

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. 244/JP/2023
निर्धारण वर्ष/Assessment Year : 2009-10.

Shri Harsh Jain 13, Mahaveer Nagar, Tonk Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AFKPJ 8373 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharwan Kumar Gupta, Advocate

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

सुनवाई की तारीख / Date of Hearing : 06/06/2023

उदघोषणा की तारीख / Date of Pronouncement: 15/06/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 24.03.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act, 1961 for the assessment year 2009-10. The assessee has raised the following grounds :-

1. The impugned assessment order u/s 144 rws 147/148 dated 01.12.2016 as well as the notice u/s 148 and the action taken by the Id. AO u/s 147 are bad in law and on facts of the case, for want of jurisdiction, barred by limitation, without proper approval or satisfaction and various other reasons and hence the same may kindly be quashed.

2. The Id. CIT (A) has grossly erred in law as well as on the facts of the case in not admitting the appeal and dismissing the same on condonation of delay ignoring the sufficient material and evidences on record, being the strong case on merit and in physical hearing the same was discussed and admitted by the Id. CIT (a)-2, Jaipur. Hence the order so passed by the Id. CIT (A) in gross breach of law and against the principal of natural justice and liable to be quashed and entire additions so made by the Id. AO may kindly be deleted.
- 3.1 Rs. 5,40,000/- : The Id. CIT (A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 5,40,000/- on account of Long Term Capital. Hence the addition so made by the Id. AO and confirmed by the Id. CIT (A) being absolutely, contrary to the provisions of law and facts of the case and not in conformity with the law, hence the same may kindly be deleted in full.
- 3.2 The Id. CIT (A)/Id. AO has grossly erred in law as well as on the facts of the case in not allowing the other benefit, deduction allowable as per law correctly, for which the assessee is entitled in law. Hence the other benefit deduction addition so denied by the Id. AO and confirmed by the Id. CIT(A) being absolutely, contrary to the provisions of law and facts of the case and not in conformity with the law, hence the same may kindly be directed for the same and be deleted the addition in full.
4. Rs. 2,50,000/- : The Id. CIT (A) has grossly erred in law as well as on the facts of the case in confirming the estimation of the income of Rs. 2,50,000/- on account of regular source of income and erred thereby making the addition of Rs. 2,50,000/-. Hence the addition so made by the Id. AO and confirmed by the Id. CIT (A) being absolutely, contrary to the provisions of law and facts of the case and not in conformity with the law, hence the same may kindly be deleted in full.
5. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A, 234B and 234C. The appellant totally denies it liability of charging of ny such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.
6. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

2. At the outset, we noticed that the appeal of the assessee was dismissed by Id. CIT (A), NFAC, Delhi on the ground that the same was filed beyond the statutory time limit of 30 days. In this regard, the Id. A/R of the assessee submitted before us that the assessee has filed the appeal physically along with an application for condonation of delay and supportive affidavit of the assessee. It was also submitted that along with the appeal, an application for placing on record the additional evidences was filed. The matter was heard by Id. CIT (A)-2, Jaipur and called for the remand report of the AO on the application for admission of additional evidences. The AO also called the assessee during the remand proceedings. Therefore, assessee was under the bonafide impression that application for condonation of delay was allowed. Subsequently, the appeal was migrated to National Faceless Appeal Centre, Delhi. However, when the assessee received the order, it was noticed that the appeal of the assessee was rejected in a summary manner on the ground of limitation.

3. After hearing both the parties at length and after perusal of record, we find that at the very first instance along with the filing of appeal, the assessee had also filed application for seeking condonation of delay along with supportive affidavit and also filed written submissions and application for admission of additional evidence. In this regard, we also noticed that the Id. CIT (A)-2, Jaipur had forwarded the additional evidences to the concerned AO for his comments by way of remand report and the copy of remand report was also given to the assessee during appellate proceedings for seeking his comments. Despite adopting all these procedures, the Id. CIT (A), NFAC summarily dismissed the appeal of the assessee by holding that

the same was filed beyond the statutory period. The Id. CIT (A) NFAC in his entire order, nowhere has discussed about the merit of the reasons mentioned by the assessee in the application for seeking condonation of delay. Therefore, in our view, dismissing of application for condonation of delay is against the principles of natural justice as the Id. CIT (A) NFAC being the quasi judicial authority was under obligation to pass a speaking order while dismissing the application for seeking condonation of delay. However, by not doing so, the Id. CIT (A) NFAC has committed an illegality, therefore, in our view, order passed by the Id. CIT (A) is not sustainable in the eyes of law as the principles of AUDI ALTERAM PARTEM are the thumb rule for dispensation of justice. The Id. CIT (A) was under obligation to pass a well reasoned speaking order. Therefore, the order of Id. CIT (A) is quashed and keeping in view the contents of the application for seeking condonation of delay, we are of the view that the reasons and the circumstances mentioned in the said application amounts to sufficient cause for condoning the delay of 23 days in filing the appeal. We, therefore, condone the delay in filing the appeal before the Id. CIT (A).

4. On perusal of case records, we also noticed that the assessment order of the assessee was passed ex parte. Therefore, we are of the considered view that in the interest of natural justice, it would be in the fitness of things to restore the matter to the file of the AO for deciding afresh.

5. Before parting, we may make it clear that our decision to restore the matter back to the file of the A.O. shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by A.O. independently in accordance with law.

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

Order pronounced in the open court on 15/06/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 15/06/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Harsh Jain, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(4), Jaipur.
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. 244/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar