

ITA NO. 490/JPR/ 2025

SMT BHANWARI DEVI D JAKHAR L/H LATE DANARAM NATHURAM JAKHAR VS ITO, WARD 2(3), JAIPUR

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठौड़ कमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपीलसं. / ITA. No. 490/JPR/2025
निर्धारणवर्ष / AssessmentYear : 2017-18

Smt. Bhanwari Devi D Jakhar L/h late Shri Danaram Nathuram Jakhar A-304, GR-23, Anukampa Graduler Swej Farm, Sodala, Jaipur – 302 019	बनाम Vs.	The ITO, Ward-2 (3) Jaipur
स्थायीलेखा सं./ जीआईआरसं./ PAN/GIR No.: ABKPJ 7825 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri R.S. Poonia, CA

राजस्व की ओरसे / Revenue by : Shri Gautam Singh Choudhary, JCIT -DR

सुनवाई की तारीख / Date of Hearing : 26/06/2025

उदघोषणा की तारीख / Date of Pronouncement : 30 /06 /2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The assessee has filed an appeal against the order of the Id. CIT(A), National Faceless Appeal Centre, Delhi dated 05-02-2024 [hereinafter referred as "(CIT(A)/NFAC"] for the assessment years 2017-18in the matter of Section 143(3) of the Income Tax Act, 1961 and thus raising therein following ground of appeal:-

"That under the facts and circumstances of the case, the Id. CIT(A)/NFAC has erred in law and facts in confirming the addition of Rs.34,39,,891/- imposed by the

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AO on account of long term capital gain and treating agriculture land as capital asset which is wrong, unwarranted and bad in law. Kindly delete the same.'

2.1 At the outset of hearing of the appeal of the assessee, the Bench noted that there is delay of 355 days in filing the appeal by the assessee for which the wife of the deceased assessee Smt. Bhanwari Devi D Jakhar, as legal heir has filed an application dated 07-04-2025 for condonation of delay narrating therein following reasoning:-

1. That Smt. Bhanwari Devi D Jakhar being a legal heir of Late Danaram Nathuram Jakhar filed this present appeal on 27.03.2025 against the ex-parte order passed by Ld. CIT (Appeals), NFAC, order dated 05.02.2024, with a delay of 355 days. The Appeal Number is ITA No. 490/JPR/2025.
2. That Late Shri Danaram Nathuram Jakhar filed an appeal before CIT (Appeal) on 07.01.2020 against the assessment order passed by A.O. on 21.12.2019.
3. That meanwhile after suffering from a disease with long period my husband Danaram Nathuram Jakhar was expired on 12.12.2024.
4. That appellant was unaware about this appeal filed by my husband Late Danaram Nathuram Jakhar before CIT (Appeal) on 07.01.2020.
5. That on 19.03.2025, appellant received a text message from the Income Tax Department on mobile of Late Danaram Nathuram Jakhar.
6. That thereafter, appellant discussed this with other family members and appellant approached the consultant of her husband and then the consultant login on portal & informed us regarding the impugned ex-parte order dated 05.02.2024 passed by CIT (Appeals), as well as explain about the text message, that the text message was related to Penalty.
7. That thereafter, appellant engaged a new counsel named CA Raghuvveer Singh Poonia and accordingly, we have prepared and filed the appeal before Hon'ble ITAT, Jaipur with a delay of 355 days.
8. That the reasonable cause for non-compliances of notices before CIT(Appeals) was due to ill health & thereafter, death of appellant Danaram Nathuram Jakhar (i.e. my husband), as he himself deal with this & appellant was unaware at all about the hearing notices issued by CIT(Appeals) as well as ex-parte order dated 05.02.2024 passed by CIT (Appeals).

9. That the delay of 355 days was due to bonafide reason.

In view of abovesubmission you are requested that kindly consider this as reasonable cause to condone the delay of 355 days. So, that proper inquiry can be conducted and substantial justice may be delivered to the appellant.”

To support the above application for condonation of delay, the wife of late Shri Danaram Nathuram Jakhar has filed an affidavit deposing the above contents made in the application for condonation of delay. Simultaneously, she has filed a Death Certificate of deceased Shri Danaram Nathuram Jakhar who passed away on 12-12-2024 at Palghar, Maharashtra and this Death Certificate was issued on 30-12-2024 by the Registrar, Govt.of Maharashtra, Department of Public Health, Grama Panchayat Boisar.

2.2. During the course of hearing, the Id. DR objected to assessee's application for condonation of such inordinate delays and prayed that Court may decide the issue as deemed fit and proper in the interest of justice.

2.3 We have heard both the parties and perused the materials available on record. The Bench noted that the reasons as advanced by legal heir of assessee for condonation of delay in respect of the above mentioned appeal has sufficient reasons to condone the delay which has merit. Thus, we concur with the submission of the legal heir of the assessee and condone the delay so made in filing the appeal by the legal heir of the

assessee 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 by sufficient cause.

3.1 Apropos solitary ground of appeal of the assessee, it is noticed that the Id. CIT(A) has dismissed the appeal of the assessee on the ground that in spite of granting several opportunities, no details, documents or submission had been provided by the assessee to substantiate the case as to why the addition made by the AO should not be sustained. The narration as made by the Id.CIT(A) in his order is reproduced as under:-

"5. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the assessee via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition made by the AO should not be sustained.

6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am constrained to agree with the approach adopted by the AO in making addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed.

7. Thus, in view of the facts and circumstances of the case, the order passed u/s 143(3) of the Act dated 21.12.2019 by the AO is upheld.

3.2 During the course of hearing, the Id. AR of the assessee prayed the legal heir of the assessee may be provided one more opportunity to adduce the details / documents as to the addition made by the AO amounting to Rs.34,39,891/- as the assessee had not received any communication from the Department to furnish the evidence / submission by 13-12-2019 before the AO.

3.3 On the other hand, the Id. DR supported the orders of the lower authorities.

3.4 We have heard both the parties and perused the materials available on record. In this case, it is noticed that the AO made an addition of Rs.34,39,891/- assessing the income to Rs.37,15,371/- by observing as under:-

“The assessee was asked to furnish his submission by 13.12.2019 but the assessee has failed to submit any evidence in respect of the land for which the income from sale was treated as agriculture income, was a agriculture land within the meaning of Income Tax Act. 1961. As the assessee has failed to prove the sold asset was not a capital asset and hence the same is treated as capital asset and the profit on sale of such land amounting to Rs. 34,39,891/- is treated as long term capital gain in hands of the assessee.”

In first appeal, the Id. CIT(A) has confirmed the action of the AO as the assessee had not filed any contrary documents against the order of the AO in spite of multiple opportunities to adduce the details of the case. Thus he observed that the AO passed a reasoned and speaking order considering

all the facts and circumstances of the case and no interference with the order of the AO is called for. From the available records, it is noticed that the assessee is ex-parte before the AO and also before the Id. CIT(A). Therefore, she could not put forth her 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 her case. However, we are 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.

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 30 /06/2025.

Sd/-

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

जयपुर / Jaipur
दिनांक / Dated:- 30/06 /2025

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Bhanwari Devi D Jakhar L/h late Shri Danaram Nathuram Jakhar, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2(3), Jaipur.
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 490/JPR/2025}

आदेशानुसार / By order

सहायकपंजीकार / Asst. Registrar