

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

डा० 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. 04/JP/2020
निर्धारण वर्ष / Assessment Year : 2007-08

Shri Avant Mutha C-11, Adarsh Nagar Jaipur	बनाम Vs.	The ITO Ward 6(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKWPM 1064A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurabh Harsh, Advocate
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 28/04/2022
उदघोषणा की तारीख / Date of Pronouncement: 16 /06/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal by the assessee is directed against the order of the ld. CIT(A)-2, Jaipur dated 21-10-2019 for the assessment year 2007-08

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. The ground of appeal raised by the assessee are as under:-

“1 That on the facts and in circumstances of the case, the ld. Appellate Authority grossly erred in deciding the appeal ex-parte without providing sufficient opportunity of being heard.

1.1 That on the facts and in circumstances of the case, the Id. Appellate Authority grossly erred in relying version of the Assessing Officer and not deciding the appeal on merit and material record.

2. That on the facts and in circumstances of the case, the Id. Lower Authorities have grossly erred in disallowing all the speculation loss shown of Rs.1,86,10,110/- even when assessee has furnished complete details during the course of assessment proceedings.

2.1. The Id. Appellate Authority grossly erred in holding that the Assessing Officer has rightly not allowed the speculation loss of Rs.1,86,10,110/-.

2.2 That on the facts and in circumstances of the case, the Id. Lower Authorities have grossly erred in not considering that the assessee has done all the transactions through M/s. G.C. Mutha & Co.”

3.1 In this appeal the solitary issue of the assessee is that lower authorities have not allowed the speculation loss of Rs.1,86,10,110/- as assessee has not submitted complete details related to these loss claimed.

3.2 At the time of hearing, the Id. Counsel for the assessee submitted the following brief synopsis of events in the case of the assessee.

Date	Particular
24-12-2009	Ld. Assessing Officer passed the assessment order u/s 143(3) disallowed the speculation loss of Rs.1,86,10,110/-.
11-01-2010	Assessee preferred an appeal before the Id. CIT(A) which was registered with ITA No. 450/09-10.
29-01-2015	Ld. CIT(A) decided the appeal vide ex-parte order dated 29-01-2015.
31-03-2015	Assessee preferred an appeal before the Hon'ble ITAT, Jaipur Bench which was registered as ITA No.313/JP/2015.

05-11-2015	Hon'ble ITAT vide order dated 05-11-2015 remanded back the appeal before the Id. CIT(A) for fresh deciding of appeal after giving sufficient and proper opportunity.
16-07-2019	The matter was fixed for hearing and Counsel of the assessee seeks adjournment and matter was adjourned to 16-08-2019.
16-08-2019	Counsel filed an adjournment application and matter was adjourned to 09-09-2019.
09-09-2019	Counsel of the assessee filed adjournment application and matter was adjourned to 12-09-2019.
13-09-2019	Counsel of the assessee filed an adjournment application and matter was adjourned to 14-10-2019.
14-10-2019	That counsel of the assessee attend the hearing and submit the application to take additional documents on record but unfortunately it is not taken on record and the appeal was decided ex-parte.

It is submitted that during the assessment proceeding the assessing officer asked for the details of transaction from Kotak Securities Services which was done through G.C. Mutha & Company and in absence of the evidence of the transaction assessing officer disallowed the speculation loss of Rs.1,86,10,110/-. In the original assessment, the AO issued a letter to M/s. Kotak Securities Ltd. u/s. 133 (6) of the Act. The reply of M/s. Kotak Securities Ltd. is as under:-

“On 7/12/2009, the reply is received from Kotak Securities Ltd., Mumbai as under:-

“We wish to inform you that we are unable to trace any details of Sh. Avant Mutha, with the said address for the financial year 2006-07 in our record. We, therefore, request you to kindly provide us with some more information like client code, DP, ID, PAN so that we could furnish the details to you.”

Further letter is sent to M/s. Kotak Securities Ltd., Mumbai on 7-12-2009 as under:-

“Please refer to your Office letter dated 4-12-2009. The PAN of Shri Avant Mutha is AKWPM1064A. You are requested to furnish copy of account of above named assessee in your books from 01-04-2006 to 31-03-2007. This information is most urgent. You are requested to furnish the above information by 14-12-2009 positively. Your cooperation in the matter is highly solicited.”

In response, the assessee informed that assessee has not done transaction directly from Kotak Securities Services but he has given contract to G.C. Mutha & Company to do all the transactions on his behalf. As the assessee took time to gather these details which were very old, further it has taken 4 adjournments and on 4th hearing the ld. AR of the assessee appeared and filed additional evidence. Therefore, the ld. AR requested to consider the additional evidence in the interest of justice which is supported by an Affidavit of a Counsel.

3.3 The ld. AR thus prayed to remand back the matter before the Assessing Officer and to consider these details of the transaction which is filed in application under Rule 29 of the Act dated 02-12-2021.”

3.4 In second round of hearing, the ld. CIT(A) based on the direction of the ITAT, Jaipur Bench vide its order dated 06-11-2016 in ITA No.313/JP/2015 in the case of the assessee, re-heard the case of the assessee and dismissed the appeal of the assessee by observing as under:-

“2.2 In this case, quantum proceeding was decided by my predecessor, which was decided on 29-01-2015, Appeal No. 450/09-10. Against this order, assessee filed his appeal before Hon’ble, ITAT, Jaipur. Vide order dated 6-11-2015, ITA No.313/JP/2015, Hon’ble ITAT has set aside the matter to the file of CIT(A) to decide the appeal of the assessee afresh after giving proper opportunity.

2.2.1 In this case, ample numbers of opportunities were given to the appellant to appear and present his case which are tabulate below:-

Date of hearing fixed	Remarks
16-07-2019	Authorized Representative filed an adjournment letter. Adjourn to 16-08-2019
16-08-2019	Authorized Representative filed an adjournment letter. Adjourn to 09-09-2019
09-09-2019	Authorized Representative filed an adjournment letter. Adjourn to 12-09-2019
13-09-2019	Authorized Representative filed an adjournment letter. Adjourn to 14-10-2019
14-10-2019	None Attended.

2.2.2 In view of the above, it is clear that the appellant and the Authorized Representative are not interested in contesting the appeal and in spite of sufficient opportunity and time have not submitted any details whatsoever. It is also relevant to state that earlier also, appeal was decided ex-parte, thus it seems that assessee is not serious to pursue the appeal. On merit, it seems that assessee has nothing to say in support of grounds of appeal taken. After careful consideration of the order, I find that Assessing Officer has rightly made the addition, hence ground of appeal is dismissed.

3. In the result, the appeal is dismissed.”

3.5 On the other hand, the ld. DR relied on the order of the ld. CIT(A) dated 21-10-2019 and further prayed the Bench not to consider the Application of the assessee under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1931 for taking additional documents on record as the ld. CIT(A) as well as Assessing Officer had given the ample time and opportunity to the assessee to file the details of speculation loss of Rs.1,86,10,110/- relating to the case but the assessee failed to submit the documents before both the authorities.

3.6 Further, the ld. AR of the assessee, filed an affidavit of an Advocate praying therein that Muzaffar Iqbal, Advocate appeared on behalf of the assessee before the ld. CIT(A) on 14-10-2019 in Appeal No. 450/09-10 for the A.Y. 2007-08 who requested the ld. CIT(A) to admit application for taking additional documents on record in the instant appeal but the ld. CIT(A) refused to admit the application on record and subsequently decided the appeal ex-parte vide order dated 21-10-2019 mentioning therein that counsel was not present on 14-10-2019.

3.7 We have heard both the parties and perused the materials available on record. The Bench noticed that vide its order dated 6-11-2015 in ITA No.313/JP/2015, it had set aside the matter to the file of the ld. CIT(A) to decide the appeal of the assessee afresh after giving proper opportunity. It is further noted that the ld. CIT(A) had given ample opportunities to the assessee to contest his

case before the Id.CIT(A) as well as to submit any details whatsoever but the assessee did not show any interest to pursue his case. Thus, the Id. CIT(A) had dismissed the appeal of the assessee in view of the assessment order passed by the AO. Further the Bench has taken into consideration the affidavit of an Advocate wherein he has mentioned that he appeared before the Id. CIT(A) on 14-10-2019 in the case of the assessee and prayed the Id. CIT(A) to admit the application for taking additional documents on record, however, she passed an ex-parte order dated 21-10-2019 in view of her limitation of granting four opportunities. The Bench, taking into consideration the entire gamut of the case find that the assessee has wasted the time and energy of Court as well as of Revenue and the assessee seems to be lethargic in following up his case and timely filing the details for the reason best known to him Therefore, the Bench directs that the assessee shall pay cost of Rs.10,000/- within 60 days from the receipt of the order in the Prime Minister Relief Fund and if assessee complies with direction of this cost then the appeal of the assessee shall be restored to the file of the Id. CIT(A) with the direction to consider additional documents being placed on record and pass afresh order by providing adequate opportunity of being heard to the assessee in accordance with law.

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

Order pronounced in the open court on 16 /06/2022

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

Sd/-

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

दिनांक / Dated:- 16 /06/2022

*Mishra

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

1. The Appellant- Shri Avant Mutha, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward- 6(1), Jaipur
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. 04/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar