

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. 67/JPR/2023
निर्धारण वर्ष / Assessment Years : 2012-13

Hemlata Sharma A-584, Vidhyut Nagar, Queens Road, Vaishali Nagar, Jaipur.	बनाम Vs.	Income Tax Officer Ward-1, Jhunjhunu.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: DLAPS 0745 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : None
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 19/08/2023
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/ld. CIT(A)"] dated 15.12.2022 for the assessment year 2012-13.

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

- "1. Assessing authority has made a wrong taken the income under section 69 for the purchase of immovable property which is not an income but only investment that is nor correct and not as per the law and not acceptable.*
- 2. The assessee had purchased a property for Rs. 1143800 out of their saving and accruals of funds as assessee was earning income from coaching education activities since last 10-12 years. The assessee is qualified Master*

of Arts and also have passed in B.Ad from reputed university and without considering this assessing authority has passed an order and nor considered same having their malicious intention.

3. That assessee has submitted all the supporting evidence for purchase of investment while case details were asked by income tax officer investigation and even had produce himself along with witness u/s 133 6 of IT Act but the same is not taken in positive by assessing authority and had not passed order under the income tax Act.”

3. Nobody appeared on behalf of the assessee in spite of giving the opportunity, therefore, the Bench decided to dispose off the appeal after considering the contention of the Ld. Departmental Representative and the material placed on record.

4. Brief facts of the case are that the notice u/s 148 of the act was issued on 26.03.2019 and duly served after recording reasons u/s 147 of the I.T. Act by the AO. The reassessment was completed on 03.12.2019 at an assessed income of Rs. 11,43,890/-. On perusal of assessment order it is observed that the addition was made on account of investment in cash for purchasing immovable property u/s 69B of the Act amounting to Rs. 11,43,890/-. Accordingly, a sum of Rs. 11,43,890/- was added back to the income of the assessee.

5. 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 10.01.2021, 31.03.2022, and 04.11.2022 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 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. During the course of appellate proceedings vide notice dated 10.01.2021, 31.03.2022 and 04.11.2022 the appellant was requested to file reply. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings I did not comply with the notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.

4.1 The Hon'bleITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.

5. In the instance of the case the RTMENT appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed an income of Rs. 11,43,890/- on account of Investment in cash for purchasing immovable property u/s 69B of the Act amounting to Rs. 11,43,890/-. Since the appellant failed to substantiate appellant's claim and addition made by the Assessing Officer of Rs. 11,43,890/- is hereby confirmed.

6. Ground No. 1, 2 and 3 of the appeal are dismissed.”

6. Aggrieved by the ld. CIT(A) order, the assessee is before us.

7. 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 ld. DR and perused the materials available on record. The Bench noted that the AO and the ld. CIT(A) have passed the ex-parte order and the assessee is deprived off to contest the case before the lower authorities. The ld. AR for the assessee fail to produce documentary evidence/submission in response to the appeal filed by the assessee hence, the order passed in both proceedings are ex-parte. Taking into consideration the present facts and circumstances of the case, we feel to remand back to the AO admitting the evidences filed before us. In the Interest of natural justice, we direct the Assessing Officer to take a consistent view of the matter after considering the submission of the assessee for the year. It is undisputed fact that the assessee was granted several authorities either by the ld. CIT(A) or by the AO to argue the case but the assessee remained non-cooperative and negligent in pursuing his case on the dates of hearing of the appeal for which

the Bench awards cost of Rs. 2,000/- 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 and thus the appeal of the assessee is restored to the file of the AO 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 assessment proceedings before the AO. Thus the appeal of the assessee is allowed for statistical purposes.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the A.O. shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by A.O. 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 31/08/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 31/08/2023

*Santosh

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

1. The Appellant- Hemlata Sharma, jaipur.

2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Jhunjhunu.
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. 67/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar