

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

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

आयकर अपील सं./ITA Nos. 1141/JP/2024
निर्धारण वर्ष/Assessment Years : 2013-14

Shri Hemraj Morya S/o Shri Ramlal Morya Village: Khatipura, Luniyawas, Sanganer, Jaipur	बनाम Vs.	The ITO Ward 1(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APKPM 2498 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Tarun Mittal, CA
राजस्व की ओर से / Revenue by: Shri Anup Singh, Addl.CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 13 /12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal of the assessee is directed against order of Id. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] dated 14-02-2024 for the A.Y. 2013-14 raising therein following grounds of appeal.

"1. On facts and in circumstances of the matter, the Ld. CIT(A) has grossly erred in passing appellate order without affording assessee with adequate opportunity of being heard. Appellant prays that the appellate proceedings were completed merely after issuing 3 hearing notices within a time span of 1 month (i.e. from 21.12.2023 to 27.1.2024), and none of which stood served upon

assessee, which is evident from appellate order itself. Appellant prays that order so passed is against the principle of natural justice and deserve to be quashed.

2. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming the re opening the assessment u/s 147 of the Income Tax Act by Id.AO, arbitrarily

3. On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in confirming the addition of Rs.86,03,320/- made by Id.AO u/s 69 of the Income Tax arbitrarily

3.1. That, Id. CIT(A) has further erred in confirming addition of entire consideration as well as registry charges of Rs.86,03,320/-, by brushing aside the fact that out of total consideration, sum of Rs.65 lacs was paid through banking channels, which was evident from Registered Sale Deed itself. It is prayed that addition to the tune of Rs.65 lacs is absolutely arbitrary and deserves to be deleted.

2.1 At the outset of the hearing of the appeal, the Bench noted that there is delay of 142 days in filing the appeal by the assessee for which the assessee has filed an application for condonation of delay with following reasons:

(i) That the appellate order was passed by Id. CIT(A), NFAC, Delhi on 18-02-2024 which stood upload on the E-Portal. Order was neither served physically nor through E-mail.

(ii) That the assessee was told by his counsel to inform whenever any communication is received from the Income Tax Department regarding issue of notice of hearing so that necessary submission can be uploaded. Since no notice was received by the assessee for a long time, he visited his counsel who checked E Portal of the assessee and came to know that appeal was already decided vide order dated 14-02-2024 and due date of filing of appeal against such order was also expired.

(iii) That, soon after order of Id. CIT(A) came to the notice, necessary appeal papers were prepared and appeal is being filed now. It is submitted that the delay in filing the appeal is absolutely inadvertent and has occurred due to circumstances beyond the control of the assessee.

4. That the assessee always has acted in bona die and the delay is of only 142 days.

To this effect, the assessee has filed an affidavit deposing the above facts for such delay made in filing the appeal.

2.2 On the other hand, the Id. DR objected for such inordinate delay and submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 We have heard the rival contention of the parties and perused the materials available on record. The Bench noted that the prayer as made by the assessee for condonation of delay of 142 days has merit and we concur with the submission of the assessee. Thus the delay of 142 days in filing the above 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 is prevented by sufficient cause.

3.1 Apropos Grounds of appeal of the assessee, it is noted that the Id. CIT(A) has dismissed the appeal of the assessee on the ground that in spite of various opportunities to the assessee to attend the case of the hearing, none appeared on behalf of the assessee nor any submission was adduced by the assessee to counter the assessment order and thus the Id. CIT(A) has sustained the addition of Rs.86,03,320/- by observing as under:-

“Considering the above, it is held that addition made by the AO of Rs.86,030,320/- is to be upheld as having been made u/s 69 of the Act and are held to be taxable/s 115BBE of the Act instead of mentioned as income from other sources’ by the AO.”

3.2 During the course of hearing, the Id. AR of the assessee submitted that the assessee was ex-parte before the AO and Id. CIT(A) and he made a request before the Bench to restore the matter before the AO to decide it afresh as the assessee was deprived off to counter the reply before the lower authorities for want of proper communication and in the interest of justice Id. AR prayed for a chance be given to the assessee.

3.3 On the other hand, the Id DR supported the orders of the lower authorities and protested for imposition of fine upon the assessee being lethargic and non-cooperative in pursuing the appeal in spite of various notices by the lower authorities.

3.4 We have heard both the parties and perused the materials available on record. From the records, it appears that the assessee was lethargic and non-cooperative in pursuing the appeal before the lower authorities and thus the Id.CIT(A) has confirmed the addition made by the AO to the tune of Rs.86,03,320/-u/s 69 of the Act which is taxable u/s 115BBE of the Act instead of mentioned as “Income from other sources” by the AO. The Id.AR of the assessee

submitted that in the interest of equity and justice, assessee may be provided one more opportunity to contest the case before the AO as the assessee being illiterate and resident of village is not acquainted with the Income Tax Law and Procedure and thus the matter may be restored to the file of the AO once more for afresh adjudication of the case. 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 defense being illiterate and resident of village and also not acquainted with the Income Tax Law and Procedure. The Bench feels that 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 did not attend to it. 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

proceedings before the AO. Thus, the appeal of the assessee is allowed for statistical purposes.

3.5 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.

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

Order pronounced in the open court on 13 /12/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13 /12/2024

***Mishra**

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

1. The Appellant- Shri Hemraj Morya, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 1(1), 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. 1141/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar