
2. प्रत्यर्थी / The Respondent- The ITO , Ward-Dausa
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. 801/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar