

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

श्री संदीपगोसाई, न्यायिकसदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 526/JP/2023  
निर्धारणवर्ष/Assessment Year :2016-17

Shri Sai Construction C-8, Batheja & Company, RIICO Chowk Opp. Mini ESI Hospital, Bhiwadi, Alwar	बनाम Vs.	The ITO Bhiwadi Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACMFS 5753 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal, CA  
राजस्व की ओर से / 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 ld. CIT(A) dated 16-06-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2016-17 wherein the assessee has raised the following grounds of appeal.

“1. That the ld. CIT(A) has erred seriously in law and on facts in sustaining the order of the AO without considering the facts and circumstances of the case.

2. That the Id. CIT(A) has erred on facts in sustaining the disallowances made by the AO on account of following expenses claimed as business expenditure by the appellant.

- (i) Sanitary expenses 100% disallowance Rs.4,18,904/-
- (ii) Misc. expenses 100% disallowance Rs.s41,230/-
- (iii) Shattering expenses 10% disallowance Rs.6,84,494/-‘

2.1 At the outset of the hearing the Bench noted that the Id. AR of the assessee vide application dated 22-09-2023 requested for adjournment of hearing of the case with following prayers.

‘‘Since the necessary documents required for arguing the instant appeal are awaited and, therefore, it shall not be possible to argue the matter on the date fixed for hearing. Your honour is, therefore, sincerely requested to grant adjournment for next suitable date.’’

2.2 The Id. DR objected to the adjournment application raised by the Id. AR of the assessee, with the prayer that in spite of various opportunities by the Id. CIT(A), the assessee did not bother to respond to any of the notices which indicates that the assessee was not willing to pursue the case before the Id. CIT(A) who based on the materials available on record dismissed the appeal of the assessee.

2.3 We have heard both the parties and perused the materials available and also noted that submissions raised by the Id. DR is tenable and thus the adjournment application raised by the Id. AR of the assessee is rejected and ponder to decide the appeal on merit.

3.1 As regards the grounds of appeal of the assessee, the Bench noted that the assessee firm had filed its return of income declaring total income at Rs.11,44,400/- on 14-10-2016. The AO issued notice u/s 143(2) on 5-07-2017 requiring the assessee to file evidence/ information in support of return of income on or before 19-07-2017. From the assessment order, it is noted that the AO issued various notices to the assessee u/s 142(1)/143(2) for filing reply but no reply had been filed by the assessee. The ld. AR of the assessee filed application before ITO, Ward 1(1), Alwar for transfer of file from Alwar to ITO Ward- Bhiwadi as jurisdiction over the case lie at Bhiwadi and thereafter the case was transferred to AO's office on 30-10-2018 who issued notice u/s 142(1) asking the assessee to file requisite information on or before 14-11-2018. In response thereto, the AR of the assessee filed detailed information which was examined and found defects by the AO as mentioned in the assessment order dated 18-12-2018. Subsequently a show cause notice u/s 142(1) dated 10-12-2018 was issued to the assessee to file requisite information or before 11-12-2018. In response, thereto, the ld.AR of the assessee filed reply through e-mail on 13-12-2018 which was not found convincing and thus the AO as mentioned page 3 in the assessment order made following additions.

Disallowance of Sanitary expenses	Rs.4,18,904/-
Disallowance of Misc. expenses	Rs. 41,230/-
Disallowance of Shattering expenses	<u>Rs. 6,84,494/-</u>
Total	Rs. 11,444,628/-

3.2 In first appeal, the ld. CIT(A) has confirmed the action of the AO by observing as under:-

“6.1 Ground No. 1 is raised regarding the disallowance made under the head ‘Other Expenses’ to the extent of Rs.11,44,628/-.

As the AO was not satisfied with the information/particulars furnished by the AR of the assessee with regard to the expenses claimed as business exigency during the course of the assessment proceedings, certain expenses as claimed as ‘sanitary expenses, misc. expenses and shattering expenses remained not fully verified and in view of the above the said amount of Rs.11,44,628/- was disallowed out of the total amount of expenses claimed as discussed in the impugned assessment order. The appellant failed to establish the genuineness of its claim during the course of appeal proceedings too in spite of availing reasonable number of opportunities afforded to explain/ substantiate the same. In view of this, Ground No. 1 is dismissed for want proper submission with credible documentary evidences.”

3.3 During the course of hearing, the ld. AR of the assessee also prayed before the Bench to give one more chance to submit proper submission with credible documentary evidence before the AO to square up the issue in question.

3.4 On the other hand, the ld. DR supported the order of the ld.CIT(A).

3.5 We have heard both the parties and perused the materials available on record. It is not imperative to repeat the facts of the case as has been elaborately discussed hereinabove by the lower authorities. The 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 Id. 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 Id. AR of the assessee to safeguard the interest of the assessee and thus the appeal of the assessee is restored to the file of the 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.

3.6 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)  
न्यायिक सदस्य / Judicial Member

Sd/-

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

जयपुर / Jaipur  
दिनांक / Dated:-

04 /10/2023

Mishra

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

1. The Appellant- Shri Sai Construction, Alwar
2. प्रत्यर्था / The Respondent- The ITO, Bhiwadi.
3. आयकर आयुक्त / The Id CIT (
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.526/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar