

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 265 & 266/JPR/2023
निर्धारणवर्ष / Assessment Year : 2011-12 & 2016-17

Ravi Prakash Sharma 1 Phutali Wali Dhani Keshupura, Ajmer Road, Jaipur	बनाम Vs.	Income Tax Officer Ward-2(5), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BVDPS 5568 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby :Shri Shaffi Mohammed (Adv.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing :22/06/2023
उदघोषणा की तारीख / Date of Pronouncement: 27/06/2023

आदेश / ORDER

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

These are two appeals filed by the assessee aggrieved from the orders of the National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/Id.CIT(A)"] both dated 02.03.2023 for the assessment years 2011-12 & 2016-17 respectively.

2. Since, the facts of both the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Ravi Prakash Sharma in ITA No. 265/JPR/2023 and this case is taken as lead case. In this appeal the assessee has raised following grounds:-

“1. That proceeding initiated u/s 147/148 is illegal and against the law and the ld. CIT(Appeals) grossly erred in sustaining the proceedings u/s 147/148.

2. That the addition so made is illegal and against the law as the Ld. Assessing Officer not allowed the benefit of peak credit theory, he has considered only deposit side and not consider the withdrawal side.

3. The assessee craves leave to add/alter any of the grounds of appeal during the course of hearing.

3. In ITA No. 266/JPR/2023, the assessee has taken following grounds in this appeal:-

“1. That the Learned Assessing Officer has grossly erred in making an addition of Rs. 1,22,579.00 treated income 8 percent of total gross receipt of Rs. 91,34,020.00 in place of 6.65 percent as declared by the assessee.

2. That the Learned Assessing Officer has grossly erred in taken the gross receipt amounting to Rs. 1,01,36,893.00 on the basis of 26AS and also erred in making the addition of Rs. 10,02,873.00.

3. That the ld. Assessing Officer is also erred in initiation of penalty proceedings.

4. The assessee craves leave to add/alter any of the grounds of appeal during the course of hearing.”

4. Brief facts of the case are that the assessee has made cash deposit in his ICICI Bank account to the tune of Rs 11,68,324/- in his saving bank

account during the financial year 2010-11. The assessee has also received commission of Rs. 1,332/- from Sahara India Ltd. As per record, the assessee has not filed his return of income for AY 2011-12 relevant to financial year 2010-11. Considering this fact, the case is selected for assessment u/s 147 for verification and assessment of this receipt and taxable income. Notice u/s 148 is issued on 29/03/2018 after recording the reason for escapement and taking necessary approval from higher authorities. No return/ response received of this notice. Thereafter, notice u/s 142(1) along with questionnaire has been issued on 07/09 2018 fixing the date of hearing on 19/09 2018. Again, no return/response received. Thereafter, Again a notice u/s 142(1) and Final opportunity letter alongwith questionnaire has been issued on 13.11.2018 fixing the date of hearing on 20.11.2018. Again, no return/ response received of this notice. Since, the assessment proceeding was a time barring assessment, and assessee has not furnished his return of income even after the receiving of notice u/s 142(1), therefore the AO has no option left except to revoke the provision of section 144 of Income tax Act and complete the time barring assessment ex parte to the best of his judgment.

5. In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee in limine for the reason that the assessee did not appear before the ld. CIT(A) to contest the case in spite of various opportunities/ notices dated 24.01.2023 and 11.02.2023 and thus finally on 21.02.2023 the assessee was issued notice to submit its reply. The extract of the order of the ld. CIT(A) is reproduced as under:-

“5.1 The assessee is on appeal before this office against the order passed under section 144 r.w.s. 147 of the Income Tax Act.

5.2 The assessee was provided multiple opportunities by his office to submit documents and make submissions in response to the appeal filed. However, the assessee has not exercised this option despite multiple reminders. The table below indicates the dates and the compliance status of the various notices issued.

Date of notice	Compliance of date	Remarks
24 th January, 2023	03 rd February, 2023	No details furnished nor any petitioner for adjournment was received.
11 th February, 2023	17 th February, 2023	No details furnished nor any petitioner for adjournment was received.
21 st February, 2023	27 th February, 2023	No details furnished nor any petitioner for adjournment was received.

The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant is not interested in prosecuting the Appeal.

5.3. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known Latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

5.3.1. The Hon'ble Income Tax Appellate Tribunal Kolkata in the case of - Pradeep Kumar Jhavar Kolkata vs. DCIT-CC-XXI (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asstt. Year: 2006-07) dismissed the appeal of the Appellant for non- prosecution.

5.3.2. The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) held as under:

"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

5.3.3. Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT [(2008) 296 ITR 495] returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

5.4 In view of the above, it is clear that the Appellant is not aggrieved with the assessment order impugned herein and is not interested in prosecuting the same. Accordingly, the additions/disallowances as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismissed this appeal. Accordingly the appeal of the assessee stands dismissed."

6. Aggrieved by the order of the Id. CIT(A). The assessee is in appeal before us. The assessee has filed an affidavit before us for non compliances which reads as under:-

"I, Ravi Prakash Sharma S/o Shri Mahesh Kumar Sharm aged about 35 years resident of 1, Phutali Wali Dhani, Keshupura, Ajmer Road, Jaipur- 302024 (Raj.) do solemnly affirm as under :-

1. That I am regular income assessee since assessment year 2012-13 and having PAN-BVDPS5568L.
2. That my case was reopened under section 147/148 of the Income tax act for the assessment year 2011-12.
3. That for the assessment of the above mentioned year following notices were issued to me but due to some unavoidable circumstances the same could not responded due to the reasons mentioned as under :-

Notice	Reasons for non compliance
29.03.2018 U/s 148	I am not aware about the Income Tax laws at that time, therefore the same could not responded.
07.09.2018 U/s 142(1)	I have contacted one consultant and handed over the documents to him but due to accident he has been admitted into hospital, therefore, application for adjournment was filed through email on 19.09.2018.
13.11.2018 U/s 142(1)	My consultant was still hospitalized upto the date of compliance.

4. That due to non-response the assessment completed Ex-parte vide order dated 10.12.2018.
 5. That there after I have filed appeal on 11.06.2019 against the assessment order before the Commissioner of Income Tax (Appeals) against the assessment order dated 10.12.2018.
 6. That the Commissioner of Income Tax (Appeals) issued notices dated 24.01.2023, 11.02.2023 and 21.02.2023 about hearing of the appeal and same were delivered on the email address of the professional who has filed my appeal and he has not informed me about these notices.
 7. That there is no mala-fide behind non response of the above mentioned notices, the reasons mentioned above are totally reasonable reasons and beyond my control.
 8. That after the order of Commissioner of Income Tax (Appeals)'s order I have again contacted my regular consultant and he advised me to file an appeal against this order of Commissioner (Appeals) before the Hon'ble Income Tax Appellate Tribunal, therefore I have filed this appeal without any delay.
 9. That because of the reasons mentioned I humbly prayed that the appeal of the mine may kindly be admitted and entertained in the interest of justice.
- That the facts stated above are true and correct to the best of my knowledge and belief, nothing has been concealed. God may help me.”

7. On the other hand, the ld. DR supported the order of the ld. CIT(A).
8. We have heard both the sides and perused the materials available on record. The Bench noted that the AO and the ld. CIT(A) have passed the ex-parte order and the assessee is deprived off to contest the case before the lower authorities. The ld. AR for the assessee fail to produce documentary evidence/submission in response to the appeal filed by the assessee hence, the order passed in both proceedings are ex-parte. Before us the ld. AR for the assessee has filed an affidavit and paper book on going through the affidavit we found a reasonable cause for not appearing before both the proceedings. Taking into consideration the

present facts and circumstances of the case, we feel to remand back to the AO admitting the evidences filed before us. The Interest of natural justice, we direct the Assessing Officer to take a consistent view of the matter after considering the submission of the assessee for both the years. It is undisputed fact that the assessee was granted several authorities either by the Id. CIT(A) or by the AO to argue the case but the assessee remained non-cooperative and negligent in pursuing his case on the dates of hearing of the appeal for which the Bench awards cost of Rs.5,000/- and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the assessee is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of assessment proceedings before the AO. Thus the appeal of the assessee is allowed for statistical purposes.

8.1 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.

9. In light of the submissions so made by both the parties, our findings and directions contained in ITA No. 265/JPR/2023 shall apply *mutatis mutandis* to this matter as well and the appeal of the assessee is thus allowed for statistical purposes.

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

Order pronounced in the open court on 27/06/2023.

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:- 27/06/2023

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Ravi Prakash Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(5), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 265 & 266/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar