

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. 36/JP/2023
निर्धारण वर्ष/Assessment Year : 2017-18.

Shri Subhash Chand Saini, C/o Pankaj Prince and Associates, 607, Mall of Jaipur, Gandhi Path, Vaishali Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward Behror, Behror.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. CEFPS 7350 G		
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 22.11.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2017-18. The assessee has raised the following grounds :-

1. That Id. CIT (A) has accepted the cash book submitted during appellate proceedings but did not delete the additions completely without rejecting the cash book.

2. That the Id. AO had erred in finalizing assessment proceedings without issue of show cause notice to assessee resulting into deletion of additions.
3. That the appellant craves the right to add, amend or alter any of the grounds of appeal either before or at the time of disposal of appeal.

2. At the time of hearing, none appeared when the case was called, which shows that the assessee is not interested in pursuing the present appeal. From the record, we noticed that on the last date of hearing, assessee had sought adjournment and considering the contents of the application matter was adjourned for today i.e. 29.03.2023. However, none appeared on behalf of the assessee when the case was called for hearing. The Id. D/R present in the court is ready with the arguments. Therefore, we have decided to proceed with the case ex parte on the basis of documents placed on record.

3. The brief facts of the case are that the assessee is engaged in the business of wholesale trading of vegetables during the year under consideration. The assessee has filed his return of income declaring total income of Rs. 5,89,190/- on 28.03.2018 for the Assessment Year 2017-18. The case of the assessee selected through CASS under scrutiny with remarks " Cash deposit during the year ". Notice under section 143(2) of the IT Act, 1961 was issued on 14.08.2018 fixing the case for hearing on 29.08.2018. Further notice under section 142(1) was issued on 22.04.2019 along with query letter fixing the case for hearing on 07.05.2019. No compliance made by the assessee. Again notice under section 142(1) was issued on 30.05.2019 fixing the case for hearing on 07.06.2019. In response, the assessee filed on-line written reply along copy of ITR and computation of income and copy of bank statements on

07.05.2019. Again the assessee was issued notice under section 142(1) along with query letter on 25.09.2019 fixing the case for hearing on 10.10.2019. In compliance, the assessee has furnished documents, details and produced relevant documents which were examined on test check basis and replies were placed on record.

3.1. On examination of the documents, the AO noted that the assessee has shown total turnover of Rs. 1,10,47,462/- declaring a net profit of Rs. 6,62,848/- @ 6% during the year under consideration. The assessee has not got his books of accounts audited under section 44AB of the IT Act. The AO further noted that the assessee has deposited Rs. 65,79,240/- in cash in his bank account and also credit entry of Rs. 1,15,95,585/- totaling Rs. 1,81,74,825/- as per bank statement. The AO considered the documents furnished by the assessee but could not find favour. He considered the total turnover of the assessee at Rs. 1,81,74,825/- on which net profit of Rs. 14,53,986/- has been taken by applying N.P. @ 8% and thus difference of Rs. 7,91,138/- has been added to the total income.

3.2. Aggrieved by the order of the AO, the assessee preferred appeal before Id. CIT (A). Before the Id. CIT (A), the assessee submitted that case of the assessee was selected for limited scrutiny for the reason that assessee deposited cash during demonetization period as evident from Notice under section 142(1) dated 25.09.2019. The Id. CIT (A) on perusal of the documents, particularly the assessment order under section 143(3) of the I.T. Act, 1961 dated 20.12.2019 noted that the case has been selected through CASS under scrutiny with remarks "*1. Cash deposit during the year*". Thus the Id. CIT (A) observed that the case of the assessee has not been selected for scrutiny due to cash deposits only during the

demonetization period but due to total cash deposit during the year. Therefore, the Id. CIT (A) dismissed the ground of the assessee by holding that the case has been selected for scrutinization of cash deposited during demonetization period is not correct.

3.3. Before the Id. CIT (A), the assessee further raised ground no. 2 challenging the assessment order on the basis that AO has made assessment on the grounds other than those for which case was covered under scrutiny. The Id. CIT (A) has dealt with this ground at page 4 of his order by observing as under :-

"I have found that the notice u/s 143(3) dated 14.08.2018 clearly mentions limited scrutiny (Computer Aided Scrutiny Selection). While making assessment the AO has mentioned that the case was selected through CASS under scrutiny with remarks (1) cash deposit during the year". Notice u/s 143(3) of the Income Tax Act, 1961 was issued on 14.08.2018 fixing the case for hearing on 29.08.2018. While computing the income the AO has applied 8% NP on Rs. 1,81,74,825/- (credit entry of Rs. 1,15,95,585/- and cash deposit of Rs. 65,79,240/- whereas the assessee has shown net Profit of Rs. 6,62,848/- @6% on total turnover of Rs. 1,10,47,462/-. Thus, it is clear that the Assessing Officer has disturbed the net profit rate and turnover also on the basis of credit entries which was beyond scope of limited scrutiny in this case. Further, there is no mention of getting any approval from the Pr. CIT for conversion of limited scrutiny to complete scrutiny as required as per instruction No. 20/2015 dated 29.12.2015 of the CBDT in this respect. Therefore, the conversion of limited scrutiny into complete scrutiny being not valid the consequential additions made by the AO are not sustainable and the additions made will be limited to the cash deposits only. Reliance is placed here on the decision of Hon'ble ITAT, Chandigarh in case of Ropar Properties and Builders Pvt. Ltd. Vs. ITO in ITA No. 982/CHD/2019 dated 24.05.2021.

4. *The assessee has also submitted that the Assessing Officer assumed total credits in bank account as turnover and calculated profit at the rate of 8% on assumed turnover and has failed to find out that assessee has deposited cash out of the cash withdrawals during the year. The assessee has not submitted any evidence to show that the deposits have been made out of the withdrawals. The Assessing Officer appears to have duly considered the trends of deposits/withdrawals in treating the deposits as turnover and not cash credits and applying a Net profit rate of 8% on it. Therefore, this plea of the assessee is not accepted.*

5. *However, the assessee's submission that the cash deposits are Rs. 59,14,240/- only and not Rs. 65,79,240/- has been found correct and from the details furnished and therefore, the turnover taken as Rs. 1,81,74,825/- (credit entry Rs. 1,15,45,585/+cash deposits treated as turnover Rs. 65,79,240/-) is reduced to Rs. 1,74,59,825/- (Rs. 1,15,45,858/- +59,14,240/-) and the income computed on it taking NP rate of 8% as adopted by the Assessing Officer, comes to Rs. 13,96,786/-. Thus, the assessee gets a relief of Rs. 57,200/- (Rs. 14,53,986/- computed by the Assessing Officer - Rs. 13,96,786/- computed above). Therefore, the addition sustainable in this case is 8% of Rs. 59,14,240/- only which comes to Rs. 4,73,139/-.. Therefore, the total income of the assessee would be Rs. 11,35,987/-. Thus the assessee gets relief of Rs. 2,44,343/- (13,80,330 11,35,987). Thus, Ground No. 2 is allowed to extent mentioned above."*

Now the assessee has come up in appeal before us.

4. We have heard the Id. D/R, perused the material available on record and gone through the orders of the lower authorities. In spite of giving opportunities to the assessee, the assessee has neither submitted any written submission nor appeared before the Tribunal. Therefore, in the facts and circumstances of the case,

it is presumed that the assessee is not serious in prosecuting his case. In the absence of any submission from the side of the assessee, we find no infirmity in the order of the Id. CIT (A), which is hereby upheld.

5. In the result, this appeal of the assessee is dismissed.

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 Subhash Chand Saini, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward Behror.
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. 36/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

