

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 380/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2019-20

Bhiwadi Integrated Development Authority H-5, Bhagat Singh Colony, Bhiwadi, Alwar.	बनाम Vs.	Income Tax Officer Ward-1(2), Alwar.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAALB 2450 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri S.L. Agarwal (C.A.)  
राजस्व की ओरसे / Revenue by: Shri Ajey Malik ( CIT)

सुनवाई की तारीख / Date of Hearing : 16/08/2023  
उदघोषणा की तारीख / Date of Pronouncement: 31/08/2023

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/Id. CIT(A)"] dated 15.10.2022 for the assessment year 2019-20.

2.1 At the outset of hearing, the Bench observed that there is delay of 180 days in filing of the appeal by the assessee for which the Id. AR of the assessee filed an

application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

“The humble assessee appellant applicant respectfully prays for the condonation of delay in the filling of Appeal for the following reason:

1. That the Id. CIT (Appeals) passed his order on 15.10.2023 which was served upon the assessee appellant applicant 15.10.2023.

2. The Appellant is a government body carrying out sovereign function for the general public. There were frequent transfers in the Authority, as the concerned person in-charge of Accounts, who was also dealing in the taxation of the appellant was transferred and the appellant had no clue of such order being passed by the learned CIT(Appeals). Even no demand was pursued by the Department till date in this particular case.

3. The notices were also not received, as the same were undertaken in the Income Tax E-proceedings portal and sent over the e-mail of the concerned person transferred as also mentioned above.

4. That subsequently, CA Shyam L Agarwal & Co (Tax Consultants) informed the Authority that no appeal was filed against the order passed by the Learned CIT Appeals and on his opinion, without any further delay, the assessee with filed this appeal before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur on 01.07.2020 with the delay of 174 days.

5. Further, the Authority was under an impression that its income is exempted from the payment of income tax as per the Honourable Rajasthan High Court order in case of UIT, Kota and that it was covered under section 10(20) of the I.T. Act.

6. Since, the case of the assessee was never heard before any forum and was devoid of justice, it is earnestly requested to your good self that the matter has been over looked at all levels because of new faceless E-assessment scheme, where the Authority was not used to such system being a newly constituted Authority.

An Affidavit duly sworn in this regard is also enclosed herewith.

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and lack of understanding of the income tax proceedings.

That in these circumstances we request your honour's to kindly condone the delay and oblige.”

To this effect, the assessee has filed an affidavit as to the condonation of delay in filing the appeal.

2.2. During the course of hearing, the Id. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

2.3 We have heard the contention of both the parties and perused the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 180 days has merit for the reason that there was complete lockdown in Jaipur on account of COVIND-19 and all the offices including the office of assessee's consultant were closed and we concur with the submission of the assessee. Thus the delay of 180 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of

Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

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

*“1. The ld. AO has erred in law as well as in facts in arbitrarily disallowing an expenditure under the head Scheme development expenses of Rs. 8,91,64,563/- on the basis that such expenditure was not incurred exclusively for the purpose of earning income, which is baseless and unreasonable. The learned CIT(A) grossly erred in confirming such ex-parte, without going on the merits of the case.*

*2. The ld. AO has erred in law as well as in facts in arbitrarily disallowing an expenditure under the head Non Scheme work expenses of Rs. 20,69,22,651/- on the basis that such expenditure was not incurred exclusively for the purpose of earning income, which is baseless and unreasonable. The learned CIT(A) grossly erred in confirming such ex-parte, without going on the merits of the case.*

*3. The ld. AO has erred in law as well as in facts in making such additions without issuing any show cause notice and following prescribed procedures for making assessment, hence the addition made was unwarranted and unreasonable and the order passed by the learned AO was against the law, where the learned CIT(A) has grossly erred in confirming the same without going on merits of the case.*

*4. That the order passed by ld. CIT(A) was an ex-parte order, hence, the opportunity of being heard was not provided in the case. In such a case, passing an order against Government authority carrying out sovereign functions, without an opportunity of being heard is unjustified.*

*5. The assessee craves to add or alter any ground of appeal during the course of hearing.”*

4. Apropos solitary ground of the assessee, the facts as emerge from the order of the ld. CIT(A) are as under:-

“In this case, Notice was issued on 13.09.2022 to the appellant to furnish written submissions and documents on or before 20.09.2022. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 21.09.2022 to the appellant to furnish written submissions, information and documents on or before 28.09.2022. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing further to say in the matter and the appeal would be decided on merits on the basis of material available on record. No written submissions/ information/ documents were received, nor any adjournment sought. Accordingly, yet another notice was issued on 29.09.2022 to the appellant to furnish written submissions, information and documents on or before 06.10.2022. In view of the fact that no written submissions/ information/ documents have been received till date from the appellant nor any adjournment sought, appeal is being decided on the basis of material available on record.

Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 30.09.2021 filed by the appellant along with Form 35. The material on record has been carefully perused.

There is no material on record to warrant interference in the order of the AO. In view of the fact that there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby dismissed.

5. As a result, the appeal is dismissed.

5. Feeling dissatisfied from the order of the Id. CIT(A), The assessee has preferred an appeal before us. The Id. AR for the assessee has filed a detailed submissions which is reproduced hereinbelow:-

“1. The State Government of Rajasthan in exercise of the powers conferred by sub-section (1) of section 9 of the Rajasthan Special Investment Region Act 2016 constituted Bhiwadi Integrated Development Authority (BIDA). form the overall development of Bhiwadi Integrated Township (BIT), a Special Investment Region comprising the entire area of 363 villages of Behror, Neemrana, Mundawar, Kotkasim and Tijara Tehsils of Alwar district. The copy of the constitution order and Rajasthan Special Investment Region Act 2016 is enclosed with the Paper-book as Annexure- 1 and Annexure-2 respectively.

2. The Authority filed its original return under section 139(4) - belated return for the assessment year 2019-20 on 30.11.2020, declaring loss of Rs. 206859959/- and the case was selected for scrutiny under the e-assessment Scheme and notice u/s 143(2) was issued to the assessee. The copy of the Income Tax return and the Final accounts for the AY 2019-20 are attached as Annexure-3 to the paper-book.

3. The Ld AO issued notice under section 143(2) on 29.06.2022 asking for the AY 2019-20 on the issue "Registration/Approval under various sections of IT Act have not been granted or have been cancelled/withdrawn." It is a fact from the attached, income tax return that the order rejecting the application of the assessee under section 12A had no relevance with the income tax return, as the assessee had filed the return without claiming any benefits under section 11 and 12 of the Income Tax Act, 1961.

4. Further, notice under section 142(1) was issued on 29.09.2021, calling for certain information like audit report, Balance sheet, expenditure account, P&L account etc. Surprisingly, without issuing any further notices, the learned AO passed an order the very next day on 30.09.2021 by making additions of Rs. 29,60,87,214/ and calculating total income at Rs. 8,92,27,2550/-. The copy of the notice is attached as Annexure-5 of the paper-book.

5. The learned assessing officer had made the assessment in such haste and unruly manner that the ex-parte assessment was completed within 24 hours of calling information and without issuing any prior show cause notice, which is evident from the statement of the learned AO as reproduced here, "Since, assessee did not come forward to made any submission, in these circumstances & looking into the fact that the case is going to be barred by limitation on 30.09.2021, I am left with no other option but to complete the assessment proceedings ex-parte u/s 144. As per Audit report, assessee is engaged in the activities of Real Estate and Renting Services." It is evident from above that the order was passed by the learned AO without following prescribed procedures or rules and against the principles of natural justice, hence the order was void-ab-initio.

6. The assessee had no information of the above notices, as none of the notices were received by the Authority and had no clue of any such proceedings being undertaken by the learned assessing

officer, as the e-proceedings were conducted and the notices were served over the mail of the concerned officer transferred from the office of the Authority. Further, the jurisdictional assessing officer had not made any efforts to directly communicate or serve the notices to the assessee.

7. The basis for making additions to the income were also arbitrary and without any justified reason, it was held that "Thus on perusal of the Scheme development expenses of Rs. 8,91,64,563/- and Non scheme wise expenses of Rs. 20,69,22,651/-, makes it clear that the said expenses have not been incurred wholly, necessarily and exclusively for the purpose of earning income chargeable to tax and therefore the same is hereby disallowed.

8. It was clear to the Ld Assessing Officer passing the original order that the Authority is a Government entity and has already filed a return of loss of Rs. 206859959/-. The Ld AO has grossly erred in law and in facts in disallowing expenses without any basis and merely on assumptions, upon a government entity carrying out sovereign functions was unjustified and against the law.

9. Aggrieved by the order of the learned AO, the assessee decided to file an appeal against the order before the learned CIT(Appeals), NFAC, Delhi. However, the assessee could not present the case before the learned CIT(A), due to the non-availability of the notice of hearing to the appellant by the concerned person, who explained that he was also not aware, as the proceedings were undertaken through a faceless system of e-proceedings:

10. Finally, the learned CIT(Appeals) passed an ex-parte order on 15.10.2022 holding that, "Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 30.09.2021 filed by the appellant along with Form 35. The material on record has been carefully perused. There is no material on record to warrant interference in the order of the AO. In view of the fact that there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby dismissed."

11. That the above order was also not available to the appellant, being a Government Authority, where the concerned person in-charge of the overall taxation of the appellant was transferred and the appellant had no clue of such order being passed by the learned CIT(Appeals), even no demand was pursued by the Department till date. It was only revealed after appointment of our tax consultants recently, who informed about this particular order. Immediately thereafter, the appellant started the process for filing this appeal before your kind honours.

Since, the case of the assessee was never heard before any forum and was devoid of justice, the assessee decided to file an appeal before the Honourable Income Tax Appellate Tribunal.

Our ground-wise submissions are as below:

1. The Ld AO has erred in law as well as in facts in arbitrarily disallowing an expenditure under the head Scheme development expenses of Rs. 8,91,64,563/- on the basis that such expenditure was not incurred exclusively for the purpose of earning income, which is baseless and unreasonable. The learned CIT(A) grossly erred in confirming such ex-parte, without going on the merits of the case.
2. The Ld AO has erred in law as well as in facts in arbitrarily disallowing an expenditure under the head Non scheme work expenses of Rs. 20,69,22,651/- on the basis that such expenditure was not incurred exclusively for the purpose of earning income, which is baseless and unreasonable. The learned CIT(A) grossly erred in confirming such ex-parte, without going on the merits of the case.

Our submission on the ground 1 and 2:

The Appellant was constituted as a statutory body for the objective as laid down under Rajasthan Special Region Act, 2016, that is to provide for establishment, planning, development, operation, maintenance, management and regulation of Special Investment Regions in the State and to provide for matters connected therewith or incidental there to.

The Learned Assessing Officer has passed a non-speaking order and without any basis, disallowed an expenditure of Rs. 8,91,64,563/- incurred towards Scheme development expenses and Rs. 20,69,22,651/- incurred towards Non scheme work expenses and held at page 4 of the order that, "Thus on perusal of the Scheme development expenses of Rs. 8,91,64,563/- and Non scheme work expenses of Rs. 20,69,22,651/-, makes it clear that the said expenses have not been incurred wholly, necessarily and exclusively for the purpose of earning income chargeable to tax and therefore the same is hereby disallowed."

It is also apparent from the income tax return, that the appellant has filed the return declaring a loss of Rs. 20,68,59,959/-. The appellant is a statutory body and all the expenditure incurred are as per the objectives/powers of the appellant, provided under the provisions of the Act. It is also a settled principle that the expenditure incurred by Government bodies are after necessary approvals and orders of the Government only and also the accounts of the appellant were under public audit system.

The appellant has shown an income under the head '90 A's Income as per the Income Tax return and Income & Expenditure account amounting to Rs. 3,10,75,709/-, which is directly related to the Scheme development Expenses.

The other development expenses, which is directly not related to the particular schemes but common development of BIDA region is classified under the head 'Non Scheme Work Expenses'.

Further, it is a very common understanding that any entity, even if it is commercially involved in selling of a real estate scheme, has to incur development expenditure in order to make that particular real estate. marketable and liveable or even fit for any person buying that particular real estate to be called a home or office or even a vacant land. Thus, the appellant has to carry development works towards the particular scheme and also in the whole region to connect that particular scheme with the BIDA region. Hence, the expenditure carried out by the appellant are wholly, necessarily and exclusively towards the purpose and objectives of the appellant only.

Hence, in the present case, the disallowance of the expenditure by the Id Assessing officer without any basis was unjustifiable and against the principle of natural justice. The assessment has been carried out in haste and unlawful manner and it should be quashed in public interest.

The appellant is a Statutory body and the powers of the appellant under the Rajasthan Special Region Act, 2016 empowers it to carry out development expenses in the BIDA region, hence the expenditure incurred by the appellant are as the Act and towards the sole objective of establishment, planning, development, operation, maintenance, management and regulation of BIDA region. Hence, the expenditure carried towards the objective of the appellant only.

3. The Ld AO has erred in law as well as in facts in making such additions without issuing any show cause notice and following prescribed procedures for making assessment, hence the addition made was unwarranted and unreasonable and the order passed by the learned AO was against the law, where the learned CIT(A) has grossly erred in confirming the same without going on merits of the case.

The learned assessing officer had made the assessment in such haste and unruly manner that the ex-parte assessment was completed within 24 hours of calling information and without issuing any prior show cause notice, which is evident from the statement of the learned AO as reproduced here, "Since, assessee did not come forward to make any submission, in these circumstances & looking into the fact that the case is going to be barred by limitation on 30.09.2021, I am left with no other option but to complete the assessment proceedings ex-parte u/s 144. As per Audit report, assessee is engaged in the activities of Real Estate and Renting Services."

It is evident from above that the order was passed by the learned AO without following prescribed procedures or rules and against the principles of natural justice, hence the order was void-ab-initio.

The assessee had no information of the above notices, as none of the notice were received by the Authority and had no clue of any such proceedings being undertaken by the learned assessing officer, as the e-proceedings were conducted and the notices were served over the mail of the concerned officer transferred from the office of the Authority.

Further, the jurisdictional assessing officer had even not made any efforts to serve the said notices to the assessee.

All other grounds of appeal are consequential and hence does not require any additional submission. In view of the above, your honours are requested to kindly quash the order and grant relief in favour of the appellant.”

6. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) and the AO 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.

7. 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.

8. 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 ld. CIT(A) and ld.AO as mentioned in his order. The assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessee completed ex-parte assessment u/s 144 of the Act on 30.09.2021. Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of several notices it is evident in the ld. CIT(A) order. Before us, ld. AR for the assessee submitted evidence to support his claim. 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 ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, 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 ld. AO.

9. 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 31/08/2023.

Sd/-

(राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

दिनांक / Dated:- 31/08/2023

\*Santosh

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

1. The Appellant- Bhiwadi Integrated Development Authority, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Alwar.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 380/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar