

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

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

आयकर अपील सं./ITA No. 327/JP/2022
निर्धारण वर्ष / Assessment Year : 2016-17

Kaila Devi Temple Trust Karauli House, New Sanganer Road Sodala	बनाम Vs.	The ITO (Exemption), Ward 1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATK 3696 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Agarwal, CA
राजस्व की ओर से / Revenue by: Shri Mirza Azhar Beign, JCIT

सुनवाई की तारीख / Date of Hearing : 24/01/2023
उदघोषणा की तारीख / Date of Pronouncement: 27 /02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 30-06-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the assessee has raised the following grounds of appeal.

“1. That the ld. CIT(Exemptions) erred in estimating the income at Rs.38,88,410/- against nil income as reported by the petitioner trust.

2. That the order passed by the AO is bad in law as well as on facts.”

2.1 Apropos grounds of appeal of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“6. Decision:- I have gone through and duly considered the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant has not furnished satisfactory documentary evidence in respect of application of income towards depreciation claimed during the A.Y. 2016-17.

During the appellate proceedings, the appellant has not complied for even once or filed any written submission. In absence of the written submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. If the appellant claims that the assessment order was objectionable he should have provided supporting arguments of evidence. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous. In the case of Anil Goel vs CIT (2008) 306 ITR (P&H), the Hon'ble High Court held as under:-

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 ITR 577 has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisonal authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisonal authority."

Accordingly, I agree with the reason given by the AO and confirm the disallowance of Rs.19,02,546/- on account of depreciation claimed by the appellant. The grounds of appeal are hereby dismissed."

2.2 During the course of hearing, the ld.AR of the assessee prayed that the ld. CIT(A) has dismissed the appeal solely on the ground that assessee is not interest in pursuing the appeal instead of deciding the appeal on merit on the basis of the material available on record for which the ld. AR of the assessee relied upon the

decision of Hon'ble Bomay High Court in the case of CIT vs Premkumar Arjundas Luthra (HUF) (2016) 240 Taxman 133. Further, the ld. AR submitted that the ld. CIT(A) without application of mind held that disallowance of Rs.19,02,546/- on account of depreciation made by the AO is confirmed ignoring that AO assessed the total income at Rs.38,88,410/- which was challenged before the ld.CIT(A) and the challenge was not against disallowance of depreciation but on account of not accepting the revised Form No.10 filed by the assessee in course of assessment proceedings.

2.3 On the other hand, the ld.DR supported the order of the ld. CIT(A).

2.4 The Bench has heard both the parties and perused the materials available on record. From the records, it is noted that ld. CIT(A) has disposed off the appeal on the ground that the assessee is not interested in pursuing his own appeal whereas the ld. AR of the assessee prayed that the ld. CIT(A) should have decided the appeal on merit, keeping in mind the materials available on record. The Bench feels that in the interest of equity and justice, the appeal is restored to the file of the ld. CIT(A) to adjudicate upon on merit but by providing an opportunity of hearing to the assessee. The assessee is also directed to produce all the relevant documents/written submission before the ld. CIT(A) for adjudication of the grounds of appeal and assessee will not take unnecessary adjournment on frivolous ground. Thus the appeal of the assessee is allowed for statistical purposes.

3.0 In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27 /02/2023.

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

जयपुर / Jaipur

दिनांक / Dated:- 27/02/2023

*Mishra

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

1. The Appellant- Kaila Devi Temple Trust, Jaipur
2. प्रत्यर्धी / The Respondent- The ITO (Exemption), Ward-1, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 327/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar