

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. 92/JP/2021
निर्धारण वर्ष/Assessment Year : 2012-13

Roop Chand Nahar E-8, E-9 Prop. Rahul Medical and Surgical Agency, Nulite Colony, Tonk Road, Jaipur.	बनाम Vs.	The CIT(A), NFAC, Delhi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHPN 4593 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri M. L. Borad (Adv.) &
Shri Dheeraj Borad (C.A.)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 26/10/2021
उदघोषणा की तारीख / Date of Pronouncement: 26/10/2021

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 28.07.2021 of Id. CIT(A), Delhi (NFAC) arising from rectification order dated 12.02.2020 passed U/s 154 of the Income Tax Act for the assessment order 2012-13. The assessee has raised the following grounds:-

"1. That the impugned order passed by the learned CIT(Appeal) upholding rejection of the assessee's application u/s 154 by the AO is most arbitrary, unjust and untenable in fact and in law and liable to be cancelled.

2. That the learned CIT(Appeal) erred in sustaining the order of the AO rejecting assessee's application u/s 154 against invoking of provisions of section 40(a)(ia) making disallowance/additions of Rs. 3,06,692/- and Rs. 4,29,062/- for alleged non deduction of TDS on interest payment made to certain loan creditors and NBFCs respectively, which sustenance by the learned CIT(Appeals) of order of the AO is most arbitrary, unjust and untenable in fact and in law and liable to be cancelled.

3. That in regard to TDS on interest payment of Rs. 3,06,692/- to loan creditors the learned CIT (Appeal) failed to appreciate that the assessee had fully complied with provisions of section 194A by deducting TDS wherever applicable and by filing form 15G/15H where the deductee had asked the assessee to not to deduct TDS from interest payment in view of provisions of section 197A of the IT Act.

4. That the observation of the learned CIT(Appeal) that the assessee failed to produce any documentary evidence to substantiate his claim that he had made full compliance of TDS provisions in regard to payment of interest made to loan creditors is unfounded and far away from truth because the fact remains is that out of 10 cases specified by the then A.O. in the asstt. order the assessee had duly deducted and deposited TDS in regard to as many as 8 deductees as per details given in the application

u/s.154 itself and in remaining two cases he(the assessee) had filed form 15G with the concerned I.T. Authorities well in time.

5. That both the AO as well as learned CIT(Appeal) failed to take into consideration the facts that all the three NBFC's to whom interest payment totaling to Rs. 4,29,062/- was paid are one of the top most NBFC's working across the country and regularly depositing their due taxes and also filing their return of income and he(the learned A.O.) could have verified these facts on income tax portal.

6. That the impugned order passed by the learned CIT(Appeal) is void ab inito because no notice of hearing was issued nor served on the assessee before passing the impugned order.

7. The appellant craves leave to add, alter, amend or substitute one or more grounds of appeal as and when necessary.”

2. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference.

3. At the time of hearing, the Id. AR of the assessee has submitted that the assessee has raised the issues of violation of principles of natural justice in ground Nos. 1 and 6 of the grounds of appeal, therefore, this issue may be taken up first. Having considered this fact that the assessee has raised the issue of not granting an opportunity of hearing by Id. CIT(A) before passing the impugned order we take up

this issue in ground Nos. 1 and 6 to be disposed off before going to the other grounds of appeal.

4. The Ld. AR of the assessee has submitted that the Ld. CIT(A) has passed the impugned order without issuing a notice of hearing to the assessee, therefore, the impugned order passed by the Ld. CIT(A) without issuing a notice and granting an opportunity of hearing to the assessee is a gross violation of principles of natural justice and consequently the impugned order is void-ab-initio and liable to be quashed/set aside.

5. On the other hand the Ld. DR has submitted that the proceedings before the Ld. CIT(A) were conducted under faceless proceedings of appeals by the Ld. CIT(A), therefore, there was no requirement of appearance of the assessee before the Ld. CIT(A). He has relied upon the impugned order of the Ld. CIT(A).

6. We have considered the rival submissions as well as carefully perused the impugned order of the Ld. CIT(A). There is no dispute that the Ld. CIT(A) has passed the impugned order without issuing a notice of hearing to the assessee therefore, it is a clear case of violation of principles of natural justice. Though under the new scheme of faceless proceedings before the Ld. CIT(A), there is no requirement of physical

hearing unless and until it is considered as necessary but that does not mean that the right to have a proper opportunity of hearing is either forfeited or obliterated. It is pertinent to note that the Id. CIT(A) has stated in the caption of the impugned order in the column of presence of appellant as well as presence of Department as not applicable. There is no mention about any notice issued by the Id. CIT(A) before passing the impugned order. Even otherwise the impugned order was passed by the Id. CIT(A) without considering any submissions including written submissions of the assessee. Therefore, it is manifest from the record that the Id. CIT(A) has not granted even an opportunity to the assessee to file the written submissions as well as a documentary evidence in support of its claim. Accordingly in the facts and circumstances of the case we are of the considered view that the impugned order is passed by the Id. CIT(A) without giving an opportunity of hearing much less a sufficient opportunity of hearing to the assessee which has resulted violation of principles of natural justice rendering the impugned order as not sustainable in law. Hence, the impugned order is set aside and matter is remanded to the record of the Id. CIT(A) for deciding the same afresh after granting sufficient opportunity of hearing to the assessee. Since, the impugned order is set aside on the ground of

violation of principles of natural justice and the matter is remanded to the record of the Id. CIT(A) for fresh adjudication therefore, the other grounds raised by the assessee in this appeal become infructuous.

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

Order is pronounced in the open court on conclusion of hearing on 26/10/2021.

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:- 26/10/2021.

***Santosh.**

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

1. अपीलार्थी / The Appellant- Roop Chand Nahar, Jaipur..
2. प्रत्यर्थी / The Respondent- CIT(A), NFAC, 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. 92/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar