

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

ITA Nos. 117/Jodh/2022
(ASSESSMENT YEAR- 2017-18)

Creative Propmart Pvt. Ltd. 13-14 Navkar Complex, University Road, Opp. Tulsi Farm House, Udaipur.	Vs	ITO, Ward-2(3), Udaipur.
(Appellant)		(Respondent)
PAN NO. AACCC 9899 C		

(Virtual hearing)

Assessee By	Shri Sandeep Jhanwar-C.A.
Revenue By	Shri Lovish Kumar, CIT-DR
Date of hearing	13/07/2023
Date of Pronouncement	14/07/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the National Faceless appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 07.04.2022 for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:-

“1. Under the facts and circumstance of the case the order passed by the ld. AO u/s 143(1) is bad in law and deserves to be quashed.

2. Under the facts and circumstances of the case the ld. CIT(A) has erred in confirming the addition of Rs. 75,00,000/- made by the ld. AO by treating the cash deposited during the demonetization period as unexplained cash credit by applying the provision of section 68 of the Income Tax Act, 1961.

3. The assessee craves to amend, alter and add grounds of appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee has e-filed his return of income on 06.11.2017 declaring the loss of Rs. 21,430/-. Later on the case has been selected for scrutiny on the reason that abnormal increase in cash deposit during demonetization period. During the demonetization period, the assessee has deposited Rs. 75,00,000/- on 11.11.2019 in the bank account of the Udaipur Mahila Samrishi Urban Co-operative Bank Ltd., Udaipur. The AO is treated Rs. 75,00,000/- as unexplained cash credit under section 68 of the Acct and brought to tax in the assessee hands. Therefore addition was made of Rs. 75,00,000/- in business income.

4. Being aggrieved the order of the AO, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) observed that notices were issued on 05.01.2021, 15.11.2021, 29.11.2021, 12.01.2022,

31.01.2022, 08.02.2022 and 01.03.2022 requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued by the Id. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“6. Decision:- I have through and duly considered the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant didn't comply to any of the statutory notices issued by the AO and has not furnished any documentary evidence to explain the source of the cash deposited in the bank account.

During the appellate proceedings, the appellant has not complied for even once nor filed any written submission. In absence of the written submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. If the appellant claims that the assessment order was objectionable he should have provided supporting arguments of evidences. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

In the case of Anil Goel Vs CIT, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given. TAX DEPA

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order.

The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 ITR 5771, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority."

Accordingly, I agree with the reasons given by the AO and confirm the addition of Rs. 75,00,000/- on account of unexplained income u/s 68 of the I.T. Act. The grounds of appeal are hereby dismissed."

5. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO in the interest of equity and justice.

6. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

7. We have heard both the parties and perused the materials available on record. The Bench observed that the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the Id. AO as mentioned in his order. It is undisputed fact that the assessee was granted several authorities by the Id. CIT(A) to argue the case but the assessee remained non-cooperative and negligent in pursuing his case on the dates of hearing of the appeal before the lower authorities. However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the lower authorities and the Id. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question. In this view of the matter, the appeal of the assessee is restored to the file of the Id. AO, with grounds so raised by the assessee, 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 proceedings before the Id. AO. 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. Thus the appeal of the assessee is allowed for statistical purposes.

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

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

Order pronounced in the open court on 14/07/2023.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 14/07/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench