

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

डॉ. एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 107 &108/JPR/2023
निर्धारण वर्ष / Assessment Years : 20012-13 & 2013-14

Ashok Kumar S/o Sh. Kan Singh, 198, Johada Shymkani, Kirdoli, Sikar.	बनाम Vs.	ITO Ward-1, Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: HDYPK 2313 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia (C.A.)
राजस्व की ओर से / Revenue by : Ms Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing 12/04/2023
उदघोषणा की तारीख / Date of Pronouncement : 25/05/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee aggrieved from the order of the National Faceless Appeal centre, Delhi [herein after referred as “/NFAC/CIT(A)”] for the assessment years 2012-13 & 2013-14 both dated 17.02.2023, which in turn arises from the order passed by the Income Tax Officer, Ward-1, Sikar passed under Section 144/147

of the Income Tax Act, 1961 (in short 'the Act') dated 08.11.2019 respectively.

2. Since the issues involved in these appeals of the assessee for all two years are almost identical, are common, all these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the ld. AR has submitted that the matter pertaining to Ashok Kumar in ITA no. 107/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount of levy of penalty in other assessment year. The ld. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 107/JPR/2023 is taken as a lead case.

4. Based on the above arguments we have also seen that for all two appeals grounds are similar, facts are similar and arguments were similar

and therefore, were heard together and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 107/JPR/2023.

5. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 107/JPR/2023 before us on the following grounds:-

“1. That the order passed by the Ld. Commissioner of Income Tax (NFAC), Delhi is bad in law, wrong on the facts and against the principles of natural justice.

2. That the Ld. CIT(Appeals) has erred on facts and in law in confirming the addition of Rs. 66,21,551/- on account of undisclosed income u/s 69A of the I.T. Act, 1961 to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition.

3. The Ld. CIT(Appeals) has erred on facts and in law in upholding the finding of Ld. A.O. in assessment order without considering the written submission submitted by assessee.

4. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdrawn any of them.”

6. The assessee has raised additional ground which reads as under:-

“ That the order passed by the Ld. Commissioner of Income Tax (NFAC), Delhi is bad in law, wrong on the facts and against the principles of natural justice. So in these circumstances it is

requested that cost may be imposed on Ld. CIT(Appeals), NFAC, Delhi for passing such illegal and baseless order.”

7. The brief facts of the case are that as per information received from the DIT(I&CI), Jaipur, during the year under consideration, the assessee deposited Rs.62,52,064/- in cash in his saving bank account maintained in Punjab National Bank, KUMS, Sikar bearing No.1081000100587382. But the assessee not filed his return of income for the year under consideration. Before initiating proceeding u/s 147 of I.T. Act, necessary enquiries made u/s 133(6), the assessee furnished his reply on 27.02.2019 that he deals with Onion Trading Business and cash deposit were out of sale of the assessee. But the assessee could not furnish any documentary evidence in support of Adhat Business. Thus, the assessee could not explain the source of cash deposit of Rs. 62,52,064/- in his bank account. Hence, notice u/s. 148 of the Act was issued to the assessee, with the prior approval of Pr. Commissioner of Income-tax-3, Jaipur requiring the assessee to furnish the return of income within 30 days from service of notice. In response to the same, the return of income was filed by the assessee declaring total income at Rs.3,20,710/- as income from other sources. The assessee disclosed income in the ITR as income from other sources as Adhat on sale of Onion.

8. The AO observed that the assessee has deposited Cash in his bank account, but the nature and source of such Deposits made in the bank accounts were not at all explained, leave alone satisfactory explanation. Further, for invoking deeming provisions under Section 69A of the act, there should be clearly identifiable asset or unexplained Money. It is amply proved beyond doubt that the assessee has deposited Cash and other Credits appearing in bank account stands unexplained, and the sum of Rs.66,21,551/- are identifiable unexplained assets. Therefore, in cases where assessee's deposited huge Cash in bank accounts but the sources were neither explained nor such money offered for taxation, the onus is on the assessee's to prove that the Cash deposits made did not bear the character of income. The assessee failed to establish its claim with cogent that the assessee was involved in Adhat sale of Onion & the cash transaction made in the bank account was related to Adhat business. As, the assessee has failed to substantiate his claim that he was involved in business of Adhat & It is clear from reply received from Bank that the assessee was not doing Aadhat business. Hence, the assessee could not explain the nature & source of credit entries of Rs.66,21,551/-. Therefore, total credit entries of Rs.66,21,551/- is treated as deemed income as

unexplained money u/s 69A of the Income Tax Act, 1961 and same amount of Rs. Rs.66,21,551/- is added to the total income of the assessee. The assessee has concealed particulars of his income, therefore, the penalty proceedings u/s 271(1)(c) are initiated separately.

9. Aggrieved, from the said order of assessment the assessee has filed the appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“Ground No. 1 & 2.3: These grounds are related to pass order u/s. 144 r.w.s. 147 without giving opportunity of being heard.

From the facts stated in the assessment order, it is seen that the AO in this case has followed due procedure prescribed under the law to reopen the case for the year under consideration, after having the reason to believe that the income in this case has escaped assessment and considered it to be a case fit for applying the provisions of section 147/148 of the I.T. Act. 1961. From the assessment order, it is observed that the notice u/s. 148 was issued to the appellant on 18-03-2019. In response to the same, the appellant also filed his return of income on 13-04-2019. Notices u/s. 142(1) along with questionnaire were also issued on 23-04-2019,29-05-2019 asking the appellant to explain the source of cash deposit of Rs. 62,52,064/-. However, in response to the same, the appellant has not attended nor filed any reply before the AO. In my view, the A.O. on the basis of material available with him which had direct nexus with the factum of income escaping assessment was justified in re-opening the assessment. The A.O. has also passed the order after proper recording of the reasons and affording proper opportunity to the appellant. In this regard. Hence, ground Nos. 1 & 2.3 are dismissed.

Ground Nos. 2, 2.1 & 2.2: These grounds are related to addition of Rs. 62,52,064/-u/s. 69A on account of unexplained cash deposits.

As per information received from the DIT(I&CI), Jaipur, during the year under consideration, the appellant deposited Rs.62,52,064/- in cash in his saving

bank account maintained in Punjab National Bank, KUMS, Sikar bearing No.1081000100587382. But the appellant had not filed his return of income for the year under consideration. Before initiating proceeding u/s 147 of I.T. Act, necessary enquiries made u/s 133(6). The appellant submitted before the AO that he deals with Onion Trading Business and cash deposit were out of sale of the appellant. But the appellant could not furnish any documentary evidence in support of Adhat Business. The copy of bank statement was called for from the Punjab National Bank, KUMS, Sikar u/s 133(6) of the I.T. Act. On analysis of the bank statement of appellant, it was noticed that during the year under consideration, total credit entries in the bank account are appearing at Rs.66,21,551/- including cash deposit of Rs.62,52,064/-. The appellant deposited total cash of Rs. 62,52,064/- in his saving bank account maintained in Punjab National Bank, KUMS, Sikar bearing account No.1081000100587382. On examination of bank statement, it was noticed that total credit entries of the bank account coming at Rs. 66,21,551/- in his bank account during the year including cash deposit. During the course of assessment proceeding, the appellant failed to explain nature and source of the above credit entries in bank account. No corroborative documentary evidence furnished by him. The appellant failed to establish its claim with cogent that the appellant was involved in Adhat sale of Onion & the cash transaction made in the bank account was related to Adhat business. The appellant failed to substantiate his claim that he was involved in business of Adhat and it was clear from reply received from KUMS that the appellant was not doing Aadhat business. Hence, the appellant could not explain the nature & source of credit entries of Rs.66,21,551/-. Therefore, total credit entries of Rs.66,21,551/- was treated as deemed income as unexplained money u/s 69A of the Income Tax Act, 1961 and added back to the total income of the appellant.

The appellant has not explained the source of cash deposited either during the assessment proceedings or during the appellate proceedings before me. During the appellate proceedings, the appellant has not responded to the notices issued by me. The burden of proof primarily lies on the appellant to explain the nature and source of cash deposited during the F.Y.11-12. Reliance is placed on the decision in the case of Sudhir Kumar Sharma (HUF) RTMENT Vs. CIT (2014) 46 Taxmann.com 340 (P&H), the Supreme Court dismissed the Special Leave Petition filed against the impugned order wherein, it is held that since, cash was deposited in bank account of the assessee, onus was upon the assessee to explain nature and source of said cash deposit. Reliance is also placed on the decision of Supreme Court in the case of K. Chinnathambam (2007) 162 taxmann 459

(SC)/(2007) 292 ITR 682 (SC) (2007) 211 CTR 86 (SC) wherein, it is held that the onus of proving the source of deposit primarily rest on the person in whose name the deposit appears in various banks. It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and another (118 ITR 461) (at pages 477 & 478) that appeal does not mean filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s. Chemipol Vs. Union of India in Excise Appeal No. 62 of 2009. The Hon'ble Supreme Court in the case of Smt. Srilekha Banerjee and others vs. CIT, Bihar and Orissa, reported in 1964 AIR 697 dated 27-03-1961, the Hon'ble Court held that the source of money not having been satisfactorily proved, the department was justified in holding it to be assessable income of the assessee from some undisclosed sources. As the appellant did not discharge the burden of proof, the AO is right in his action to treat the said deposit as unexplained. The Ground No. 2, 2.1 & 2.2 are dismissed.

6. In the result, the appeal is dismissed.”

10. Per contra, the ld. DR relied upon the order of the lower authorities.

11. We have heard the rival contention and perused the material available on record. We note that the ld. AR for the assessee filed additional ground in the interest of justice and no objection from the ld. DR, we are admitting the additional ground filed before us. From the records of the order of the lower authorities we have noted that the order passed by the ld. CIT(A) ex-parte order based on the record available before us. We note that the adjournment

application has been filed by the assessee before the ld. CIT(A) on 21.09.2021 and on 25.04.2022 and also filed reply along with supporting documents dated 24.05.2022 before the ld. CIT(A) but the ld. CIT(A) has not considered the adjournment application and passed ex-parte order on 17.02.2023, observing that the assessee has explained the source of cash deposit in the written submission filed before the ld. CIT(A). The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. We observed that in the present case, the ld. CIT(A) has dismissed assessee's appeal without complying with the said provisions of section 250(6). Therefore, the impugned first appeal-order passed by Ld. CIT(A) deserves to be set aside and the matter is fit for remand to the file of ld. CIT(A) for a proper adjudication. The ld. DR fairly agrees to this but prays to direct the assessee to represent his case before the ld. CIT(A) and do not seek unnecessary adjournments. In view of this and also having regard to the principle of natural justice and fair play, we deem it fit and appropriate to remand this matter back to the file of ld. CIT(A) for a proper adjudication after giving

opportunity of hearing to the assessee. We order accordingly. The assessee is also directed to ensure participation in the hearings fixed by the Id. CIT(A) and do not seek unnecessary adjournments. Thus, the appeal of the assessee is allowed for statistical purposes.

12. The Bench feels that the fact in the case Ashok Kumar in ITA No. 108/JPR/2023 is exactly the similar to the fact ITA No. 107/JPR/2023 and therefore, it is not imperative to repeat the fact in ITA No. 108/JPR2023. The decision taken us in ITA No. 107/JPR/2023 shall apply mutatis mutandis to ITA No. 108/JPR/2022.

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 25/05/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 25/05/2023.

***Santosh**

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

1. अपीलार्थी / The Appellant- Ashok Kumar, Sikar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Sikar.

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. 107 &108/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar