

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, 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. 297/JPR/2023
निर्धारण वर्ष / Assessment Year : 2007-08

Rajasthan Jal Vikash Nigam Ltd. 72B, Ground Water Department, Jhalana Doongri, Jaipur,	बनाम Vs.	Income Tax Officer, Ward-6(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABFR 3357 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Subhash Arya
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 11/07/2023
उदघोषणा की तारीख / Date of Pronouncement: 31/07/2023

आदेश / ORDER

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

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/ld.CIT(A)"] dated 23.03.2023 for the assessment year 2007-08.

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

"1. On the facts and in circumstances of the case and in law, the ld. CIT(A) has erred in to upheld the disallowances made under section 40A(7) of the Act, 1961 by the ITO for Rs. 21,00,000/-."

3. Brief facts of the case are that the assessee has filed its return of income declaring total income of Rs. Nil on 29.10.2007. The return was processed u/s 143(1) of I.T. Act. Notice u/s 143(2) issued on 25.09.2008/ Further notice u/s 142(1) is issued along with query letter on 09.11.2009. In compliance to these notices the assessee filed details books of account. The assessee company is engaged in drilling in water tube wells and hand-pumps, development and geophysical & hydro geological survey. During the year under consideration, the assessee has show total turnover of Rs. 4,07,09,528/-and shown gross profit of Rs. 51,06,347 giving G.P. rate of 12.54%. The ld. AO has also made disallowance u/s 40A(7) for an amount of Rs. 21,00,000/-contending that the assessee has not justified the claim of gratuity and leave encashment of fund.

4. Being aggrieved by 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 23.12.2020, 19.09.2022, 06.12.2022 and 03.03.2023 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 ld. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the ld. CIT(A) is reproduced as under:-

“4.1. I have gone through the order of the learned AO, submission by the appellant and the ground wise disposal of appeal is as under-

Ground 1

4.2. Ground 1 relates to the order of the learned AO to be bad in law and contrary on the facts. This is generic ground and does not require any specific adjudication.

Ground No. 2

4.3 Ground 2 relates to disallowing prior period expenses by the learned AO.

4.4 The learned AO has made the contention that the assessee has debited the prior period expenses into profit and loss.

4.5 The appellant has not provided any justified reply to the learned AO, neither has he made any satisfactory response now in his submission to the appeal of CIT(A).

4.6 The appellant has not provided any supporting evidences to verify his ground. Therefore, the addition made by the Learned AO is upheld.

4.7 Accordingly, Ground 2 of the appellant is dismissed.

Ground 3

4.8. Ground 3 relates to addition made by the learned AO on contribution to gratuity and leave encashment fund.

4.9 The learned AO has disallowed the deduction considering the provisions of 40A(7).

4.10 The appellant has submitted CIT approval to the employees gratuity fund assurance scheme of Jal Vikas Nigam Ltd. However, the appellant has not provided for any submission and supporting documents relating to the amount deposited in the particular fund. It is seen from the assessment order that the appellant has made multiple contribution to gratuity and leave and encashment funds.

4.11. In absence of supporting documents provided by the appellant regarding the amount deposited into the fund approved by the CIT for gratuity assurance scheme of Rajasthan Jal Vikas Nigam Ltd. It is not possible to verify the ground raised by the appellant. Therefore, the addition made by the learned AO is upheld.

4.12 Accordingly, Ground 3 of the appellant is dismissed.

Ground 4,5

4.13 Ground 4,5 relates to the fact that the learned AO has wrongly mentioned that he asked about justification for claiming prior period expenses as well as provision of section 48(7) of the income tax act, 1961.

4.14. The leamer AD has issued notice along with Query letter as per his order. The appellant should have provided supporting evidences and evidences to the queries raised by the Learned AO.

4.15 The appellant has not made submissions relevant for the addition made by the Learned AO even before the CIT(A).

4.16. Therefore, it is clear that the appellant has not discharged his duties regarding filing of response along with supporting evidence.

4.17 Accordingly, ground 4, 5 of the appellant is 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 as the relevant proof of recognition of fund has been arrived from the LIC and therefore based on that fact claim of the assessee is allowable.

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 this 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 ld. AR for the assessee submitted before us that the ld. CIT(A) order passed an ex-parte and no opportunity was provided or considered to be the claim of the assessee on merits and the ld. CIT(A) has erred in confirming the findings of the AO. Before us, the ld. AR for the assessee that the additions made is on account of welfare scheme of employee. The payment was made to LIC and the approval of the welfare scheme of the LIC come late and therefore the assessee could not substantiate the claim. Considering these facts, we feel that in the interest of natural justice, we are of the considered view that let these evidences be examined by the ld. AO based on the issues raised in the assessment order. Therefore, the matter is restored to the file of the ld. AO for adjudication on merits based on the evidence placed. Thus, we admit the additional evidences filed before us and set aside the order passed by the ld. CIT(A) and restore the issue of disallowance u/s 40A(7) of the Act to the file of ld. AO for adjudication on merit, after providing adequate opportunity of being heard to the assessee. We also direct the assessee to cooperate with the ld. AO for expeditious disposal of the appeal. Thus, the appeal filed by the assessee is treated as allowed for statistical purpose.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. 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 Id. AO independently in accordance with law.

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

Order pronounced in the open court on 31/07/2023.

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:- 31/07/2023

*Santosh

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

1. The Appellant- Rajasthan Jal Vikash Nigam Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(1), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 297/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar