

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 62/JP/2023
निर्धारण वर्ष/Assessment Years : 2010-11

Shri Rajesh Sharma, Kailashpuri	बनाम Vs.	ITO Ward 4(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ATEPS 7542 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None

राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 26/04/2023

उद्घोषणा की तारीख / Date of Pronouncement: 03/05/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 14.12.2022 [here in after Id. NFAC/CIT(A)] for assessment year 2010-11 which in turn arise from the penalty order dated 22.06.2018 passed under section 271(1)(c) of the Income Tax Act, 1961 [here in after to as Act] by ITO, Ward 4(1), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

- “1. Penalty for A.Y 2010-11 as per order passed u/s 143(3) of the I.T. Act 1961 is bad in law.
2. The learned Authority has erred in levying penalty u/s 271(1)(c) of the IT Act 1961 of Rs. 1,40,865/-.
3. The appellant craves her rights to add, delete, amend any of the grounds on or before the hearing.”

3. Succinctly, the fact as culled out from the records is that the assessee is one of the beneficiaries of obtained accommodation entries of bogus profit of Rs. 3,87,93,700/- {(-) 6170950, 21824600, 9701800, 23518200, (-) 8690150, (-) 27223600, 1333800}. On sale of shares/commodities through M/s JKT Trading, Pioneer Trading, R S Enterprises, R. K. Trading, Rupam Traders, Suruchi Trading, V K Singhania & Co. and not shown the income in return of income in during the year under consideration. Therefore, after believing that the income to the tune of Rs. 3,87,93,700/- has escaped assessment, the case of the assessee was reopened by invoking the provisions of section 147 to the I.T. Act 1961 after recording the reasons. Notice 148 was issued on 29.03.2017 with prior approval of Pr. CIT-02, Jaipur. The notice was duly served upon the assessee. In response to this, the assessee attended & produced copy of e-return of income filed on 22.10.2017 in response to notice u/s 148 and declaring income of Rs. 1,20,000/-. The assessee has also requested to provide reason for issuance of notice u/s 148 of the Act. Hence, reasons for issuance of notice u/s 148 was supplied. During the year, assessee derives income from

salary of Rs. 1,20,000/- and loss on trading of commodity of Rs. 95,306/-.

During the proceedings, assessee was asked to furnish complete details of transactions made with NMCE. In response, thereto, the assessee has filed details of transactions made with broker along with ledger account, global report and contract note. On perusal of details filed, it is found that assessee has made transactions with MCX & NMCE and incurred loss of Rs. 95,306/-. After analyzing the data received from the broker, a show cause notice was issued on 15.12.2017 and asked to the assessee as to why profit of Rs. 3,87,93,700/- should not be added and commission @ 2% paid in lieu of getting entry of profit should not be added. The assessee has filed replied and submitted that all the trades allegedly done by him for getting entry of profit were already considered by him before filing of return. The assessee has furnished reconciliation statement of trades entered in by him through tainted sub-brokers of counter party. The assessee has submitted that he has entered in NMCE & MCX through broker M/s Motisons commodities Pvt. Ltd. It is submitted that during the year under consideration he incurred loss of Rs. 95,306/- on commodity transactions at MCX/NMCE. Although, the assessee has shown the loss of Rs. 95,306/- in his return of income, but it is seen that the assessee has not declared any expenditure of commission for getting the entry of profit. In response to

show cause notice, the assessee has denied to pay any commission. The reply filed by the assessee has been considered by the AO but found not tenable. Looking to the facts and circumstances of the case, it is held that assessee has made of commission of Rs. 7,75,874/- i.e. 2% of Rs. 3,87,93,700/-. Thus, the amount of commission of Rs. 7,75,874/- is added to the total income of the assessee u/s 69C of the Act.

4. After the culmination of the assessment proceeding, penalty proceeding was initiated against the assessee wherein the Id. AO noted the assessee has not filed appeal against the assessment order before the Id. CIT(A). Based on that the Id. AO noted the assessee is agreed with the addition made during the assessment proceedings. The Id. AO further noted that the assessee failed to disclose true income while filling his return of income. The Id. AO also noted the assessee has concealed particulars of income his income Rs. 7,75,874/- and thereby levied a penalty of Rs. 1,40,865/- u/s. 271(1)(c).

5. Aggrieved from the order of the Id. AO levying penalty the assessee has preferred an appeal before the Id. CIT(A). In the appellate proceeding the assessee vide submission dated 26.11.2022 requested for

adjournment. Without dealing with that application of the adjournment whether the same is rejected or otherwise the appeal of the assessee decided ex-party without giving proper opportunity of being heard to the assessee.

6. The Id DR is heard who relied on the findings of the lower authorities and vehemently argued that the assessee has not filed the return of income even though he is supposed to do so and even before the bench the assessed did not appear to represent the appeal. Therefore, Id. DR prayed to dismiss the appeal of the assessee.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that on the date of hearing the assessee sought an adjournment before the Id. CIT(A). The Id. CIT(A) has neither dismissed the adjournment application nor given any further date of hearing and he has proceeded ex-party which is not correct. Thus, on careful consideration of the facts of the case available on record we are of the considered we that the assessee is deprived of the just and has not been allowed proper opportunity of being heard and therefore, we are of the view that the assessee should get an opportunity of being heard by the Id.

CIT(A). We see no harm in providing one more opportunity of hearing to the assessee, In case, however, the assessee does not fully cooperate in expeditious disposal of remanded proceedings, learned CIT(A) will be at liberty to take such action, apart from disposal of appeal based on material on record, as he deems fit and proper and judicious. The matter is thus restored to the file of the learned CIT(A) for adjudication de novo after affording yet another opportunity of hearing to the assessee, by way of a speaking order, and in accordance with the law. Ordered, accordingly. As the matter is remitted to the file of the learned CIT(A) for fresh adjudication. We see no need to deal with other grievances of the assessee which deal with the merits. These aspects of the matter, as of now, are infructuous, and are dismissed as infructuous.

8. In the result the appeal is allowed for statistical purposes in the terms indicated above.

Order pronounced in the open court on 03/05/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/05/2023

*Ganesh Kumar

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

1. The Appellant- Rajesh Sharma, Kailashpuri
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(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. 62/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar