

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

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 431/JP/2023  
निर्धारणवर्ष / AssessmentYear :2012-13

Shri Laxman Singh Rathore B-98, Acharya Vinobha Bhave Nagar, Nursery Circle, Vaishali Nagar, Jaipur	बनाम Vs.	The ITO Ward 5(4) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACMPR 8613 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : None  
राजस्व की ओरसे / Revenue by : Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 04/10/2023  
उदघोषणा की तारीख / Date of Pronouncement: 06 /10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 12-06-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in passing order ex-parte, i.e. without affording assessee with adequate opportunity of being heard. Appellant prays that order so passed is against the principles of natural justice and deserves to be set aside.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in confirming the action of the AO in making disallowance of Rs.2,44,250/- by not accepting the agriculture income declared by the assessee by burshing aside the submission made and evidences adduced.

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has grossly erred in confirming the addition of Rs.9,75,000/- made by the AO on account of cash deposits arbitrarily.

2.1 During the course of hearing, none attended in the hearing of the case on behalf of the assessee nor any adjournment application was filed in spite of notice to the last known address of the assessee. Hence, the Bench decided to dispose off the case of the assessee on merit by taking into consideration the materials available on record.

2.2 On the other hand, the ld. DR submitted that the assessee has recalcitrant attitude. The prayer of the assessee is to give one chance under the guise of adequate opportunity and if the assessee does not cooperate then the result will again come same. Based on that arguments ld. DR supported the order of the lower authorities.

2.3 The Bench has heard the ld. DR and perused the materials available on record. Brief facts of the case are that the assessee is an individual wherein the proceedings of the cases were started u/s 148 of the Act after seeking approval

from the PCIT-2, Jaipur. It is noted from the assessment order that information was received to the effect that the assessee had deposited cash amounting to Rs.17.25 lacs in his account during the year F.Y.2011-12 relevant to A.Y. 2012-13 and not filed return of income for A.Y. 2012-13. In compliance of notice u/s 148, the assessee filed ITR declaring total income of Rs.1,85,860/- from salary and other sources. Accordingly, notices were issued to the assessee. During the assessment proceedings, the assessee submitted that he has earned Rs.2,44,250/- as agriculture income but as no documentary evidence were submitted, therefore, agriculture income as shown in ITR of Rs.2,44,250/- was disallowed and added to the total income of the assessee. The AO held that the assessee deposited Rs.9.75 lacs out of undisclosed sources of income and the same was added to total income of the assessee. It is also noteworthy to mention that the case of the assessee was fixed for hearing before the AO on 18-10-2019 but on the date of hearing neither anyone attended nor filed any adjournment. Thus the AO noted that it is proved that the assessee had submitted documents without any actual factual facts to hide source of cash deposit. The assessee submitted girdavari report and jamabandi of agriculture land but he failed to furnish about share of assessee in the agriculture land. Hence, the ld. AO made disallowances of Rs.2,44,250/- on account of

agriculture income and addition of Rs.9.75 lacs on account of unexplained cash deposits. In first appeal, the ld. CIT(A) dismissed the appeal of the assessee and upheld the order of the AO being non-attending the case by the assessee on the date of hearing and paucity of any evidence supporting the assessee's ground for which it was difficult for the ld. CIT(A) to take a view on merit against the assessment order passed by the AO. Conclusively, the ld. CIT(A) confirmed the action of the AO by observing at para 7.8 to 9 of his order.

“7.8 The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dt. 19.12.2001) in the case of Whirlpool of India Ltd. v. DCIT had dismissed appeal for not attending hearing. inferring that assessee is not interested in prosecuting of appeal. Thereafter in another decision in the case of Chadha Finlease Ltd, V. ACIT (ITA No.3013/Del/2011date of order 20.12.2011) the Hon'ble ITAT had dismissed the appeal for non-attending hearing inferring that the assessee is not interested in pursuing the appeal. The Hon'ble Delhi ITAT Bench in CIT V. Multiplan Ltd. 38 ITD 320 has also reiterated the same. In view of the aforesaid discussions and relevant judicial pronouncements, the appeal filed is liable to be dismissed without going into merits of the case.

8.0 In view of the discussion above and facts of the case, it seems that the appellant has nothing to add in this matter, despite getting five (05) opportunities. The appellant has only filed an appeal in the form No.35. The appellant has not filed any written submission/document with respect to ground raised in Form-35. In the given circumstances and paucity of any evidence supporting the appellant's ground of appeal, it is difficult to take a view on merits against the Assessment order passed by the AO.

8.1 Therefore, it is held that no interference is required to the impugned addition made by the AO. The grounds of appeals are therefore dismissed and the Assessment order is upheld.

9.0 In the result, for statistical purposes, appeal of the department is dismissed.”

The Bench has taken into consideration both the orders i.e. of Id. CIT and AO's order. However, the Bench does not want to go into merit of the case, but it is imperative that the assessee must be provided adequate opportunity of being heard by the AO. In this view of the matter, the Bench feels that the assessee should be given one more chance to contest the case before the AO and assessee is directed to produce all the relevant papers concerning his appeal to settle the dispute raised hereinabove. As regards the contention of the Ld. DR that considering therecalcitrant attitude of the assessee if the assessee do not come forward with the details in a reasonable time and opportunity granted by the Id. AO then the Id. AO may also levy the penalty for non-compliance of the notice in accordance with the law.

2.4 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.

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

Order pronounced in the open court on 06/10/2023

Sd/-

(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalashmi)  
न्यायिकसदस्य / Judicial Member

Sd/-

( राठोडकमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 06/10/2023.

**Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Laxman Singh Rathore, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 5(4), Jaipur
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 431/JP/2023}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar