

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 195/JP/2022  
Assessment Year : 2017-18.

M/s. Jeenkripa Township Pvt. Ltd., Plot No. 5, Vinoba Bhawe Nagar, Tursery Circle, Vaishali Nagar, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 1(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AADCJ 4916 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anoop Bhatia (CA)  
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 21.06.2022.  
घोषणा की तारीख / Date of Pronouncement : 28/06/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), National Faceless Appeal Centre, Delhi (NFAC) dated 25.03.2022 confirming the ex parte assessment under section 144 of the I.T. Act, 1961 made by the AO thereby assessing the total income of the assessee at Rs. 1,98,67,320/- comprising of cash deposits of Rs. 37,50,000/- and other credit entries of Rs. 1,61,17,323/- appearing in the HDFC Bank account of the assessee company

in the FY 2016-17 relevant to AY 2017-18. The grounds raised by the assessee are as under :-

1. On facts and in the circumstances of the case, Id. CIT (A) has erred in deciding the appeal ex parte without affording adequate opportunity to the assessee. Assessee prays that the order passed in violation of principles of natural justice deserves to be quashed.
  2. On facts and in the circumstances Id. CIT (A) has grossly erred in conforming the summary addition of Rs. 1,98,67,320/- without considering the obvious facts emerging from the bank statements available on records.
    - 2.1. That the Id. CIT (A) has erred in dismissing the appeal grossly and confirming the arbitrary addition made lby Id. AO without considering the cash withdrawals made and available with the assessee for making cash deposits into the account. Appellant prays that additions so confirmed deserves to be deleted.
    - 2.2. That the Id. CIT (A) has further erred in confirming additions made for credit entries appearing in the bank account. Appellant prays that such credits being duly explainable deserves to be deleted.
    - 2.3. That Id. CIT (A) has further erred in confirming the additions made by Id. AO by invoking provisions of sec. 115BBE of the Act. Assessee prays that such credits in the bank account being fully explainable, sec. 115BBE do not apply and the same deserves to be dropped.
  3. The appellant requests leave to add or amend any other ground before disposal of the appeal.
2. Briefly the facts of the case are that the assessee is a private limited company incorporated on 27.01.2012 for undertaking Township development

work and liaisoning for sale of land. Since its incorporation there has been no development work carried out by the assessee and there has been no income generation. Due to lack of knowledge about the legal obligations of the assessee company, no Income Tax Return was filed for the year under consideration for the reason that there has been no income generation at all. On the basis of data analysis and information gathered during the phase of online verification under 'Operation Clean Money', the AO came to know that the assessee M/s. Jeenkripa Township Pvt. Ltd. has deposited Rs. 24,00,000/- in cash in its bank account with HDFC Bank, Chitrakoot during the Demonetarization period on 07.12.2016. From the record, the AO found that the assessee company has not filed its return of income under section 139 for the assessment year 2017-18 under appeal. Accordingly, in order to verify the source of above cash deposits, during the course of e-proceedings, various notices under section 142(1)/133(6)/131 of the IT Act on 28.01.2018, 25.01.2018, 06.09.2019, 16.09.2019, 27.09.2019, 22.10.2019 and 18.11.2019 were issued and served upon the assessee from time to time through registered e-mail ID of the assessee calling certain relevant details. However, no compliance has ever been made by the assessee. The AO, therefore, as per provisions of section 144(1)(b) of the IT Act, 1961 proceeded to complete the assessment on the basis of relevant material available with him and thereby assessed the total income of the assessee company at Rs. 1,98,67,320/-. Aggrieved by the order of the AO, the assessee preferred

appeal before Id. CIT (A). The Id. CIT (A) issued notice under section 250 of the IT Act on 21.01.2022 asking the assessee to file details in support of the grounds of appeal on or before 07.02.2022. No compliance was made by the assessee. Accordingly, another notice dated 05.03.2022 was issued to the assessee requiring the assessee to file detailed submissions on or before 21.03.2022 in support of its case. However, no compliance was made by the assessee company. Therefore the Id. CIT (A) treating the assessee as not interested to prosecute its case, passed the order under section 250 of the IT Act, 1961 ex parte confirming the order of the Assessing Officer. Against the said order, now the assessee is in appeal before the Tribunal.

3. We have heard the rival submissions and perused the material available on record. At the very outset, the Id. A/R appearing for the assessee has drawn our attention to ground no. 1 of the appeal wherein it was specifically pleaded by the assessee that the Id. CIT (A) has grossly erred in deciding the appeal ex parte without affording adequate opportunity to the assessee. It was further submitted before us that the order passed by the Id. CIT (A) is in violation of principles of natural justice and in this regard from the record we noticed that the Id. CIT (A) had issued notice under section 250 to the assessee on 21.01.2022 asking the assessee to file details in support of ground of appeal on or before 07.02.2022. However, the assessee did not comply with the said notice issued by the Id. CIT (A). Therefore, another notice under section 250 of the Act was issued again to the assessee on

05.03.2022 asking the assessee to file details in support of the ground of appeal on or before 21.03.2022, in the said notice the assessee was duly informed that this is the final opportunity granted. However, the assessee again did not comply with the said notice and has not filed any details before the Id. CIT (A). Therefore, in view of non compliance of two notices issued to the assessee, the Id. CIT (A) dismissed the appeal by upholding the order of the AO. The Id. A/R of the assessee submitted that in order to support the contention of the assessee, the assessee has filed Statement of facts which are placed in the court file wherein it is specifically pleaded that the assessee is a private limited company and since its incorporation there has been no development work carried out by the assessee and there has been no income generation. Since according to the assessee, the Director had no knowledge about the legal obligation of the assessee company, therefore, no Income Tax Return was filed for the year under appeal for the reasons that there had been no income generation at all. The Id. A/R further submitted that during the relevant year the assessee has received certain advances for liaisoning of sale of land from certain clients and this money was deposited in the bank account and certain withdrawals were made to facilitate the said liaisoning of land for its clients. But when the deal could not be completed, the same were again deposited into the bank account. There are no transactions in the bank account other than receipt of advances, loans from the Director, withdrawal of cash to be paid to the prospective sellers of agricultural land and re-deposit of

the cash so withdrawn after the sale could not be materialized. The Id. A/R further submitted that the assessment was completed ex parte vide order dated 07.12.2019 wherein additions were made by invoking provisions of section 69A of the Act. Later on the said order was rectified under section 154 of the Act, as in the original order though section 115BBE was invoked, the tax was calculated at normal rate. This order passed under section 154 of the Act was challenged before the Id. CIT (A), but again the appeal was decided ex parte for the reason that the notice sent through electronic media could not be acted upon by the assessee as the Id. A/R did not manage the proceedings properly and the assessee was not aware of the same. The Id. A/R further submitted that the assessee is now before the Tribunal raising various grounds to be decided on merits.

3.1. We noticed that since no appeal was filed against the original order passed under section 144/147 of the Act for the reasons best known to the assessee, according to Id. A/R, the appeal against the original order has now been filed before the Id. CIT (A) along with an application for condonation of delay. Thus on the totality of facts and circumstances of the case, we find that apparently it is a case of gross negligence on the part of the assessee as during the appellate proceedings, the assessee was issued two notices but the same were not complied with. Therefore, the Id. CIT (A) has decided the appeal filed by the assessee ex parte by passing the impugned order. Now considering the peculiar facts of the case, the Id. A/R submitted that the

assessee has already filed appeal against the original order passed under section 144/147 of the Act before the Id. CIT (A) along with an application for condonation of delay, which is pending before him. Therefore, considering these peculiar facts and in order to maintain consistency and avoiding the possibility of passing contrary orders by the lower authorities, we are of the view that this appeal filed by the assessee against the impugned order passed by the Id. CIT (A) dated 25.03.2022 also needs to be set aside to the file of Id. CIT (A) so that while deciding the appeal filed by the assessee against the original order passed under section 144/147 of the Act, the Id. CIT (A) also taken into consideration the appeal filed by the assessee against the order rectified under section 154 of the Act in order to maintain consistency. Since there was no plausible reason put forth by the assessee before us for non compliance of the notices issued by the Id. CIT (A), therefore, we are of the view that non appearance before the Id. CIT (A) inspite of repeated notices/summons is dis-regard towards the Authorities and wastage of precious time on the part of the assessee. Be that as it may, without going into merits, considering the interest of natural justice, one more opportunity is granted to the assessee, and the file is restored back to the Id. CIT (A) for consideration afresh, subject to cost of Rs. 5,000/- for negligent attitude during income tax proceedings, to be deposited in the Prime Minister's Care Fund and the proof thereof should be produced.

4. Since we have restored the matter to the file of the Id. CIT (A) for adjudicating the matter afresh after providing reasonable opportunity to the assessee, the other grounds raised have become infructuous and need no adjudication.

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

Order pronounced in the open Court on 28/06/2022.

Sd/-  
( राठौड़ कमलेश जयंतभाई, )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2022.

das/

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

1. अपीलार्थी / The Appellant- M/s. Jeenkripa Township Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO Ward 1(1), 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. 195/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

