

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 1026/JPR/2024
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Sarvesh Khemka 44, Paradise Anand Kanak Vrindavan, Near Maharshi Arvind College, Sirsi Road, Jaipur	बनाम Vs.	ITO, Ward 6(5) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AIAPK 1020 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Manish Tatiwala, A/R
राजस्व की ओरसे / Revenue by: Shri Gautam Singh Choudhary Addl.CIT

सुनवाई की तारीख / Date of Hearing : 09/10/2024
उद्घोषणा की तारीख / Date of Pronouncement: 02 /12/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against order of the Addl. Id. CIT(A)-4, Thiruvantipuram dated 06-06-2024 for the assessment year 2012-13 wherein the assessee has raised the following ground of appeal.

“1.That the Id. CIT(A) has erred in law and in facts in treating the assessment legally correct.

2. That the Id.CIT(A) has erred in law as well as in facts in sustaining addition made for Rs.24,58,333/- as long term capital gain without any reason or basis.

2.1 Brief facts of the case are that the AO vide his order dated 4-11-2019 for the assessment year 2012-13 made an addition in the hands of the assessee amounting to Rs.24,58,333/- as Long Term Capital Gain wherein he found that the assessee had failed to furnish proper reply in spite of providing so many opportunities and thus the AO passed an ex-part order.

2.2 Aggrieved by the order of the AO, the assessee carried the matter before the Id. Addl. CIT(A) who dismissed the appeal of the assessee by observing as under:-

“The appeal was filed by the appellant on 12-11-2019 for the AY 2012-13 against the order of AO passed u/s 143(3) r.w.s. 147 on 14-11-2019 and served on 6-11-2019. In this case, addition of Rs.24,58,333/- (long term capital gains) was made for not depositing the capital gains in the capital gain account scheme before the due date for filing the return of income as required as per the provisions of Section 54/54F. A new residential house property was purchased by him on 17-07-2013 after the due date for filing the return of income. Notice dated 22-04-2024 was issued to the appellant to explain the discrepancy. Appellant asked for the adjournment for a fortnight days which was granted but there is no response from the appellant till date. Therefore, it is presumed that appellant does not have anything to explain in the matter. Therefore, the addition made on account of long term capital gains of Rs.24,58,333/- is confirmed.

It is pertinent to mention that the Id.Addl. CIT(A) has passed an ex-parte order in the case of the assessee (supra) for the reason that there was no response from the side of the assessee on the date of hearing of the appeal.

2.3 During the course of hearing, the Id.AR of the assessee has filed the following documents to counter the orders of the lower authorities.

S.N.	Details of documents	Page No.
1.	Notice u/s 148 dated 31-03-2019	1
2.	ITR Return form	2 to 8
3.	Statement of Long Term Capital Gains	9
4.	Purchase Registry	10 to 38
5.	Sale Deed	39 to 48
6.	Valuation Report	49 to 54
7.	Receipts	55 to 62

It is submitted by the Id. AR of the assessee during the course of hearing that the above mentioned documents were made available before the AO at the time of assessment.

2.4 On the other hand, the Id. DR supported the order of the Id. CIT(A) and the AO.

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noticed that the Id.CIT(A) sustained the addition made by the AO amounting to Rs.24,58,333/- as long term capitals for the reason that the assessee had not supplied the informations before him at the

time of first appeal. This indicates that the assessee was lethargic in pursuing his appeal and not supplying the documents to counter the order of the AO. However, the Bench has taken into consideration the Paper Book submitted by the Id.AR of the assessee and feels that one more chance should be given to assessee to contest the case before the AO. The Bench noticed that it is an admitted fact that the assessee is ex-parte before the AO and also before the Id. CIT(A). Therefore, he could not put forth his proper 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. However, the Bench is 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.

2.6 Before parting, we may make it clear that our 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 02 /12/2024.

Sd/-
(राठोड कमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 02 /12/2024

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Sarvesh Khemka, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(5), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 1026/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar