

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

श्री संदीप गोसाई, न्यायिक सदस्य एवंश्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.34/JP/2022
निर्धारण वर्ष/Assessment Year : 2011-12

Shri Jaswant Singh Village: Rampura, Malah Bharatpur (Raj.)	बनाम Vs.	The ITO Ward- 3 Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CWXPS 7363 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Smt. Runi Pal, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 29/03/2022
उदघोषणा की तारीख / Date of Pronouncement: 05/04/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal by the assessee is directed against the order of the ld. CIT(A) dated 29-12-2021, National Faceless Appeal Centre, New Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12.

2. The hearing of the appeal was concluded through video conference by both the parties in view of the prevailing situation of Covid-19 Pandemic.

3.0 The grounds of appeal raised by the assessee are as under:-

1. That the ld. CIT(A) has erred in law as well as on the facts and circumstances of the case in giving a finding in the appellate order in first on page no. 7 that "no submission or explanation has been furnished by the appellant" for

filing of manual appeal whereas the facts remains that the assessee has filed the appeal on online mode on 13-12-2021 vide acknowledgement No.182299371131221 with a condonation request for delay in filing of appeal and lying on the portal and the necessary reply was also filed before CIT (Az) which appears to have escaped attention of CIT (A) and accordingly has not been considered while disposing off the appeal,, thus the appeal was erroneously dismissed on incorrect facts and without giving any finding on the online appeal thus appellate order merits to be quashed.

2. That the Id. CIT(A) has erred in law as well as on the facts and circumstances of the case in not deciding the appeal on the merit of the case and dismissed the appeal on technical ground which is against the principles of natural justice and thus the appellate order suffers from grave illegality and the appellate order on this ground alone deserves to be quashed.

3. That the AO has erred in reopening of the case without having jurisdiction over the case of the assessee and the Id. CIT(A) has erred in not giving any finding thereon.

4. The AO has erred in not serving the notice u/s 148 upon the assessee and without serving thereof, proceeded to frame the assessment order and the Id. CIT(A) has erred in not giving any finding thereon.

5. That the AO has erred in making the huge addition of Rs. 62,00,000/- stating on account of each cash deposited from undisclosed sources without having any jurisdiction over the case of the assessee and the Id. CIT(A) has erred in not giving any finding thereon.

6. That the AO has erred in making addition of Rs. 7,155/- stating saving bank interest and the Id. CIT(A) has erred in not giving any finding thereon.

7. That the AO has erred in law as well as on the facts and circumstances of the case in creating a demand of Rs. 51,11,580/- including interest u/s tax of Rs. 17,95,442/-, interest u/s 234A of Rs. 15,79,988/- , u/s 234B of Rs. 26,69,722/- and u/s 234C of Rs. 66,431/-

3.1 The solitary issue in question before the AO was that the assessee had deposited cash of Rs.62.90 lacs in his saving bank account namely The Bharatpur Cooperative Bank Ltd., Bharatpur on different dates of the financial year 2010-11 as this information was gathered by the AO from CIB Department that Shri

Jaswant Singh Malah, Bharatpur had deposited total cash of Rs 62.90 lacs in the The Bharatpur Cooperative Bank Ltd., Bharatpur. On verification from the departmental software, the AO noticed that no return of income was filed by the assessee from the A.Y. 2011-12. In this situation, the proceedings u/s 147 of the Act was initiated by the AO against the assessee for the A.Y. 2011-12 after recording the reasons and accordingly a notice u/s 148 of the Act was issued to the assessee on 29-03-2018 by the AO after obtaining prior approval from the PCIT, Alwar. The AO noted that the assessee had failed to file his return of income for the assessment year under consideration within 30 days from the service of notice u/s 148 of the Act. However, a notice u/s 142(1)(ii) of the Act was issued to the assessee on 26-10-2018 requiring the assessee to explain the nature and source of cash with supporting documents and to provide the details with documents as specified therein, on 30-10-2018. The case of the assessee was fixed by the AO on various dates for hearing to submit the desired information. However, on last fixed date of hearing on 9-11-2018, neither the assessee attended nor filed any explanation in this regard. In the meantime, bank statement of the assessee was obtained on 29-10-2018 from The Bharatpur Cooperative Bank Ltd., Collectorate Branch, Bharatpur by issuing notice u/s 133(6) of the Act. It is not imperative to repeat the facts as mainly the AO had given ample opportunities to the assessee to submit the required details but no return of income was filed by the assessee in

response to notice issued u/s 148 of the Act for the assessment year under consideration. Hence, the AO had no other option except to complete the assessment u/s 144 of the Act after considering the facts as well as on the basis of information available on the record. Thus the AO made an addition of Rs.62,97,155/- by observing at para 4 of his order as under:-

“4.On repeated asking about the nature and source of cash deposited during the financial year 2010-11, the assessee failed to offer any explanation, therefore an addition of Rs.62.90 lacs has been made on account of cash deposited from undisclosed sources and assessed under the head Income from other Sources for the assessment year 2011-12. On perusal of bank statement, it has been noticed that the bank has credited interest of Rs.1,593/- on 24-09-2010 and Rs.5,562/- on 16-03-2011 in his saving bank account. Thus, the assessee received total saving bank interest of Rs.7,155/- during the financial year 2010-11 which shall be taxable under the head Income from Other Sources, therefore, the same has been added to the total income of the assessee for the year under consideration.”

3.2 Being aggrieved, the assessee carried the matter before the Id.CIT(A)/NFAC, Delhi who dismissed the appeal of the assessee on technical ground by observing as under:-

“6. I have gone through the records and facts of the case. In absence of any reason or explanation filed by the appellant, fact remains that this appeal has been filed manually and is void ab initio. Therefore, the manual appeal filed is not maintainable as per provisions of Section 249(1) of the Act. Hence, this appeal is treated as not maintainable and invalid ab initio.

7. As a result, the manual appeal filed by the appellant for A.Y. 2011-12 is treated as dismissed u/s 250 r.w.s. 251 of the Act.”

3.3 During the course of hearing, the ld.AR of the assessee prayed that the ld. CIT(A)/ NFAC has dismissed the appeal of the assessee on the ground that the appeal had been filed manually by the assessee. The ld.AR of the assessee further submitted before us that assessee informed the ld. CIT(A) /NFAC that he had filed the appeal online mode and submitted the copy of the same to him with a request to condone the delay as the assessee was not aware of the requirement of law and also the assessee had filed the appeal in paper form within due time and he should not treat assessee's appeal as invalid on technical ground. However, the ld. CIT(A) did not accept the prayer of the assessee and dismissed the appeal on technical ground. Lastly, the ld. AR of the assessee prayed that the AO had erred in making addition of Rs.62,97,155/- as the assessee had discharged his onus and provided plausible explanation to justify the cash deposit of Rs.62.90 lacs in his bank account but the AO has not objected or demanded further evidence regarding explanation of the assessee. Thus the AO failed to discharge his onus to justify the addition of Rs.62.90 lacs in the total income of the assessee. The ld. AR of the assessee further submitted that the amount of Rs.62.90 lacs is not an unexplained money. Thus the addition made by the AO needs to be quashed.

3.4 On the other hand, the Id.DR supported the orders of the authorities below.

3.5 We have heard both the parties and perused the materials available on record. From the perusal of the records, we find that the Id. CIT(A)/NFAC, Delhi dismissed the appeal of the assessee on technical ground as appeal had been filed by the assessee manually which is not admissible as per provisions of Section 249(1) of the Act and thus, he treated it as not maintainable as well as invalid ab initio. We feel that the Id. CIT(A)/NFAC, Delhi instead of dismissing the appeal on technical ground should have decided the issue based on the facts and records available before him. The brief facts in this case are that the AO received information from CIB regarding cash deposit of Rs.62.90 lacs made by the assessee in The Bharatpur Cooperative Bank Ltd.. The AO relied on such information and reopened the assessment u/s 147 of the Act. The AO mentioned in his order that the assessee was provided various opportunities to explain the source of the amount of Rs.62.90 lacs but the assessee failed to submit the same and thus the AO made an addition of Rs 62,97,155 (Rs.62,90,000 plus bank interest of Rs.7,155/-). Taking into consideration all the above facts and circumstances of the case, it will be better in the interest of equity and justice to restore the matter to the file of the AO to decide it afresh after providing adequate opportunity of being heard to the assessee. The assessee is also directed to produce all the relevant records on the issue of addition

of Rs.62,97,155/- made by the AO in the hands of the assessee. Thus the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 05 /04/2022

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/04/2022

*Mishra

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

1. The Appellant- Shri Jaswant Singh, Bharatpur .,
2. प्रत्यर्थी / The Respondent- The ITO, Ward 3, Bharatpur .
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 32/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar