IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

VIRTUAL HEARING

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

ITA No. 87/Jodh/2023
(ASSESSMENT YEAR- 2019-20)

M/s Khadi Grammodhyog Prathisthan O, Khadi Sadan, Rani Bazar, Bikaner	Vs	Asst. Director of Income CPC, Bangaluru
(Appellant)		**(Respondent)**
PAN NO. AAAAK 5288 M		

Assessee By	Shri Suresh Ojha, Adv.
Revenue By	Sh. S. M. Joshi, JCIT-DR
Date of hearing	11/07/2023
Date of Pronouncement	31/07/2023

O R D E R

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 14.02.2023 [here in after (NFAC)] for assessment year 2019-20 which in turn arise from the order dated 01.05.2020 passed under section 143(1) of the Income Tax Act, by the ADIT, CPC.

2. The assessee has marched this appeal on the following grounds:-

> *"1. That the order passed by the assessing officer is illegal against the law and judicial decorum.*
>
> *2. The assessing officer should have accepted the revised return submitted by the assessee which was in accordance with the law and CIT(A) should have accepted the ground and should not rejected without reading the ground.*
>
> *3. That the order passed by the CIT(A) is not reasoned order and disallowance made by the assessing officer is confirm arbitrary and against the law and against the natural justice therefore liable for quash.*
>
> *4. That cost (appeal fees + travelling expenses + advocate fees) may kindly be granted in respect of dragging the assessee in appeal due to negligence and carelessness of the CIT(A) in view of judgment of Rajasthan High Court delivered in case of Chiranji Lal by treating the assessee and department at par.*
>
> *5. That addition of Rs. 3,51,811/- is illegal and against the law is only account of negligence.*
>
> *6. Without prejudice when the income is exempt in that case no tax should be charged."*

3. The fact as culled out and recorded in the orders of the lower authorities is that the assessee has filed its original return of income belatedly u/s 139(4) of the Act for the assessment year 2019-20 on 15.01.2020. The due date for filing return of income for the said assessment year u/s 139(1) of the Act was extended to 31.10.2019. The return of income filed by the appellant u/s 139(4) of the Act was processed by the CPC, Bengaluru u/s 143(1) of the Act disallowing

current year losses of Rs. 3,51,811/- (Bonus of Rs. 3,20,000 and Interest of Rs. 31,811/-).

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:

> "5. Decision-: There are five grounds of appeal but they are condensed to a single issue which is assessee's grievance against CPC disallowing a sum of Rs. 3,51,811/- on account of current year's losses. After looking into the entire factual matrix of the case, I find that assessee's plea is untenable because losses can only be allowed when the return of income is filed within the stipulated time prescribed by the Act. It is noted from the order u/s 143(1) of the Act that the returns were filed on 15.01.2020 whereas the due date u/s 139(1) of the Act was 30.03.2019. Hence there is no infirmity in the order passed by the AO (CPC).
>
> The appeal is therefore dismissed."

5. The ld. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

"With reference to the above, it is submitted that the order passed by the assessing officer and sustained by the CIT (A) in a manner that is illegal against the law and against the judicial decorum from all corners.

I want to submit that CIT (A) is also having a duty to correct the errors in the proceeding. I have categorically pointed out the factual/legal mistake committed by the CPC authority. All the act leads to the concussion that the CIT A did not take the pain to read the submission at all. There are the following judicial pronouncements of the Supreme Court and High Court in respect of correcting the error.

The apex Court while dealing with the scope and powers of the appellate authority in the case of Kapurchand Shrimal vs. CIT (1981) 24 CTR (SC) 345: (1981) 131 TTR 451 (SC) has held as Follows:

"It is well known that an appellate authority has the jurisdiction as well as THE DUTY TO CORRECT ALL ERRORS IN THE PROCEEDINGS UNDER APPEAL AND TO ISSUE, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute."

As per section 250(6) of the Act, it is the duty of the Commissioner (Appeals) to state a point in dispute, record the reasons and pass a speaking order. The Hon'ble Supreme Court in the case of Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan (2010) 9 SCC 49% and Canara Bank v. V. K. Awasthy (2005) SC 2090 has held that nonspeaking orders by Tribunal, as well as Commissioner (Appeals), is violating the principle of natural justice and liable to be set aside.

Accordingly, under the faceless appeal scheme, the Authorities are bound to pass the speaking order.

The CIT (A) fails to pass the speaking order and passed the order in ten lines AND THE TAXPAYER HAS BEEN DELIBERATELY PUSHED INTO THE PIT OF LITIGATION. YOU ARE REQUESTED TO DECLARE THE SAME AS ILLEGAL.

In view of the above submission, you will observe that the addition made by the assessing officer is illegal and against the law without following the order of the tribunal.

CONVERSATION OF PROOF INTO NO PROOF BY THE CIT (A)

Respected sir, we fail to understand how the CIT (A) disbelieved the explanation/statements given by the assessee when both documents are the documents of CPC and converted good proof into no proof. Hon'ble Justice Hidayatullah of the Supreme Court in the case of Sreelekha Banerjee Vs CIT [19631 49 ITR 112 (SC); 120 observed that the Income Tax Department cannot by merely rejecting unreasonably a good explanation, convert good "proof into no proof". Hon'ble Supreme Court in the case of Uma Charan Shaw & Bros Co Vs CIT 37 ITR 271 has held that the surmises and conjectures, and the conclusion are the result of suspicion which cannot take the place of proof. Hon'ble Punjab & Haryana High Court in the case of CIT Vs Anupam Kapoor (2008) 299 ITR 179

(P&H) also held that suspicion, howsoever strong cannot take the place of legal proof.

Honorable, please also look into the working style of the Income Tax Commissioner Appeal.

The assessing officer should have accepted the revised return submitted by the assessee which was in accordance with the law and CIT (A) should have accepted the ground and should not be rejected without reading the ground.

The return in the question of income filed on 15th January 2020 Income Tax Act was in fact revised return. The original return was filed on 30th September 2019. Hence you have observed that there is no infirmity in the order passed by the CPC, which is not correct. In this respect, I want to submit that the document already submitted before your good self was not considered by the CIT (A). The original return of income was submitted Vide acknowledgment number 235538551301019 dated 30 October 2019. Subsequently, the original return submitted by the assessee was revised vide its acknowledgment number 291917561150120 dated 15th January 2020.

I want to make it clear that the original return of the institution was submitted well within the tank but due to some oversight, CIT (A) has failed to appreciate the correct position as per the record. After considering the actual date there is no delay and on the basis of your theory the original return was well within the time and the same was revised which the assessee already considered the same. For your ready reference, I am again attaching the acknowledgment as well as the computation of income in the paper book.

That the order passed by the CIT (A) is not reasoned order and disallowance made by the assessing officer is confirmed arbitrary and against the law and against the natural justice therefore liable for quash.

The assessee took following grounds: -

i) That the order passed by the Assessing Officer is illegal and against the law

ii) The Assessing Officer should have accepted the revised return submitted by the assessee which was in accordance with the law
iii) That the order passed by the Assessing Officer is not reasoned order and disallowance made by the Assessing Officer is arbitrary and against the law and against the natural justice

iv) That the assesse was prevented by reasonable cause from furnishing the appeal within the stipulated time

v) That the claim of Rs.3,51,811 is in accordance with law.

Respected sir just see the CIT (A) have decided the appeal in ten lines which is being reproduce here under: -

> Decision-: There are five grounds of appeal but they are condensed to a single issue which is assessee's grievance against CPC disallowing a sum of Rs.3,51,811 on account of current year's losses. After looking into the entire factual matrix of the case, I find that assessee's plea is untenable because losses can only be allowed when the return of income is filed within the stipulated time prescribed by the Act. It is noted from the order u/s 143 (1) of the Act that the returns were filed on 15.01.2020 whereas the due date u/s 139 (1) of the Act was 30.09.2019. Hence there is no infirmity in the order passed by the AO (CPC). The appeal is therefore dismissed.

In this respect, judge yourself whether it is a proper manner to decide the appeal by the CIT (A). It is a way of pushing in the litigation. I want to submit that at the time of deciding on the appeal the CIT (A) have not even consider the argument as well as the fact and the document already submitted before your good self.

COST MAY KINDLY BE AWARDED TO ASSESSEE BY THE DEPARTMENT

That cost (appeal fees+ travelling expenses+ advocate fees) may kindly be granted in respect of dragging the assessee in appeal due to negligence and carelessness of the CITA) in view of judgment of Rajasthan High Court delivered in case of Chiranji Lal by treating the assessee and department at par.

Accordingly, under the faceless appeal scheme, the authorities are bound to pass the speaking order and have to pass the order following the judicial procure after considering the documents and submission. But the CIT (A) passed the order by keeping his eye closed and by ignoring the judicial decorum and disciple.

<u>It is therefore humbly submitted that that cost may kindly be awarded in respect of negligence putting the assessee in unnecessary litigation in view of the judgment of the Rajasthan High Court.</u>

I want to draw your attention to this submission of mine that the department is wasting the precious time of the court and the tax payer's money as well as time. THIS IS A RATHER A NATIONAL LOSS AND AT LEAST A RESPONSIBLE OFFICER LIKE COMMISSIONER SHOULD HAVE AVOIDED BUT EVEN IF THEY ARE NOT BOTHERING THEREFORE THEY SHOULD BE TAUGHT A LESSON AND THE ONLY WAY IS IN THE HAND OF THE APPELLATE AUTHORITY LIKE YOU. The only way to bring the officer to the limit is by way of imposing cost so that appropriate action may be taken against the said officers by their higher authority who has taken the action of this missing the appeal without following the procedure.

Both the department and the appellant are equal before you. The financial loss of the appellant can be easily estimated and assessed and no other officer is responsible for it except the Commissioner of Income Tax Appeals. This is an offense that is not condoned in the Service Conduct Rules. Many decisions are available to post on the concerned authorities, some of them are written below.

I want to draw your attention to the following cases.-

In view of the judgment
CHARANJILAL TAK SHYAM PARWANI & PARTY vs. UNION OF INDIA & ORS reported at 252 ITR 333 (Raj),

The assessee is entitled to cost.

Observation is as under:-

"Litigation is not a luxury and/or amusement or entertainment. It is not pleasure or pleasant to come to the courts. Only when the Union or a State or its officers make it unavoidable, do the litigants come up before the court for redressal of their grievances or for enforcement of their legal or fundamental rights? The litigation is heavily cost (sic-costs heavily) and in the matter of awarding the cost, the court should have to keep in mind this aspect in such matters. It is no use or desirable that on the success of the litigant, he has been given only the token cost or the cost for the sake of the cost of the litigation. The litigants spent a huge amount in filing litigations."

Supreme Court of India
State Of Maharashtra vs Narayan Vyankatesh Deshpande on 31 March, 1976
Equivalent citations: 1976 AIR 1204, 1976 SCR (3) 980

The State Governments should not adopt a litigious approach and waste public revenues on fruitless and futile litigation where there are no chances of success. It is unfortunately a fact that it costs quite a large sum of money to come to this Court and this Court has become untouchable and unapproachable by many litigants who cannot afford the large expense involved in fighting litigation in this Court. It is, therefore, all the more necessary that State Governments, which have public accountability in respect of their actions, should not lightly rush to this Court to challenge a judgment of the High Court which is plainly and manifestly correct and drag the opposite party in unnecessary expense, part of which would, in any event, not be compensated by an award of cost. We accordingly dismiss the appeal with costs. S.R. Appeal dismissed.

THE PRESENT APPEAL IS AN INSTANCE OF THE KIND OF UNNECESSARY AND FUTILE LITIGATION WHICH CAN BE AVOIDED IF THE CIT (A) COULD HAVE TAKEN THE PAIN TO VERIFY THE ONLY DATE OF THE ORDER.

That addition of Rs. 3, 51,811/- is illegal and against the law and is the only account of negligence.

In this regard, I would like to submit that whatever was submitted by the taxpayer, the return was revised by showing the disputed amount in the revised return. If the Commissioner of Income Tax had seen the revised return, then the issue of dispute could have ended there itself. But the Commissioner of Income Tax Appeal did not dare to at least see the attached documents. The accretion under these circumstances is illegal. In the revised return amount has been increased in the interest income and bonus.

Without prejudice when the income is exempt in that case no tax should be charged. In the end, you would also like to say that the income of the taxpayer is included in the category of exemption in section 10, so the government does not intend to impose any kind of tax on the taxpayer, therefore the amount demanded from the taxpayer is illegal and the income tax officer who Tax assessment should be done considering the increase in income in the category of exemption.

In these facts and circumstances, it is requested that the order passed u/s 250 of the IT Act may kindly be annulled the same, declared illegal, and against the judicial decorum and discipline."

5.1 The ld. AR of the assessee also filed a paper book of the documents relied upon the same is also reproduced here in below:

Sr. No.	Particular	Page No.
1	Copy of Original ITR and Computation of Total Income A.Y 2019-20 filed on 30.10.2019	1-4
2	Copy of Revised ITR and Computation of Total Income A.Y 2019-20 filed on 15.01.2020	5-8
3	Copy of written submission dated 19.01.2023 with acknowledgment submitted before CIT(A)	9-13

5.2 In addition the above paper book and written submission so filed the ld. AR of the assessee, expressed his anguished on the lower authorities in not appreciating the facts even the same placed on record by the assessee or the same is available at the time of processing the ITR filed by the assessee. The only short issue that the original return of income was filed by the assessee on 30.10.2019 [which is within the extended due by CBDT] and thereafter the assessee revised the return on 15.01.2020 which CPC considered it as original return and has denied the current year loss of Rs. 3,51,811/-. This simple fact is not considered by the ld. CIT(A) and dismissed the appeal of the assessee and therefore, the ld. AR of the assessee submitted that the revenue should pay cost of the efforts made by the assessee in bringing this appeal.

6. The ld DR is heard who has relied on the findings of the lower authorities and vehemently submitted that the CPC has processed the return filed by the assessee on 15.01.2020.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the apple of discord in this appeal is that the assessee has filed its original return of income on 30.10.2019 which the extended due date of filling the return of income. Thereafter the assessee revised the return of income on 15.01.2020 which the AO CPC considered as original and thereby denied the current year loss of Rs. 3,51,811/-. The fact that the due date of filling the return of income for the year under consideration was extended by the relevant notification is reproduced here in below:

F. No. 225/ 150/2020-ITA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
*****

North Block, ITA-II Division
New Delhi, the 30th September,2020

Order under Section 119(2)(a) of the Income-tax Act, 1961

The date for furnishing of Income-tax returns under section 139 of the Income-tax Act ,1961 ('Act') for the Assessment Year 2019-20 was 31st March, 2020. However, on consideration of difficulties being faced by the taxpayers due to COVID-19 pandemic, the said date was initially extended to 30th June,2020 and subsequently to 31st July,2020 and 30th September,2020 vide the Taxation and other laws (Relaxations of certain provisions), Ordinance dated 31.03.2020, Notification No.35/2020 dated 24.06.2020 and Notification No.56/2020 dated 29.07.2020 respectively.

2. In this context, on further consideration of genuine difficulties being faced by the taxpayers due to the outbreak of COVID-19 pandemic, the Central Board of Direct Taxes (CBDT), in exercise of powers conferred under section 119(2)(a) of the Act, hereby, further extends the date for furnishing of belated and revised returns for the **Assessment Year 2019-20** under sub-section (4) and (5) of section 139 of the Act respectively, from 30th September,2020 to **30th November,2020.**

-sd-

(Rajarajeswari R.)
Under Secretary to the Government of India

Copy to: -

1. PS to F.M./OSD to F.M./PS to MoS (R).
2. PS to Finance/Revenue Secretary.
3. Chairman (CBDT)& All Members of CBDT.
4. All Pr. CCsIT/CCsIT/Pr. DsGIT/DsGIT.
5. All Joint Secretaries/CsIT, CBDT.
6. Directors/Deputy Secretaries/Under Secretaries of CBDT.
7. ADG (Systems)-4 with a request to place the order on official income-tax website.
8. CIT (M&TP), Official Spokesperson of CBDT with a request to publicize widely.
9. Addl. CIT, Data Base Cell for placing it on irsofficersonline.gov.in.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce.

Rajarajeswari R. 30-9-20

(Rajarajeswari R.)
Under Secretary to the Government of India

Therefore, the original return filed by the assessee is well within time. Subsequently, the assessee revised the return on 15.01.2020 while processing that return the CPC has considered that return as original and accordingly the current year losses were in the light of that fact denied to the assessee. On careful perusal of the records we observed that the intimation under challenge has not considered the fact that the return filed on 15.01.2020 was not the original return but was revised one and therefore, the denial of loss is not correct based on the set of facts and evidence available on records. Based on these set of facts ground no. 1,2,3 & 5 is allowed.

8. Vide ground no. 4, the assessee has prayed to this tribunal to award the cost of filling this appel, travelling expenses and advocate fees that is incurred on account of the revenues' negligence in not appreciating the correct facts of the case of the assessee.

9. The ld. AR of the assessee has filed the written submission to grant cost to the assessee and the same is reproduced here in above. In addition to the written submission the ld. AR of the assessee submitted that the assessee has to undergo mental pressure and has

to incur cost just to correct the mistake undertaken by the revenue in not understanding the fact that the return of income filed on 15.01.2020 is not the original return but the revised return and therefore. in correct appreciation of the facts has resulted into extra cost to the assessee and thus, assessee prayed to award the cost. To support his contention the ld. AR of the assessee relied upon the decision of the hon'ble Rajasthan High Court in the case of Chiranji Lal Tak v. Union of India [2001] 252 ITR 333/[2002] 120 Taxman 602 he requested that cost of the appeal may please be awarded to the assessee which will act as deterrent for illegal and non-speaking orders passed by the authorities causing loss to the assessee.

10. On the other hand, the learned Departmental representative strongly opposed the argument of learned counsel for the assessee. Based on the records both the lower authorities have passed the order. He submitted that in this case there is no illegal act, as the intimation has been issued by the system considering the system based control and based on that set of even the ld. CIT(A) has recorded similar facts. He further submitted that since the matter under consideration is quasi-judicial and has not reached finality,

therefore, calling the order as arbitrary and perverse would amount to pre-judging the outcome of the appeal. There is nothing on record to demonstrate any mala fide on the part of the lower authority and the assessee has not resulted into any irreparable loss and the assessee is exploring the judicial right available under the law. Further, there is nothing on record that the assessee has been harassed. He accordingly submitted that the ground raised by the assessee to award cost should be dismissed.

11. We have considered the rival arguments made by both sides. In our opinion the learned Commissioner of Income-tax has passed an order which is based on the set of facts placed or understood by him. Since, the appeal of the assessee has been disposed under the faceless regim the contention that the officer should be made responsible is not possible under this faceless regime, where the personal contact is avoided and therefore, no prejudiced caused to the assessee. The judgement based on the set of facts understood by the ld. CIT(A) while discharging duty, action might have caused some hardship to the assessee due to error of judgement but that in our opinion does not warrant levy of cost on the Department. The hon'ble

Supreme Court in the case of Pooran Mal v. Director of Inspection [1974] 93 ITR 505, while adjudicating relief claimed in respect of action taken under section 132 of the Income-tax Act has observed as under (at pages 518 and 519) :

> "We are, therefore, to see what are the inbuilt safeguards in section 132 of the Income tax Act. In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the Department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in section 132(1)(a), (b) and (c) exists. In this connection it may be further pointed out that under sub-rule (2) of rule 112, the Director of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income-tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (i) to (v) in sub-section (1), all of which are strictly limited to the object of the search. Fifthly, when money, bullion, etc., is seized the Income-tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible so that within a reasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc., is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5), and, lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances. The provisions, therefore, relating to search and seizure in section 132 and rule 112 cannot be regarded as violative of articles 19(1)(f) and (g).

A minor point was urged in support of the above contention that section 132 contains provisions which are likely to affect even innocent persons. For example, it was submitted, an innocent person who is merely in custody of cash, bullion or other valuables, etc., not knowing that it was concealed income is likely to be harassed by a raid for the purposes of search and seizure. That cannot be helped. Since the object of the search is to get at concealed incomes, any person, who is in custody without enquiring about its true nature, exposes himself to search. Sub-section (4) of section 132 shows the way how such an innocent person can make the impact of the search on him bearable. All that he has to do is to tell the true facts to the searching officer explaining on whose behalf he held the custody of the valuables. It will be then for the Income-tax Officer to ascertain the person concerned under sub-section (5)."

12. In that case, it was observed that it causes serious invasion of the privacy of a person. Still the hon'ble Court held that even though the innocent is likely to be harassed by a raid for the purpose of search and seizure that cannot be helped. In the instant case, there is no such action of search and seizure which causes serious invasion in the privacy of the person. The Commissioner was discharging her quasi-judicial duty. Further, there is nothing on record to suggest that the action of the Commissioner of Income-tax was mala fide. Therefore, we do not find any merit in the submission of learned counsel for the assessee to award cost.

13. The decisions relied on by learned counsel for the assessee are distinguishable as in the decision of the hon'ble Rajasthan High Court

in the case of *Chiranji Lal Tak* (*supra*) is concerned, there also facts were different. In that case, the respondent Income-tax Officer issued illegal notice to the petitioner and later withdrew the same. Under these circumstances, the court directed the respondent to pay for the advocate fee and litigation expenses incurred by the petitioner in prosecuting writ proceedings. However, in the instant case, there is no prim facie illegality in issuing the intimation which is also system based and even the proceeding before the first appellate authority was on faceless regime. We, therefore, do not find any merit in the argument of learned counsel for the assessee to award cost. The ground raised by the assessee is accordingly dismissed.

In the result, appeal of the assessee is partly allowed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-	Sd/-
(Dr. S. Seethalakshmi) Judcial Member	(Rathod Kamlesh Jayantbhai) Accountant Member

Dated : 31/07/2023
**Ganesh Kumar, PS*
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