

आयकर अपीलिय 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. 898/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Ravi Shankar, Wine Contractor, Gram Jagmohan Ka Pura, Post – Silavat, Rajakheda, Dholpur.(Raj.)	बनाम Vs.	Income Tax Officer, Ward – 4, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ASHPR 7458 J		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : None

राजस्व की ओर से / Revenue by : Smt. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 29/03/2023

उदघोषणा की तारीख / Date of Pronouncement: 3/05/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 28.12.2018 of Id. CIT (A), Alwar passed under section 250 of the IT Act for the assessment year 2014-15. The assessee has raised the following grounds :-

1. That on the facts and in the circumstances of the case, Id. CIT (A) Alwar is incompetent to dismiss the appeal in limine without deciding on merits.
2. That on the facts and in the circumstances of the case, Id. CIT (A) has grossly erred in law and facts in not providing sufficient opportunity of being heard before dismissing appeal in default. The order is per-se illegal and bad in law.

3. That on the facts and in the circumstances of the case, Id. CIT (A) has grossly erred in law and facts in not providing last opportune being here before dismissing the appeal in default.
4. That on the facts and in the circumstances of the case, Id. CIT (A) has grossly erred in law and facts in not passing speaking order which is the requirement of natural justice and fairness in proceeding.
5. That the appellant reserves his right to add, amend or alter the ground of appeal on or before the date of appeal hearing.

2. None appeared on behalf of the assessee when the case was called out for hearing. However, the Bench decided to dispose off the appeal on merit. Brief facts of the case are that the assessee is engaged in retail business of English and Country made liquor under the name and style of M/s. Ravi Shankar Wine Contractor at Dholpur. The assessee filed e-return declaring total income of Rs. 2,18,940/- on 31.12.2014. During the year under consideration, the assessee continues to derive his income under the head Income from Business and has declared GP rate of 16.32% on total turnover of Rs. 1,34,79,287/- as against GP rate of 9.16% on total turnover of Rs. 1,11,53,958/- declared in the immediately preceding year, thereby having an increase in GP ratio by 7.14% in comparison to last financial year i.e. 2012-13. The assessee maintained its books of account on mercantile basis and its accounts were audited under section 44AB of the Income Tax Act, 1961. The case was selected under scrutiny through CASS. The notice under section 143(2) was issued on 31.08.2015 fixing the date of hearing on 18.09.2015 and on transfer of the case from ITO Agra again notice under section 143(2) was issued on 29.09.2015 fixing the date of hearing on 07.10.2015. This notice was duly served on the

assessee. Thereafter, the case was fixed for hearing on various dates by issuing notice under section 142(1) of the IT Act, 1961 as under :-

S.No.	Date of notice issued	Date of hearing
1.	04.05.2016	13.05.2016
2.	30.05.2016	08.06.2016
3.	16.08.2016	24.08.2016
4.	24.10.2016	31.10.2016
5.	30.11.2016	06.12.2016

The assessee was asked to furnish necessary details/information as per notice under section 142(1) along with query letter dated 04.05.2016. In compliance, the assessee produced copy of ITR, computation of total income along with copy of audit report and form No. 26AS but not produced any evidence regarding commission paid and expenses incurred. After taking into consideration the documents/information submitted by the assessee, the AO completed the assessment at Rs. 12,56,210/- by disallowing various expenses. Aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A) who also dismissed the appeal of the assessee on the ground of non prosecution.

3. Now the assessee is in appeal before us.
4. None appeared on behalf of the assessee inspite of various opportunities given to the assessee nor submitted any written submission.
5. On the other hand, the Id. D/R supported the orders of the Revenue authorities.
6. We have heard the Id. D/R and perused the material on record and also gone through orders of the revenue authorities. On going through the impugned order,

we note that the Id. CIT (A) has decided the appeal of the assessee by observing in para 3.1 to 3.3 of his order as under :-

" 3.1. In this case, notices u/s 250 was issued to the appellant on several occasions fixing the hearing on 08.08.2018, 27.09.2018 and 27.11.2018. No one attended. Opportunity of being heard is central to any adjudication process but that does not absolve the appellant from non attendance and submission of evidences in support of ground of appeal despite repeated and several notices sent and served and not responded. An adjudication proceeding cannot be held in abeyance indefinitely on account of non attendance of the appellant or his AR. In this case the continued non responsive attitude of the appellant has left no option before me but to decide the appeal on the basis of evidences on record.

3.2. I have taken into consideration the facts of the case filed along with Form No. 35.

3.3. In absence of any submissions by the appellant in support of its claims, I have relied upon the facts mentioned in the penalty order. Accordingly, I do not see any reason to interfere in the penalty order. Hence, the appeal is dismissed."

The Id. CIT (A) has decided the appeal considering that the appellant has been unable to furnish any supporting evidence in support of grounds of appeal or produce any material to controvert the findings contained in the assessment order thereby the burden of proof of explaining the commission paid and expenses incurred remain un-discharged. Thus it is evident that the Id. CIT (A) has dismissed the appeal of the assessee for want of prosecution as the assessee has not availed so many opportunities given to the assessee to controvert the findings contained in the assessment order. 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 Id. CIT (A) for deciding the matter afresh after considering the arguments as well as the documentary evidence, if any, to be filed by the assessee, 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.

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

Order pronounced in the open court on 3/05/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 3/05/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Ravi Shankar, Dholpur.
2. प्रत्यर्थी / The Respondent- The ITO Ward-4, Bharatpur.
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. 898/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

