

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

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 84/JP/2023
निर्धारणवर्ष/AssessmentYear :2010-11

Shri Manish Paliwal C/o Shri Ghanshyam Paliwal 90, Bhatton Ki Gali, Purani Vidhan Sabha Jaipur	बनाम Vs.	The ITO Ward -1(1) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AQXPP2628N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Khandelwal, CA
राजस्व की ओर से / Revenue by: Ms. Chanchal Meena, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 28/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 03/05/2023

आदेश / ORDER

PER SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A), National Faceless Appeal Centre, ("for short NFAC"), Delhi dated 30-01-2023 for the assessment year 2011-12 raising therein following grounds of appeal.

"1. That the AO has erred in law as well as in facts of the case in assuming jurisdiction u/s 148 of the Act.

2. That the AO has erred in law as well as in facts of the case in continuing reassessment proceedings initiated by issue of notice u/s 148 of the Act despite the fact that income alleged to be escaped in reasons recorded was never assessed and

thereby overlooking the settled law that addition cannot be made u/s 147 divorced from reasons recorded unless the alleged escaped income is assessed.

3. That the AO has erred in law as well as in facts of the case is making addition of Rs.3,23,000/- to the returned income by holding genuine and explained deposit into bank account to be unexplained within ambit of Section 69 of the Act.

2.1 Brief facts of the case are that the assessee has not filed his ITR for the A.Y. 2010-11. As per information available, the AO noted that the assessee has made share transaction to the tune of Rs.23,52,870/- during the F.Y. 2009-10 and the assessee has not disclosed this transaction. Therefore, the transactions of Rs.23,52,870/- remained unexplained and not verified by the AO. Accordingly, notice u/s 148 of the Act dated 24-03-2017 was issued after recording reasons u/s 147 of the Act and this notice u/s 148 was served upon the assessee. It is noted that the assessee in compliance of notice u/s 148 of the Act, the assessee filed the I.T.R. for A.Y. 2010-11 declaring total income of Rs.1.20 lacs. Hence, the AO during the course of assessment proceedings noticed that the assessee had declared income from salary of Rs.1.20 lacs and claimed loss (-) Rs.3,50,963/- on account of share transactions during the years. In support of above, the assessee has furnished globe report for the period 01-04-2008 to 31-03-2009 made by broker M/s. Indiabulls Securities Pvt. Ltd. and loss claimed under the head LTCG found verified. The AO perused the bank statement and noticed that the assessee had deposited cash

amounting to Rs.5.00 lacs during the financial year 2009-10 for which the assessee was required to explain the source of cash deposits made in bank account during the year as per show cause dated 24-07-2017. The assessee had furnished confirmation of petty loans from various persons for which confirmations had been filed and in order to verify the genuineness and creditworthiness the assessee was asked to produce the related persons for cross examination as the onus to prove the same is on the part of the assessee. In compliance, the assessee produced only 3 persons who had confirmed to give cash loan to the assessee during the year. Apart from above, the assessee stated that he was having salary income which was also deposited in cash in the bank account. The AO considering all the facts and documentary evidences furnished before him found a sum of Rs.1.77 lacs verified and genuine and remaining amount of Rs.3.23 lacs found unexplained and no evidence was produced. Hence, the AO made an addition of Rs.3.23 lacs being unexplained investment u/s 69 of the Act in the hands of the assessee.

2.2 In first appeal, the Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

“6.5 In view of the above, in the absence of any documentary evidence in support of the appellant’s claim, I proceed to dispose this appeal based on the facts of the case as emanating from the assessment order, ground of appeal and statement of facts submitted by the appellant on merits.

6.6 The appellant filed the ITR in response to the notice u/s 148 of the Act and submitted the details/documents as required by the AO. During the assessment proceedings, the AO noticed that the appellant had deposited cash amounting to Rs.5,00,000/- in the bank account. The appellant had submitted to AO that the amount of cash deposit consists of salary of Rs.1,20,000/- and petty loans which were taken from relatives and friends. In order to verify the genuineness of the petty loans, the AO requested the appellant to bring the persons for cross examination. In response, the appellant had brought only 03 persons before the AO. Considering all facts and evidences, the AO found Rs.1,77,000/- as genuine and the remaining amount of Rs.3,23,000/- was treated as unexplained u/s 69 of the Act.

6.7 During the course of appellate proceedings, with regard to above addition, the appellant failed to produce written submissions or documentary evidence in support of his claim even though multiple opportunities were given. Hence, in the absence of any evidence, I do not have any other alternative but to confirm the addition made by the Assessing Officer and upheld the assessment order. Therefore, the grounds of appeal raised by the appellant are dismissed.”

2.3 During the course of hearing, the Bench noted that the grounds of appeal raised by the assessee are new which were not raised before the ld. CIT(A). However, the ld. AR of the assessee prayed to admit these grounds of appeal with a view to providing him one more opportunity to contest the case before the ld. CIT(A)

2.4 On the other hand, the ld. DR objected to the new grounds of appeal which were not raised before the ld. CIT(A) during appellate proceedings.

2.5 We have heard both the parties and perused the materials available on record. The Bench noted that the *ld. CIT(A) has passed the ex-parte order since the*

assessee failed to produce written submission or documentary evidence in support of his claim even though multiple opportunities were given. The Bench feels that the assessee should be given one more chance to contest the case before the ld. CIT(A) and the grounds of appeal raised by the assessee are admitted. Thus the appeal of the assessee is restored to the file of the ld. CIT(A) for afresh consideration by providing opportunity of being heard to the assessee. However, the assessee is directed not take adjournment on frivolous grounds and cooperate in the appellate proceedings before the ld. CIT(A). Thus the appeal of the assessee is allowed for statistical purposes.

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

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

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03 /05 /2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Manish Paliwal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(1), Jaipur
3. आयकरआयुक्त / The ld CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 84/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar