

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, 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. 1246/JP/2018
निर्धारण वर्ष / Assessment Years : 2014-15.

Shri Chandra Prakash, S/o Shri Raghunath Yadav Yadav Kirana Store Ke Pass, Vatika, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. BOJPP 9392 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Nitesh Gupta (CA)

राजस्व की ओर से / Revenue by : Smt. Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 18.02.2020.
घोषणा की तारीख / Date of Pronouncement : 19/02/2020.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 14th September, 2018 of Id. CIT (A)-3, Jaipur for the assessment year 2014-15. The assessee has raised the following grounds of appeal :-

1. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in deciding the case ex-parte without following proper course of law and providing opportunity to the assessee for presenting the case. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order and order passed by the Id. CIT (A) which is passed in gross violation of principles of natural justice.

2. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in not adjudicating on the action of the Id AO in rejecting the books of account of the assessee by invoking the provision of section 145(3) and thereafter applying a N.P. Rate of 8% which resulted into confirming of trading addition of Rs. 15,46,243/-. The action of the Id. CIT (A) and Id. A.O. is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rejection of books and deleting the trading addition of Rs. 15,46,243/-.
3. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in not adjudicating on the action of the Id AO for passing the assessment order ex-parte under section 144 of the I.T. Act, 1961. The action of the Id. CIT (A) and Id. AO is illegal, unjustified and arbitrary. Relief may please be granted by quashing the entire assessment order being illegal and violative of the principles of natural justice.
4. The assessee craves his right to add, amend or alter any of the grounds on or before the hearing."

2. The assessee is an Individual and engaged in the business of retail sale of liquor (wine shop). The assessee filed his return of income on 30th November, 2014 declaring total income of Rs. 4,10,700/-. During the course of assessment proceedings, the AO rejected the books of accounts of assessee by invoking the provisions of section 145(3) of the IT Act and thereby estimated the income of the assessee by applying Net Profit rate at 8% which has resulted trading addition of Rs. 15,46,243/-. The assessee challenged the said order of the AO before the Id. CIT (A). However, nobody has appeared before the Id. CIT (A) therefore, the appeal of the assessee was dismissed by passing the impugned ex parte order.

3. Before us, the Id. A/R of the assessee has submitted that the notices issued by the Id. CIT (A) were received by the employee of the assessee, however, the

same could not be brought to the notice of the assessee and, therefore, there was no appearance before the Id. CIT (A). He has referred to the affidavits of the assessee as well as one Shri Bharat Saini, the employee of the assessee and submitted that due to mis-communication and bonafide mistake there is no representation before the Id. CIT (A). The Id. A/R has further submitted that the Id. CIT (A) has deleted the appeal summarily without passing a speaking order and particularly without deciding the issue raised in the appeal. Therefore, he has pleaded that the impugned order of the Id. CIT (A) may be set aside and the matter may be remanded to the record of the Id. CIT (A) for deciding the same afresh after giving an opportunity of hearing to the assessee.

4. On the other hand, the Id. D/R has vehemently opposed to the request of remanding the matter to the record of the Id. CIT (A) and submitted that the Id. CIT (A) has granted numbers of opportunities to the assessee but nobody has appeared on the date of hearing despite the notices were issued to the assessee. Therefore, when there is no violation of principles of natural justice, then no further opportunity should be given to the assessee.

5. We have considered the rival submissions as well as the relevant material on record. The AO has estimated the income of the assessee by applying the Net Profit at 8% and thereby made trading addition of Rs. 15,46,243/-. It is pertinent to note that the adoption of Net Profit at 8% in the case of the assessee has no basis as the AO has not brought on record any past history of the assessee declaring Net Profit or a comparable case or Net Profit prevailing in the particular trade. Though the AO has also passed the assessment order under section 144 of the IT Act, however, the Id. CIT (A) ought to have at least decided the issue of estimation of income on some

reasonable and proper basis. Instead of going into the merits of the issue, the Id. CIT (A) has dismissed the appeal of the assessee summarily in para 4 as under :-

" 4. The present appeal is against the assessment order passed u/s 144 of the Act. I have carefully perused the grounds of appeal and assessment order. As already discussed above, the appellant has failed to offer any explanation for submission in support of the grounds raised in this appeal nor any supporting evidences were produced by him despite adequate opportunity having been provided.

In this connection, reliance may be placed upon the decision of the Hon'ble Supreme Court in the case of H.M. Esufali H.M. Abdulali (1973) 90 ITR 271 wherein the Hon'ble Court has held that the appellate authority cannot substitute its own judgment in place of the judgment of the A.O. unless it is shown that the judgment of the AO was biased, irrational, vindictive or capricious.

In the instant case the appellant has not able to show that the decision of the A.O. was arbitrary, biased, irrational, vindictive or capricious without any basis, I find no reason to interfere with the decision of the AO."

Since the impugned order of the Id. CIT (A) does not touch the merits of the issue regarding the addition made by the AO and the justification of adoption of the Net Profit at 8%, therefore, in the facts and circumstances of the case, we set aside the order of the Id. CIT (A) and remand the matter to the record of the Id. CIT (A) for fresh adjudication. The assessee is granted one more opportunity to represent his case before the Id. CIT (A). In case the assessee fails to appear before the Id. CIT (A), the Id. CIT (A) may decide the appeal on the basis of the material available on record.

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

Order pronounced in the open court on 19/02/2020.

Sd/-

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

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/02/2020.

das/

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

1. अपीलार्थी / The Appellant-Shri Chandra Prakash, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO Ward 7(2), Jaipur.
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. 1246/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar