

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

डॉ. 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. 185/JP/2021
निर्धारण वर्ष / Assessment Years : 2011-12

Bansal Propbuild Private Limited 1057 Bansal House, Pano Ka Dariba, Subhash Chowk, Subhash Chowk, Jaipur.	बनाम Vs.	CIT-A, Delhi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCB0851G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Suresh Bansal (Company Director)
राजस्व की ओर से / Revenue by : Ms Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 05/04/2022
उदघोषणा की तारीख / Date of Pronouncement : 12/04/2022

आदेश / ORDER

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

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi (hereinafter called as 'NFAC') dated 23.08.2021 for the Assessment year 2011-12.

2. The assessee raised the following grounds of appeal:-

"1. That on the facts and in the circumstances of the case, the learned CIT-Appeals, has erred in law and fact in confirming the addition of Rs. 7,22,991.00 instead of deleting fully, as assessee is having agriculture income and no any business income, therefore treating business income without any basis is wrong and unjustified, the impugned order is bad in law and facts.

2. That Appellant crave leaves to add, amend or alter all or any of the grounds of Appeals on or before the date of hearing.”

3. The brief facts of the case are that the assessee is engaged in agriculture produce and the same was sold during the year under consideration. However, the AO has not treated it as agriculture income and made addition of Rs. 7,22,991/-. The relevant observation of the A.O. in not considering the submissions of the assessee as to addition of Rs. 7,22,991/- under the head agriculture income after 4 years is as under:-

“Perusal of the record i.e. ITR for the A.Y. 2011-12 it is notice that the assessee company has declaring income from business in the ITR and not filed the Audit Report alongwith ITR. Therefore the contention of the assessee is not acceptable. Further the assessee filed application after four year date of processing and the last 154 order. Hence application u/s 154 filed by the assessee is hereby rejected.”

4. Being aggrieved by the impugned order issued U/s 154 of the IT Act, the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) finally held that as under:-

“4. I have considered the facts of the case and written submissions of the appellant.

The assessee filed return of income declaring loss of Rs. 32,549/-. The return was processed by CPC and tax liability was raised U/s 115JB of the Act. The appellant filed rectification application u/s 154 of the Act before Id. AO stating that liability u/s 115JB could not be raised against the assessee company as it had only agricultural income Rs. 7,22,991/-, which was exempt from tax. Further that the assessee company did not have any other income during A.Y. 2011-12. However, as mentioned in the order u/s 154 of the Act Passed by Id. AO, perusal of the ITR for A.Y. 2011-12 showed that the assessee company was declaring income from business in the ITR. Further, the application for rectification u/s 154 has been filed on 10.01.2019, which was after four years from the date of processing. Hence, the application was rejected.

The application u/s 154 of the Act was filed by the appellant on 10.01.2019, which is beyond the time allowed under the Act, i.e. beyond 4 years from the date of processing by CPC. In view of above, it is held that the AO was justified in not entertaining the application u/s 154 of the Act. The MAT was rightly levied as the assessee company had filed ITR for AY 2011-12 declaring a loss and had declared business income in the ITR. The impugned order u/s 154 passed by Id. AI is upheld. Ground of appeal 1 is dismissed.”

5. Being aggrieved by the order passed U/s 154 of the IT Act by the CIT(A), the assessee preferred an appeal before us. The Ld AR for the assessee has filed a Written Submission along with Paper Book furnishing the details pertaining to delay in filing of application U/s 154 of the IT Act. The Written submissions are as under:-

“ This appeal has been filed against order U/S 154 of I.T. Act, 1961 dated 13/03/2019 passed by C.I.T. (Appeals) National faceless Appeals, determining total income of Rs. 722991/- the brief facts are as under:

That appellant is engaged agriculture producing and same was sold during the year under consideration but Id. A.O. has not treated it as agriculture income.

Ground No.1

That assessee has filed return of income online declaring total Loss of Rs. 32549/- CPC has not consider agriculture income, because assessee company is having only agriculture income, but figures of agriculture income was not shown/ entered under exempted income due to omission, therefore at the time of assessment CPC impose MAT tax liability on assessee company, assessee has filed rectification application before LD. A.O. but A.O. has rejected the same on the ground that at the time of filing return of income assessee has not filed Audit report U/s 115JB, and same was filed after expiry of 4 years from last rectification filed.

That assessee could not filed rectification application U/s 154 before A.O. due to that main director shree Suresh Agarwal who is looking after all business activity of the company was

continuously suffering from illness i.e. from Cardiac surgery in the year 2010-11 and after that another illness copy of some admission and discharge and other treatment prescription are also enclosed for your ready reference. Further also assessee his suffering from memory loss.

That CIT Appeals has also upheld the order of Ld. A.O. without considering the facts of Assessee Company, that Assessee Company is deriving income from agriculture only and not having any other business income. All the facts of the case submitted before CIT Appeals, regarding agriculture income.

It is brought to your notice that assessee company derived income from Agriculture produce Rs. 7, 55,540/- and In this regard assessee would like to state that in the A.Y. 2011-12 audit was done by auditor on 30/08/2011 U/s 115JB, but during the year under consideration there was no any provision to upload online, or delivered physically in the department, therefore assessee has not uploaded on portal, hence contention of A.O. is wrong in this regard.

Assessee was carrying on agricultural operation in the agricultural land owned by company at gidhani dudu, Jaipur and derived income from sale of agriculture produce. Assessee would like to submit that the Assessing officer has erroneously treated the agriculture income as business income. Actually, income from an agriculture income and the same is exempted under section 10(1) of the Income Tax Act and having complete income from agriculture which is exempt income and assessee is having no any other income and return was filed accordingly.”

6. At the time of arguments, the Id. AR of the assessee has filed a detailed written submissions praying therein to delete the addition of Rs. 7,22,991/- as confirmed by the Id. CIT(A). Before us, the assessee, the Director of the company himself argued before us and produced the evidence for delay in filing the application U/s 154 of the IT Act, we have perused the paper book, the Id AR for the assessee has produced all medical records from pages 32 to 56 of the paper book moreover the Id. AR for assessee produced for the first time additional evidences relating to balance sheet, sale bills etc before us.

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

8. We have considered the rival submissions and perused the material available on record. The Bench observed that the assessee is engaged in agriculture produce and the same was sold during the year under consideration. However the AO has not treated as agriculture income. The assessee has filed application under Section 154 of the Act on 10.01.2019 mentioning therein that the assessee company has shown income of Rs. 7,22,991/- which is exempt from tax. The prayer of the assessee is that application filed by the assessee under section 154 of the Act was not properly disposed off without providing adequate opportunity to the assessee. In the interest of equity and justice, the appeal of the assessee is remand to the file of the CIT (A) to decide it afresh by providing adequate opportunity of hearing to the assessee. We don't have any hesitation to condone the delay of 4 years for filing the application under section 154 of the IT Act due to reasonable cause and genuine in nature and we consider accordingly, it is a fit case for remand for proper adjudication of the case by following the established procedure laid down. under rules 46A(1), (2) and (3) of the Rules which we order accordingly. The impugned order passed by the Lower authority is hereby quashed and set aside. The appeal is remanded to the Commissioner of Income-tax ,who shall make an endeavour to dispose of the entire appeal in accordance with law as indicated above as expeditiously as possible, The assessee is also directed to produce relevant additional evidences concerning the issue in question, where additional evidence in form of segmental audited results have been admitted which needs to be verified and examined by the Revenue authorities and in any case within a period of three months from the date of pronouncement of this order before him.

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

Order pronounced in the open Court on 12/04/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 12/04/2022.

Sd/-

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

***Santosh**

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

1. अपीलार्थी / The Appellant- Bansal Propbuild Private Limited, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT-A, Delhi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 185/JP/2021 }

सहायक पंजीकार / Asst. Registrar