

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. 388/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Aloke Goswami Flat No. 1000 Block-S, Hill View Society Thara, Tijara	बनाम Vs.	Income Tax Officer, Ward, Bhiwadi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AMKPG 9349 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Krishna
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 13/09/2023
उदघोषणा की तारीख / Date of Pronouncement : 21/09/2023

आदेश / ORDER

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 09/05/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2011-12 which in turn arise from the order dated 10.12.2018 passed under section 144 r.w.s. 147 of the Income Tax Act, by ITO, Bhiwadi.

2. The assessee has marched this appeal on the following

grounds:-

"1 Under the facts and the circumstances of the case and in law, the order dated 09.05.2023 passed by the Learned Commissioner of Income Tax (Appeal), Income Tax Department (hereinafter referred to as "Ld. CIT (A)") u/s 250 of the Income Tax Act, 1961 ["the Act"] is perverse, arbitrary, without jurisdiction and bad in law.

2. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing the order u/s 250 of the Act without providing opportunity of being heard and passing an ex-parte order.

3. Under the facts and circumstances of the case and in law, Ld. CIT (A) and Ld. AO has erred in passing the ex-parte order and sustaining the impugned addition of Rs.23,23,280/-.

4. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in sustaining addition of Rs. 21,10,000/- u/s 69A of the Act.

5. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in sustaining addition of Rs. 2,12,182/- on Account of salary income and Rs. 1,094/- on account of interest from HDFC Bank.

6. The appellant craves leave to add, amend, alter, revise and modify any of the grounds of appeal on, before or in the course of hearing of the appeal."

3. The fact as culled out from the records is that the assessee has not filed his return of income for the year under consideration. As per ITS data/details available with the department, the Id. AO noticed that the assessee has deposited cash aggregating amount of Rs. 37,76,000/- in his saving bank account maintained with HDFC Bank Ltd and the assessee also received salary (other than Govt. Employees) amount of Rs. 2,12,182/-. As the assessee has

not filed ITR for the relevant year proceedings u/s 147 of the Act was initiated after recording proper reasons and notice u/s 148 was issued to the assessee on 29.03.2018 and the same was duly served to the assessee through affixture on the available addressee of assessee. The assessee did not respond to the notice issued and did not furnish the reasons as to why cash deposit in saving bank account should not be treated as unexplained money u/s 69 of the Act ultimately due to none appeared or non compliance, the assessment order passed u/s 144 read with section 147 of the Act making addition of Rs.21,10,000/- on account of cash deposit at Rs. 1,094/- added on account of saving bank account and Rs. 2,12,182/- was added on account of salary income and thereby the assessment was completed ex-party.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised even before Id. CIT(A)/NFAC, the assessee did not respond to the various notices issued, the relevant finding of the Id. CIT(A)/NFAC on the issue noted as under:-

“In the present appeal also neither the appellant nor his AR could have furnished/uploaded any evidence in support of his claim raised in the grounds of appeal nor had any compliance filed against above notice dated 20.04.2023. In view of above discussion, I am unable to found any evidence and logic in support of appellant’s claim stating AO’s action being erroneous. Rather the submission of the appellant vis-à-vis grounds of appeal is treated as ambiguous and baseless.

In view of the discussion in preceding paragraph, I find that AO was justified in completing assessment after addition of Rs. 23,23,276/- as above u/s 144 of the IT. Act. Considering above the said additions stand confirmed.

5. Conclusion: In the result, the appeal of the appellant is Dismissed.”

5. Aggrieved from the said ex-party order of the Id. CIT(A), assessee preferred an appeal before this tribunal on the grounds as reiterated here in above in para 2. A propose to the grounds so raised the assessee has filed a paper book containing the following evidences in support of the contentions so raised:

S. No.	Particulars	Submitted before	Page No.
1	Copy of notice issued u/s 148 of the Act dated 29.03.2018	Ld. AO	1
2	Copy of reasons recorded	Ld. AO	2
3	Copy of the sale deed	Ld. CIT(A), NFAC	3-12
4	Copy of the bank statement reflecting cash deposit	Ld. AO	13-20
5	Copy of purchase deed	Ld. CIT(A), NFAC	21-32
6	Copy of notice issued by Ld. NFAC dated 20.04.2023	Ld. CIT(A), NFAC	33-34
7	Copy of reply submitted on 09.05.2023 in response to notice dated 20.04.2023	Ld. CIT(A), NFAC	35-37

Relying on the above document so filed, the Id. AR of the assessee prayed that though both the orders of lower authorities are ex-parte but looking to the fact that the assessee has sold the house property and received the cash and the said cash was deposited in his HDFC Bank account. From that money the assessee also purchased the residential property. Therefore, if the assessee allowed one more opportunity, he may submit the details so as to concede the merits of the case, even though the assessee may be lethargic but in the interest of justice, the assessee may please be allowed one more opportunity to plead the merits of his case.

6. Per contra, the Id. DR objected to the prayer of the assessee and heavily relied upon the finding of lower authority and prayed that the assessee has not complied to the notices and his prayer to set aside the case does not require to be entertained.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee is non government salaried employed. Though the Id. DR objected to the prayer of the assessee but looking to the fact of the case that

assessee being small person working in private organization has sold his house property and deposited the cash into bank account and from that money purchased the property again. We find force in the arguments of the Id. AR of the assessee that if the arguments placed if tested and verified by the Id. AO then in that case the cash deposited of Rs. 21,00,000/- can considered as explained and only chargeability to be sealed and allowability of the deduction of section 54 of the Act on account of purchase of house property to be verified by the Id. AO looking to the various case laws of the Hon'ble Apex Court that the assessee should not be deprived of the justice, and he should be heard on merit rather than to dismiss the appeal on the technical reasons.

7.1 Considering that prayer of the assessee, we find force in the arguments advanced by the Id. AR of the assessee and considering the totality of the facts we consider deem fit to remand back the matter before the Id. AO to decide afresh on merit. Therefore, considering that contentions and ongoing through the orders of the lower authorities we are of the considered view that the assessing officer should hear the assessee's submission on merits after affording proper opportunity of being heard and pass

speaking order in the matter in accordance with the law. At the same time assessee is directed to represent and present all the facts before the assessing officer and should not ask for the adjournment on frivols grounds. At this stage we remand back the issues raised without commenting upon the merits of the case and the Id. AO is directed to complete the assessment as per law.

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

Order pronounced in the open Court on 21/09/2023

Sd/-
(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/09/2023

*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Aloke Goswami, Tijara, Rajasthan
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward, Bhiwadi
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. 388/JP/2023 }

आदेशानुसार / By order
सहायक पंजीकार / Asst. Registrar