

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीता लक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 365/JP/2022
निर्धारणवर्ष/Assessment Year : 2013-14

Rajesh Kumar Gupta B-92, Rajdhani Anaj Mandi, Sikar Road, Jaipur.	बनाम Vs.	Deputy Commissioner of Income Tax, Circle-4, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AEJPG 4222 M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assessee by : Shri R.K. Bhatran (C.A.)
राजस्व की ओरसे/ Revenue by: Smt. Anil Kumar Bhardvaj (CIT)

सुनवाई की तारीख/Date of Hearing :16/11/2022
उदघोषणा की तारीख/Date of Pronouncement: 30/11/2022

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred as "NFAC"], CIT(A) for the assessment year 2013-14 dated 05.09.2022 which in turn arises from the order passed by the Dy. Commissioner of Income Tax, circle-3, Jaipur passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 26.03.2016.

2. The assessee has raised following grounds of appeal:-

“1. That the Ld. CIT(A) is wrong, unjust and has erred in law in passing the ex-parte Appeal order without considering the adjournment application filed by appellant on 31-08-2022 seeking adjournment up to 15-09-2022 and therefore the same is passed in haste without affording reasonable opportunity to the appellant.

2. That the Ld. CIT(A) is further wrong, unjust and has erred in law in passing the non speaking appeal order in summary manner without considering the documents lying available on assessment record.

3. That on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in confirming the action of Ld. AO in

a) applying provisions of sec. 14A of the I.T. Act, 1961 in respect to investment of Rs.5,49,12,582/- made by the appellant.

b) making disallowance of Rs. 65,79,329/- out of interest claimed by the appellant u/s 14A of the I.T. Act, 1961 by applying provisions of Rule 8D of the I.T. Rules, 1962.

c) That without prejudice to ground No. 3(b) above the amount disallowed u/s 14A r/w rule 8D of the I.T. rules, 1962 by the Assessing Officer is not correctly calculated.

4. That on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in confirming the action of Ld. AO in holding that long term capital gain of Rs.8,83,56,894/- claimed as exempt income u/s 10(38) of the IT Act, 1961 on sale of listed shares of M/s. KGN Enterprises Ltd. and M/s Blue Circle Services Ltd., through recognized stock exchange is not genuine on the ground that shares of the said company were allegedly involved in circular transaction and manipulation of share price and that purchase of those shares is also allegedly not verifiable. The Ld. CIT(A) further wrong in confirming the action of Ld. AO in making addition of whole sale consideration of Rs.8,83,56,894/- to the income of the appellant as undisclosed income u/s 69 of the IT Act, 1961 irrespective of the fact that assessee purchased the said shares and sold them through recognized stock exchange receiving consideration by cheque resulting in gain on sale of shares.

5. The Ld. CIT(A) further wrong and has erred in law in confirming the action of Ld. AO in holding that the appellant has allegedly paid commission @ 0.5% for obtaining alleged accommodation entry in form of long term capital gain and thereby making addition of Rs.4,41,784/- to the income- of the appellant u/s 69 of the IT Act, 1961 as unexplained income of the appellant.

6. That the levy of interest u/s 234B of the LT. Act, 1961 on the appellant is wrong, bad in law and is also not correctly calculated.

7. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”

3. The brief facts of the case are that the assessee e-filed his return of income declaring total income at Rs. 1,58,66,520/- on 30/9/2013. The case was selected for scrutiny under CASS. Notice u/s 143(2) was issued on 04/09/2014, which was duly served upon the assessee. Thereafter, due to change of incumbent notices u/s 142(1) and 143(2) of the IT Act, 1961 were issued on 17.11.2015 and a detailed questionnaire was issued on 3.12.2015. The assessee is engaged in the business of Trading of Shares, Future options of shares and commodities. As per the computation of return of income the assessee has earned income under the Heads of Salary, House Property, Business & Profession, exempt Capital Gain & Other Sources. It is also noticed that the assessee has earned income from long-term capital gains from sales of shares amounting to Rs. 8,83,56,894/- during the year. This income from long-term capital gains has been claimed as exempt u/s 10(38) of

the Income Tax Act. The long term capital gain of Rs. 8,83,56,894/- includes capital gain of Rs. 2,87,42,764/- from sale of (78,500) shares of KGN Enterprises Ltd. and Rs. 5,96,13,643/- from sale of M/s Blue Circles Services Pvt. Ltd. (12,50,000 shares).

4. The ld. AO observed that the generalised explanation is not found tenable and the quantification of disallowance u/s 14A of the Act in accordance with the provisions of Rule 8D of the IT Rules, is made as under:

Calculation of disallowance as per Section 14A Rule 8D

Interest paid		7369339
Average value of investment related to exempt income		54912582
Average value of total assets		287223838
Disallowance under Rule 8D (ii) (a) $7369339 * 54912582 / 287223838$	(a)	1408899
Disallowance under Rule 8D(ii) (0.5% of 54912582)	(b)	274563
Total disallowance		1683462

Accordingly, sum of Rs. 16,83,462/- is hereby disallowed out of interest expenses and added back to the total income of the assessee.

With these remarks and discussion, total income of the assess is computed as under:

Subject to the above remarks, total income is re-computed as under:-

	Total income as declared	1,58,66,520/-
Additions:		
As discussed in para 11 above	8,83,56,894/-	
As discussed in para 12 above	4,41,784/-	
As discussed in para 13 above	16,83,462/-	9,04,82,140/-
	Net taxable income	10,63,48,660/-

Assessed u/s 143(3) of the Income Tax Act, 1961 at Rs. 10,63,48,660/- calculation of tax of the I.T. Act, 1961 has been shown in the enclosed ITNS-150 which is also a part of the assessment order, accordingly demand notice and challns is issued.

‘Penalty proceedings have been initiated u/s 271(1)(c). Notice u/s 274 read with section 271(1)(c) is issued for concealing the particulars of income.

5. Being aggrieved by the order of the ld. AO the assessee preferred an appeal before the ld. NFAC/ CIT(A) and the findings of the ld. NFAC/CIT(A) are reproduced as under:-

“The appellant was sent notices of hearing/submission on 11-01-2021 & 24-08-2022. There was no reply from the appellant at given address. Therefore, it seems appellant has no interest in perusing the appeal. Hence, I do not find any reason to interfere with the order passed by assessing officer. In sum, appeal is dismissed.”

6. Being aggrieved by the order of Ld. NFAC/ CIT (A), the assessee preferred an appeal before us. The Ld. AR for the assessee has reiterated its arguments in written submission for all the grounds which are as under:-

“The above appeal has been filed by assessee against the ex-parte appeal order dated 05-09-2022 passed by CIT (A), NFAC, New Delhi in appeal No. 1/10429/2016-17. In this connection we have been directed to submit that after Covid-19 lockdown period the case was first time fixed for hearing on 31-08-2022 vide notice dated 24-08-2022. That appellant filed an adjournment application on 31-08-2022 seeking adjournment up to 15-09-2022. The Ld. CIT did not consider the adjournment application at all passed the appeal order in haste without providing reasonable opportunity of hearing. An affidavit of appellant certifying the above facts is enclosed herewith. Even the Ld. CIT(A) not considered the documents available/placed on assessment record of appellant at the time of passing of appeal order. For ready reference the observation of CIT(A) are reproduced herein below:-

"The appellant was sent notices of hearing/submission on 11-01-2021 & 24-08-2022. There was no reply from the appellant at given address. Therefore, it seems appellant has no interest in perusing the appeal. Hence, I do not find any reason to interfere with the order passed by assessing officer. In sum, appeal is dismissed."

In view of the above facts and circumstances the case the assessee was prevented by sufficient reasons in not complying the notice(s) received from CIT (A). Thus there was no default on the part of appellant in compliance the terms of the statutory notice issued by the Ld. CIT(A). In the circumstances it is prayed to your honor that the matter may kindly be set aside/remanded back to Ld. CIT(A).”

7. Per Contra, the ld. DR relied on the findings of the lower authorities.
8. We have heard both the parties, perused materials available on record. The ld. AR for the assessee submitted that an affidavit for seeking adjournment up to 15.09.2022 by an application on 31.08.2022 before the Ld CIT(A) but the ld. CIT(A) did not consider the adjournment application and passed the order ex-parte

without providing reasons opportunity of being heard to the assessee, where the assessee was sent notice of hearing/submissions dated 11.01.2021 and 24.08.2022 however, the assessee failed to reply for the notices. Before us, the ld. AR for the assessee has prayed for set aside/ remand back to the ld. CIT(A) as order is passed ex-parte without giving any opportunity of being heard. Therefore, we are of the considered opinion that issue needs to go back to the file of the ld CIT(A) to give one more opportunity to the assessee to file necessary evidence in support of his case. Hence, we set aside impugned order and remit the matter back to file of the ld CIT(A) and direct him to reconsider the issues after providing adequate opportunity of hearing to the assessee. Needless to say the assessee shall go before the ld. CIT(A) without seeking any adjournment unless or otherwise warrants under extreme circumstances. We restore the issue to the file of the ld. CIT(A) for afresh decision. Thus the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 30/11/2022

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/11/2022

* Santosh

आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:

1. The Appellant- Rajesh Kumar Gupta, Jaipur
2. प्रत्यर्धी / The Respondent- DCIT, Circle-04, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 365/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar