

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH "A", JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &  
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 66/JP/2023  
Assessment Year : 2014-15.

Mahesh Agarwal HUF, B-1, Nulite Colony, Tonk Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 6(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAGHM 7094 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Advocate

राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 18.07.2023.

घोषणा की तारीख / Date of Pronouncement : 23/08/2023.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17.12.2022 for the assessment year 2014-15 passed under section 250 of the I.T. Act 1961. The grounds raised by the assessee are reproduced below :-

1. Under the facts and circumstances of the case the Ld. NFAC has grossly erred in deciding the appeal ex-parte, without providing sufficient opportunity to appellant, here the Ld. NFAC ought to have decided the appeal on merits instead of dismissing the appeal for non-attendance.

2. Under the facts and circumstances of the case the Ld. NFAC was not justified in confirming the addition as made by Ld. AO of Rs. 44,31,664/- on account of alleged Unexplained Credit u/s 68 for alleging Bogus Exemption claimed U/s 10(38) of the act, during the year without evidence and without considering the materials and explanations available on records in their true perspective and sense.
3. Under the facts and circumstances of the case the Ld. NFAC was not justified in confirming the addition as made by AO of Rs. 2,78,392/- on account of commission u/s 69C without appreciating the facts available on records and without considering them in their true perspective and sense therefore complete addition should be deleted,
4. The Ld. NFAC has grossly erred in confirming the addition as made by Ld. AO on the basis of statement recorded of the persons which are not concern with the company which shares have been traded though the concerns persons, despite of having provided the List of concern persons by the assessee.
5. The Ld. NFAC has grossly erred in confirming the addition as made by Ld. AO by denying opportunity of cross examination of the persons (witness) on which recorded statements are the basis of addition though the Apex courts verdict in ANDMAN TIMBER strongly recommended such opportunity of cross examination.
6. The Ld. NFAC has grossly erred in confirming the addition on account of bogus long term capital gain u/s 10(38) and Commission u/s 69C without having any corroborative material on record against the complete valid chain of documents as submitted by the assessee.
7. The Ld. NFAC has grossly erred in confirming the addition as made by Ld. AO by denying opportunity of cross examination of the persons (witness) on which recorded statements are the basis of addition though the Apex courts verdict in ANDMAN TIMBER strongly recommended such opportunity of cross examination.
8. The Ld. NFAC has grossly erred in confirming the action of Ld AO for charging Interest U/s 134A, B and C of the Act.

9. The appellant reserved her right to add, amend or alter the grounds of appeal on or before the date of appeal hearing.

2. The brief facts of the case are that assessee E-Filed his return of income for the Assessment Year 2014-15 on 29.08.2014 declaring a total income of Rs. 9,66,830/-. The return was processed under section 143(1)(a) of the Income Tax Act, 1961. The case of the assessee was selected for scrutiny under CASS and accordingly notice u/s 143(2) of the IT Act, 1961 was issued on 18.09.2015. Notice under section 142(1) was issued along with questionnaire on 01.01.2016 and 01.07.2016. In response to these notices, the assessee submitted necessary details and explanations. The AO completed the assessment under section 143(3) of the I.T. Act, 1961 and assessed the income of the assessee at Rs. 56,76,886/- by making addition of Rs. 44,31,664/- on account of bogus Long Term Capital Gain and Rs. 2,78,392/- on account of Commission paid for acquiring such accommodation entry vide his order dated 15.12.2016. Aggrieved by the order of AO, the assessee preferred appeal before the Id. CIT (A), NFAC, which was dismissed by the Id. CIT (A) vide his order dated 17/12/2022 for non-compliances of the notices/not submitting the documents or making submissions by the assessee or his representative on the dates fixed for hearing.

Now the assessee is in appeal before us.

3. We have heard the rival contentions, perused the material available on record and gone through the orders of the revenue authorities and the case laws cited before us. At the very outset, we noticed that the assessee has taken first ground of

appeal that NFAC has erred in deciding the appeal ex parte without providing sufficient opportunity to the assessee and dismissed the appeal of the assessee for non compliance/attendance. On perusal of case file, we noticed that the Id. CIT (A) has categorically mentioned in his order that opportunity of hearing was given to the assessee from time to time on several occasions vide notices dated 13<sup>th</sup> January, 2021, 27<sup>th</sup> September, 2021, 5<sup>th</sup> October, 2021, 5<sup>th</sup> July, 2022, 4<sup>th</sup> August, 2022 and 28<sup>th</sup> November, 2022 but the assessee could not furnish any details and was only seeking adjournments. Whereas on the contrary, the Id. A/R has filed Paper Book before us, which contained pages 1 to 49 and the Id. A/R has also certified that all the above annexures contained therein were before the lower authorities, but the Id. CIT (A) has failed to examine the said documents and has decided the appeal of the assessee ex parte by adopting short cut method. It was further submitted by Id. A/R that he had sought adjournments for addressing the arguments but the Id. CIT (A) did not adjourn the hearing of the appeal and rather decided the appeal ex parte.

3.1 After having gone through the entire facts of the present case and also after hearing the parties at length, we noticed that although the assessee has placed on record the paper book containing different documents in support of his contention and he has also certified all the above annexures contained therein were before the lower authorities, whereas on the contrary, the Id. CIT (A) has categorically mentioned in his order that no details were furnished by the assessee. Since both the parties have raised conflicting pleas, therefore, instead of going into the same at this stage, we deem it proper to restore the matter back to the file of the Id. CIT (A) with a direction to decide the issue afresh after considering the documents placed on paper book pages 1 to 49 which are in the shape of contract notes, financial ledger,

bank statement, purchase bill of shares, bank statement receipt/confirmation of account, intimation of declaration of bonus shares etc. etc. after giving an opportunity of hearing to the assessee.

4. Our decision to restore the matter back to the file of Id. CIT (A) is based on the undisputed fact that the Id. CIT (A) has decided the appeal without considering the documents as according to him the assessee has not furnished any details before him. Even otherwise, it is a right of every litigant to get its case decided on merits. Therefore, considering this principle in mind, we have decided to restore the matter back to the Id. CIT (A) for decision afresh.

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

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

Order pronounced in the open court on 23/08/2023.

Sd/-  
( राठौड़ कमलेश जयंतभाई, )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23/08/2023.

das/

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

1. अपीलार्थी / The Appellant- Mahesh Agarwal HUF, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO Ward 6(2), 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. 66/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar