

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

डा० 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. 237/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2010-11

Archita Burnwal 48, Maa Karni Nagar, F Block, 9 Dukan, Maharana Pratap nagar, Panchyawala, Jaipur.	बनाम Vs.	ITO, Ward-1(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIJPB 3524 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajat Choudhary (Adv.)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 22/06/2023  
उदघोषणा की तारीख / Date of Pronouncement : 26/06/2023

आदेश / ORDER

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

This appeal is filed by assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [here in after "NFAC/ld.CIT(A)"] dated 20.02.2023 for the assessment year 2010-11, which in turn arises from the order passed by the Income Tax Officer, Ward-1(3), Jaipur passed under Section 144/147 of the Income Tax Act, 1961 (in short 'the Act') dated 06.12.2017.

2. The assessee has marched this appeal 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. 37,75,000/- on account of undisclosed cash deposit to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition.

3. That the Ld. CIT (Appeals) has erred on facts and in law in confirming the addition of Rs. 10,37,662/- on account of undisclosed source of income to the income of the appellant on this count is wrong, unwarranted and bad in law. Kindly delete the addition.

4. That the Ld. CIT (Appeals) has erred on facts and in law in confirming the addition of Rs. 19,780/- on account of TDS deducted u/s. 194C 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

5. 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.

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

3. The fact as culled out from the records is that the assessee is a lady who deposited a sum of Rs. 26,55,480/- in the HDFC Bank Limited, Jaipur and Rs. 11,19,520/- in the IDBI Bank account. Based on these details the case of the assessee was reopened after obtaining the requisite approval from the PCIT. As the assessee did not participate in the assessment proceedings the

assessment was finalized u/s. 144 of the Act assessing the income of the assessee at Rs. 50,19,090/-.

4. Aggrieved from the ex-party order of the assessing officer, assessee preferred an appeal before the Id. CIT(A). The appeal filed by the assessee was decided by the Id. CIT(A) based on the information available with the Id. CIT(A) as the assessee has not filed any details even though the 6 notices were issued. As the assessee did not file any details the Id. CIT(A) also decided the appeal of the assessee ex-party and the relevant finding of the Id. CIT(A) is reproduced here in below:

“4.3 During the appellate proceedings, the appellant has only submitted submission in the form of Statement of facts. After that neither she has relied to hearing notices nor submitted any documentary evidence/information to prove her side. Sufficient and adequate opportunities were afforded to the appellant as indicated at page no. 1 and 2 para 3. No reply whatsoever has been submitted by the appellant. Even the assessment was completed under Section 144/147 of the Income Tax Act, 1961 due to non-compliance on the part of the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned seen no reason to interfere with the order of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”

5. Feeling dissatisfied from the order of the Id. CIT(A) the assessee preferred this appeal on the grounds as reproduced here in above. A propose to the grounds of the assessee the Id. AR of the assessee fairly admitted that there was noncompliance of the assessee before the lower authority. The Id. AR of the assessee submitted that the assessee was out of town on account of the ill health of the family members. To support the contentions the Id. AR of the assessee directed to declare the contention on an affidavit so as to consider the contention of the non-compliance before the lower authority. The content of the affidavit so filed by the assessee is reproduced here in below:-

“I, Archita Burnwal W/o Ashok Bokaro Aged about 45 years R/o 4, Maa Karni Nagar, F Block, 9 Dukan, Maharana pratap Nagar, Panchyawala, jaipur, Rajasthan-3020021 do hereby solemnny affirm on oath:

1. That the appeal pending before CIT(Appeals) was decided an ex-parte on 20.02.2023.
2. That the reason for non compliance before CIT(Appeals) was due to ill health of my brother in law, I was out of town (i.e. in Calcutta City) for taking care and looking after family.
3. In this circumstances I was not able to submit written submission on merits.”

6. On the other hand, the Id. DR relied upon the orders of the lower authorities. The Id. DR submitted that if the bench fees that

the matter be restored to the file of the Id. AO then in that the same may considered by imposing the cost upon the assessee.

7. In the rejoinder the Id. AR of the assessee submitted that the assessee has already paid the appeal filling fees to get the justice and the same be treated as cost on the part of the assessee.

8. We have heard both the parties, perused the material available on record. We find from the Court file the orders of the lower authority were ex-parte. The assessee submitted her affidavit praying that being a lady she has sufficient caused to be remain in Calcutta for the treatment of the close relative. To support the contention, she has filed the affidavit. Considering these peculiar circumstances argued before us we are of the considered view that the assessing officer should hear the assessee's submission on merits after affording proper opportunity of being heard and passed speaking order in the matter and therefore, the matter is set aside to the file of the learned assessing officer. At the same time assessee is directed to represent and present all the facts before the assessing officer and should not ask for the adjournment on frivols grounds. The assessee is also directed to participate in this

remand proceeding. At this stage we remand back the issue without commenting upon the merits of the case and the Id. AO is directed to complete the assessment in accordance with the law.

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

Order pronounced in the open Court on 26/06/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 26 /06/2023

\*Santosh.

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

1. अपीलार्थी / The Appellant- Archita Burnwal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(3), 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. 237/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar