

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 134/JP/2022
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Hari Om Gupta, 5/602, UIT Sector 5, Near S.P. Office, Bhiwadi, Alwar.	बनाम Vs.	The Income Tax Officer, Ward Bhiwadi, Bhiwadi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ALNPG 0563 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)

राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 24/08/2022

उदघोषणा की तारीख / Date of Pronouncement: 31/08/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 29.03.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2011-12. The assessee has raised the following grounds :-

1. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming the action of Id. AO in reopening the assessment u/s 147 of the Income Tax Act, 1961 and thereafter passing the order u/s 147 r.w.s. 144.

- 1.1 That, the Id. CIT (A) has further erred in confirming the action of Id. AO in completing the re-assessment u/s 147 of the Income Tax Act, 1961 without service of notice u/s 148, thus the entire re-assessment proceedings deserves to be held bad in law and consequent order be quashed.
2. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in completing the appellate proceedings ex parte without allowing sufficient opportunity to the assessee to present his case. Therefore, the impugned order passed by CIT (A) is in gross violation of the principles of natural justice deserves to be quashed and the consequent additions deserve to be deleted.
3. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming the action of Id. AO in making addition of Rs. 15,98,000/- by alleging the same to be undisclosed income of the assessee merely on the basis of assumptions and presumptions, without assigning any proper and cogent reasons for the same. Therefore, the addition of Rs. 15,98,000/- deserves to be deleted.
4. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

2. Briefly the facts of the case are that the assessee is an Individual. As per NMS data/details available with the Assessing Officer, it was noticed that the assessee has deposited cash amounting to Rs. 15,98,000/- in his saving bank account maintained with OBC Bank during the financial year 2010-11. Since the assessee had not filed his Income Tax Return for the relevant year, hence, amount of financial transactions mentioned above could not be verified. Therefore, proceedings under section 147 of the IT Act was initiated after recording proper reasons and notice under section 148 was issued to the assessee on 27.03.2018 after obtaining the prior approval of the Pr. CIT which was sent through Speed Post to the assessee on 28.03.2018 requiring to

furnish return of income for the year under consideration, but the same was returned back undelivered by Postal Authority with the remark 'Left'. Further notice under section 142(1) dated 13.08.2018 was issued to the assessee on the address available for furnishing requisite details/information and fixing the hearing on 27.08.2018 but the same again returned back undelivered by Postal Authority with the remark 'Left'. Thereafter, notices under section 148 and 142(1) of the Act were served through affixture on the available address of the assessee. Since no compliance was made by the assessee, a final show cause notice under section 144 of the Act dated 29.10.2018, fixing the date of hearing on 14.11.2018 along with notice under section 142(1) of the Act was issued to the assessee to furnish the reasons, why the cash deposit in the saving bank account amounting to Rs. 15,98,000/- should not be treated as unexplained money under section 69A of the Act. Since the assessee has failed to file his return of income, sufficient opportunities were afforded to the assessee by way of issuing notices under section 142(1) to attend the hearing before the AO on the dates fixed. As the assessee did not comply with the notices, the AO completed the assessment ex parte under section 144 of the IT Act, at an income of Rs. 15,98,000/- being unexplained cash deposit. On appeal by the assessee, the Id. CIT (A) after affording reasonable opportunities to submit the written submissions/documents, which the assessee did not avail, passed the order under section 250 of the IT Act,

thereby 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 case of the assessee was decided ex parte under section 144 of the IT Act by the AO and thereafter the assessee challenged the order of assessment before the Id. CIT (A). However, the Id. CIT (A) also decided the case ex parte and thus now the assessee has challenged the order of the Ld. CIT (A) before us.

3.1. From the record, we noticed that the Id. CIT (A) while deciding the appeal of the assessee has categorically observed in para 5, 6.1 and 6.2 of his order as under :-

“ 5. The appellant was provided opportunity of being heard by way of issue hearing notice dated 13-01-2021 requesting the appellant to file written submissions and documents electronically through incometaxindia.efiling website on or before 28-01 2021 for necessary consideration while disposing this appeal. As there was no reply, another hearing notice dated was issued on 18-03-2021 asking the appellant to make the submissions on or before 02-04-2021. The appellant again failed to respond to this notice and to another hearing notice issued on 23-02-2022 fixing the hearing on 04-03-2022 as well. Thereafter, a final notice was issued on 08-03-2022 calling for submissions on or before 21-03-

2022. However, the appellant has not submitted any written submission till date. In these circumstances, the appeal is decided on the basis of material available on record.

6.1. The facts and grounds of the appeal have been carefully considered. It is evident from the assessment order that the AO had given sufficient opportunity to file explanation, first through notices u/s 142(1). The appellant failed to respond to any of these letters/notices. In fact, the appellant did not file any return despite service of notice u/s 148. Later, a final show cause notice dated 29-10-2018 along with the notice u/s 142(1) issued to the appellant and the appellant has not responded. From this record, it is well understood that the appellant had no explanation about the said addition and therefore AO had rightly concluded the assessment u/s 144 by making addition of Rs. 15,98,000/- as unexplained cash deposits to the total income of the appellant.

6.2. Though the appellant claims that the AO was not justified in making such assessment, he never put forth any reasons for claiming so. Even during current appellant proceedings, the appellant never came forward with his explanation to the grounds mentioned by the appellant despite being offered number of opportunities through hearing notices issued by this office. The onus lies on the appellant to prove his case before seeking relief in the appellate proceedings. On this front, appellant miserably failed. In these circumstances, it is deemed fit not to interfere with the assessment made by the AO. Accordingly, the addition made by the AO is upheld and grounds are dismissed.”

3.2. On further verifying the records, we also noticed that during the assessment proceedings, notice under section 142(1) dated 13.08.2018 was issued by the AO fixing the case for hearing on 27.08.2018, but the same returned back undelivered. Thereafter, notices u/s 148 and 142(1) of the Act were served through affixture on the assessee. Since no compliance was made by the assessee, a final show cause notice under section 144 dated 29.10.2018 along with notice under section 142(1) of the Act was issued to the assessee fixing the date of hearing on 14.11.2018 to furnish the reasons why the cash deposit in the saving bank account should not be treated as unexplained money under section 69A of the Act. In the said notice it was specifically mentioned that in case of non compliance, order under section 144 shall be passed. Since, even on the said date of hearing none appeared on behalf of the assessee, therefore, the order of assessment was passed under section 144/147 of the IT Act on 26.11.2018 thereby making the addition.

3.3. From the entire sequence of events and the conduct of the assessee in non compliance of the repeated notices, it appears gross negligence on the part of the assessee and wastage of precious time. In our considered view, non compliance of notice issued by the Authorities and non appearance before the Authorities inspite of repeated notices/summons is dis-regard towards the Authorities. 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 AO 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 proof thereof should be produced.

4. Since we have restored the matter to the file of the A.O. 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 31/08/2022.

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

जयपुर / Jaipur

दिनांक / Dated:- 31/08/2022.

das/

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

1. अपीलार्थी / The Appellant- Shri Hari Om Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO Ward Bhiwadi, Bhiwadi.
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. 134/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar