

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1028/JP/2019
निर्धारण वर्ष / Assessment Year :2010-11

Shri Pyare Lal Saini, Ward No. 5, Shri Ram Colony, Tehsil- Tijara, District- Alwar.	बनाम Vs.	I.T.O., Ward-Bhiwadi.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: DTGPS 9947 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Mrs. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/06/2020
उद्घोषणा की तारीख / Date of Pronouncement : 02/06/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 25/06/2019 of Id. CIT(A), Alwar for the A.Y. 2010-11. The assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) has erred on facts and in law in deciding the appeal ex parte without providing adequate opportunity of hearing to the assessee.*
- 2. The Id. CIT(A) has erred on facts and in law in not deciding the ground of appeal on merits and thereby upholding the order of AO.*
- 3. The assessee craves to amend, alter and modify any of the grounds of appeal.*

4. *Necessary cost be awarded to the assessee."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. The Id AR of the assessee has submitted that the Id. CIT(A) has passed impugned order ex parte without affording a reasonable and appropriate opportunity to the assessee. He has further submitted that the assessee is a farmer and more than 70 years old. There is a capital gain arising from sale of capital asset. However, the assessee has utilized the sale consideration in construction of new residential house and therefore, was eligible for deduction U/s 54F of the Income Tax Act, 1961 (in short, the Act). Since the assessee did not appear before the authorities below and therefore, the relevant documentary evidence in support of the claim of deduction U/s 54F of the Act could not be produced, thus, the Id AR has submitted that in the interest of justice, one more opportunity of hearing be given to the assessee to present his case before the authorities below and to produce the evidence in support of claim of deduction U/s 54F of the Act.

3. On the other hand, the Id DR has objected to the remand of the matter and giving one more opportunity to the assessee and contended that the assessee has not filed any return of income U/s 139 of the Act,

therefore, the claim of deduction U/s 54F of the Act is not allowable. Despite several opportunities and notices issued by the A.O. as well as the Id CIT(A), there is no compliance on behalf of the assessee, therefore, more than sufficient opportunities were given to the assessee but despite the various notices, the assessee has not responded and attended the proceedings before the authorities below. She has relied on the orders of the authorities below.

4. We have considered the rival submissions as well as relevant material on record. The Id. CIT(A) has dismissed the appeal of the assessee by passing the impugned ex parte order in para 3.1 to 3.3 as under:

“3.1 In this case, notices u/s 250 was issued to the appellant by fixing the hearing on 16-01-2019, 18-02-2019, 15-05-2019 and 18-06-2019. No one attended. Opportunity of being heard is central to any adjudication process but that does not absolve the appellant from non attendance and submission of evidences in support of ground of appeal despite repeated and several notices sent and served and not responded. An adjudication proceeding cannot be held in abeyance indefinitely on account of non attendance of the appellant or his AR. In this case the continued non responsive attitude of the appellant has left no option before me but to decide the appeal on the basis of evidences on record. It is also to be kept in mind that even during assessment proceedings no one attended before the A.O.

3.2 *I have taken into consideration the facts of the case filed along with Form No. 35.*

3.3 *In absence of any submissions by the appellant in support of its claims, I have relied upon the facts mentioned in the assessment order. Accordingly, I do not see any reason to interfere in the assessment order. Hence, the appeal is dismissed."*

Thus, it is clear that the Id. CIT(A) has mentioned in para 3.1 of the impugned order that the appeal of the assessee was fixed for hearing on four occasions but no one has attended the proceedings before the Id. CIT(A) and consequently the appeal of the assessee was dismissed for want of any supporting material. There is no dispute that the assessee has neither appeared before the A.O. nor before the Id. CIT(A) and the land in question was sold by the assessee alongwith several other co-owners as per the details given by the A.O. page No. 2 of the assessment order. Therefore, so far as the details of the capital asset sold by the assessee as a co-owner of the property, the same is not in dispute. However, the assessee at the time of filing of the appeal before the Id. CIT(A) has specifically raised an issued of claiming of deduction U/s 54F of the Act and claimed that the sale consideration has been used for construction of new residential house which is eligible for deduction U/s 54F of the Act. Having regard to the facts and circumstances, where the assessee is a farmer and a senior citizen, the

claim of deduction U/s 54F of the Act cannot be denied without verification of the fact of utilization of the sale consideration for construction of the house. Since it is a case of non-filing of return of income and the A.O. has issued notice U/s 148 of the Act for assessing the capital gain in the hands of the assessee, therefore, there is no bar in claiming the deduction U/s 54F of the Act against the capital gain proposed to be taxed by the A.O. in the proceedings U/s 147 of the Act. Hence, the issue of deduction U/s 54F of the Act is required to be considered and decided after considering the facts of utilization of sale proceed in construction of new residential house. Therefore, in the substantial interest of justice, we set aside the matter back to the record of the A.O. for deciding the same afresh after giving due and reasonable opportunity of hearing of the assessee.

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

Order pronounced in the open court on 02nd June, 2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 02/06/2020

***Ranjan**

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

1. अपीलार्थी / The Appellant- Shri Pyare Lal Saini, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Bhiwadi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1028/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar