

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 529/JP/2023
निर्धारणवर्ष/AssessmentYear :2011-12

M/s. J.R. Industries H-36-37-38, RIICO Industrial Area Agra Road, Dausa	बनाम Vs.	The ITO Ward- Dausa Dausa
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAEFJ 4186 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rohan Sogani CA
राजस्व की ओरसे / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 27/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 04 /10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 13-06-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 wherein the assessee has raised the following grounds of appeal.

“1. In the facts and circumstances of the case and in law, Id CIT(A)/National Faceless Appeal Center (NFAC) has erred in passing the order, in the first appellate proceedings, ex-parte, without providing adequate opportunity to the assessee firm, to present its case and make appropriate submissions. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may be please be granted by

quashing the entire order passed by the Id. CIT(A)/NFAC, being passed against the principles of natural justice.

2. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in, confirming the action of the Id. AO in reopening the case of the assessee firm under Section 147 of the Income Tax Act, 1961. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire reassessment proceedings initiated by the Id. AO and confirmed by the Id CIT(A)/NFAC.

3. In the facts and circumstances of the case and in law, Id CIT(A)/NFAC has erred in, confirming the action of the Id AO of making addition of Rs.8,55,000, to the income of the assessee firm, in the course of reassessment proceedings, by completely relying on the statement recorded of a third party i.e. Shri Vipin Garg, for the year under consideration. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by the Id. AO and confirmed by the Id. CIT(A)/NFAC.

4. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming action of the Id. AO in not providing to the assessee firm, an opportunity to cross examine the person, whose statements have been relied upon by the Id. AO. The action of the Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the re-assessment order being illegal and against the principal of natural justice and thereby deleting the entire addition made by the Id. AO which is also confirmed by the Id. CIT(A)/NFAC

5. In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in, confirming the action of the Id AO, in making addition of Rs.8,55,000 to the income of the firm, without providing the requisite material used against the assessee firm. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the re-assessment order being illegal and against the principal of natural justice and thereby deleting the entire addition of Rs. 8,55,000 made by the Id. AO which is also confirmed by the Id. CIT(A)/NFAC”

2.1 At the outset of the hearing, the main grievance of the Id. AR of the assessee in its ground of appeal is that Id CIT(A)/National Faceless Appeal Center (NFAC) has erred in passing the order, in the first appellate proceedings, ex-parte, without providing adequate opportunity to the assessee firm, to present its case and make

appropriate submissions. The action of the ld. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case and relief may be please be granted by quashing the entire order passed by the ld. CIT(A)/NFAC, being passed against the principles of natural justice.

2.2 On the other hand, the ld. DR submitted that the ld. CIT(A) has rightly dismissed the appeal of the assessee in view of the records available before him at the time of hearing of the appeal of the assessee.

2.3 Apropos Ground No. 1 to 5 of the assessee, the relevant facts as emerges from the order of the ld. CIT(A) are as under by dismissing the grounds of appeal of the assessee:-

‘6.2.1....6.2.6In impugned case, the AO has taken into consideration all legal steps before initiating action in terms of section 147/148 of I.T. Act. The reasons for reopening was based on the information received from the ADIT (inv.). Jaipur regarding assessee's involvement in providing accommodation entries by issuing bogus bills. No assessment u/s. 143(3) of I.T. Act was ever carried out in the case, hence, proviso to section 147 of I.T. Act is not applicable as the case was reopened after 4 years from the end of the relevant assessment year. In impugned case, the AO was supposed to issue notice by 31.3.2018, however, the notice was issued on 30.03.2018 after taking approval from Competent Authority, which is well within the time. Thereafter notices u/s.143(2)/142(1) were issued which is in accordance with the decision of Hon'ble Supreme Court in the case of Hotel Blue Moon as duly relied upon by the assessee. The assessee has not brought on record any cogent material suggesting that notices u/s.143(2)/142(1) were not issued within the stipulated time. Therefore, having considered entire facts of the case and position of law on this issue, the action of AO is found to be correct as it is based on proper appreciation of facts and following all the conditions as laid down in terms of section 147/148 of I.T. Act. Accordingly, the action of AO is upheld and objection raised through grounds of appeal nos. 1 is dismissed. As a result, grounds No.1 of appeal is dismissed.

7. Ground No.2 of the appeal is against the addition of Rs.8,55,000/- made by the A.O. The fundamental question involved is that whether or not the AO was justified in making the addition of Rs 8,55,000/- as income on account of bogus sales in the hands of the assessee, and the most critical thing to be examined in this regard is explanation of the assessee with respect to these trading transactions. There is no, and there cannot be any, dispute on the fundamental legal position that the onus is on the assessee to prove 'bonafides' or 'genuineness of the transactions of sale and purchases recorded in his books of accounts. The burden is thus on the assessee to prove the nature and source of transactions, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the assessee and on how acceptable is the explanation so given by the assessee. The next question is as to what the kind of explanation that the assessee is expected to give.

7.2.....7.4...

7.5 An Appellate Authority cannot be superficial in its assessment of the genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted / placed by the appellant on the record but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. There may be a difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the appellate authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidence. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact-finding authority is made conclusive by law. This faith in the appellate authorities by Hon'ble Courts above makes the job of the appellate authorities even more onerous and demanding and, it does require an appellate authority to take a holistic view of the matter, in the light of surrounding circumstances, the preponderance of probabilities and ground realities, rather than being swayed by the not so convincing but apparently in order, documents and examining them, in a pedantic manner, with the blinkerson.

7.6 It would not be out of place to mention here that the phenomenon of shell/bogus entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of the financial world, about modus operandi of entry operators running shell entities. There were, therefore, not many questions raised about the genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well.

7.7 What essentially follows is that genuineness of a transaction is one of the most important, foundational and critical factors in determining whether explanation given by the assessee is acceptable or not is its genuineness and this genuineness is to be examined in the light of ground realities, rather than random extracts from judicial precedents isolated from their true context as an exposition of law on standalone basis Undoubtedly,

that is a subjective exercise, but that cannot be excuse enough to not to probe the matter properly for taking a well-considered call on whether the impugned share application monies received, in this case, a genuine transaction or not.

7.8 With these observations as made above, the actual facts of these cases are to be examined. There was an action conducted by the Investigation Wing, Jaipur, in the case of one Shri Vipin Garg, wherein, the appellant was identified as one of the accommodation entry providers, issuing bogus bills to various beneficiaries.

7.9 The appellant is absolutely silent regarding the genuineness of transactions undertaken by him with M/s Shri Ram Trading Company. Having considered entire facts of the case and evidences brought on record, and in the absence of any fresh evidence submitted by the appellant, I find no infirmity in the order of AO, hence, addition made of Rs. 8,55,000/- is confirmed. As a result, Ground No.2 of the appeal is dismissed.

8. In the result, the appeal is dismissed. Order passed u/s.250 r.w. s 251 of the Act.”

2.3 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the case of assessee was reopened by issuing a notice u/s 148 of the Act dated 30.03.2018 on the basis of information received from ADIT (Investigation), Jaipur regarding involvement of assessee in bogus trading transactions. It was informed that a party mainly M/s. Shri Ram Trading Company has booked bogus purchase bills in their account by taking accommodation entries from the assessee. A total of Rs.34,20,000/- worth bogus purchase were booked by M/s. Shri Ram Trading Company in the name of the assessee. The AO held the said sales as bogus and estimated the profit @ 25% and completed the assessment by making an addition of Rs.8,55,000/- (@25% of bogus sales of Rs.34,20,000/-). It may be noted that during the course of appellate proceedings, sufficient number of opportunities were given to the assessee by the ld. CIT(A) as none of which was complied with as recorded in para 4 of ld.

CIT(A)'s order. The Bench noted that the ld. CIT(A) passed the ex-parte order in view of the materials available on record before him. It is not imperative to repeat the facts of the case as has been elaborately discussed hereinabove by the lower authorities. It is worthwhile to mention that the Bench does not want to come into fuss on this issue of not providing opportunity of hearing to the assessee as the main object of the Bench is to deliver justice to the assessee in case anything remained against the assessee for want of proper submission and credible documentary evidence before the lower authorities. The Bench noticed that the ld. AR of the assessee could not advance / submit the documents concerning the issue in question before the lower authorities to safeguard the interest of the assessee in spite of various opportunities by lower authorities. From the conspectus of the above case, the Bench feels that one more chance should be given to the assessee as prayed by the ld. AR of the assessee to safeguard the interest of the justice and thus the appeal of the assessee is restored to the file of the ld. AO to decide it afresh but by providing adequate opportunity of being heard to the assessee. Thus the appeal of the assessee is allowed for statistical purposes.

3.1 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.

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

Order pronounced in the open court on 04 /10/2023.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04 /10/2023

Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- M/s. J.R. Industries, Dausa
2. प्रत्यर्थी / The Respondent- The ITO, Ward, Dausa
3. आयकरआयुक्त / The Id CIT (
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.529/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar