

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

Sh. Ranjeet Singh Village Sare Khurd, Tehsil Tijara, District, Alwar	बनाम Vs.	ACIT Circle-01, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BTUPS 1352 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (FCA)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 10/10/2023  
उदघोषणा की तारीख / Date of Pronouncement : 17/10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre (NFAC), Delhi [ Here in after referred as NFAC ] for the assessment year 2011-12 dated 29.05.2023, which in turn arises from the order passed by the ITO, ACIT, Circle-01, Alwar passed under Section 144 r.w.s 147 of the Income tax Act, 1961 (in short 'the Act') dated 29.10.2018.

2. The assessee has marched this appeal on the following

grounds:-

*“1. The Ld. CIT(A), NFAC has erred on facts and in law in deciding the appeal ex-parte without providing adequate opportunity of hearing to the assessee and ensuring service of notice in as much as the assessee being illiterate did not receive the notices issued by CIT(A).*

*2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 10,35,000/- u/s 69A of the IT Act, 1961 by treating the cash deposit in the bank account to this extent as unexplained money of the assessee whereas the same is out of the sale proceeds of agricultural land.*

*3. The appellant craves to alter, amend & modify any ground of appeal.*

*4. Necessary cost be awarded to the assessee.”*

3. The fact as culled out from the records is that as per information available with the department, the assessee has deposited cash, amounting to Rs. 10,35,000/- in his bank Account, during the relevant year. On verification of record revealed that the assessee has not filed his ITR, therefore, the cash deposited in the Bank Account of the assessee remained unverifiable. Request letters to file reply regarding transaction done were issued to the assessee but assessee had not made any compliance. Therefore, the sources of cash deposits and taxability thereof could not be ascertained. The resultant to escapement assessment to the tune of Rs. 10,35,000/-. Therefore, the reasons were recorded and notice u/s. 148 was issued by taking prior approval as per law to the assessee. The assessee remained non-compliant in the

assessment proceedings. Since, the assessee has deposited cash to the extent of Rs. 10,35,000/- and interest was received in the bank account for Rs. 12,158/- was considered as income of the assessee and the assessment was completed u/s. 148 r.w.s. 144 of the Act.

4. Aggrieved from the said order of the assessment the appeal was preferred before the Id. CIT(A) wherein the assessee was given four notices but has not submitted any submission in the support of the contentions so raised so the Id. CIT(A) has dismissed the appeal of the assessee based on the merits as per the records available.

5. Feeling dissatisfied with the order of the Id. CIT(A) the assessee preferred the present appeal. Apropos to the grounds so raised the Id. AR of the assessee has placed their written submission as extracted here in below;

1. At the outset it is submitted that none of the notices issued by CIT(A) came to the knowledge of assessee as he is illiterate and not computer savvy. Further the first notice was issued on 22.01.2021 which was during the Covid period. Thereafter notices issued on 17.04.2023, 25.04.2023 & 15.05.2023 were issued within very short time period. Therefore, order passed by CIT(A) dismissing the appeal has caused injustice to the assessee more particular when the source of cash deposit in the bank account is otherwise verifiable as explained hereunder.

2. It is submitted that assessee vide sale deed dt. 20.09.2010 (PB 2-8) has sold an agricultural land for Rs.7 lacs. Thereafter vide sale deed dt. 26.04.2011 (PB 9-15) he sold another agricultural land for Rs.4 lacs against which advance of Rs.3.50 lacs was received on 29.09.2010 (PB 16). Thus source of cash deposit of Rs.10.50 lacs on 29.09.2010 (PB 1) is out of the sale proceeds of agricultural land. Hence source of cash deposit is fully explained.

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

5.1 The Id. AR of the assessee in addition to the above written submissions submitted that before Id. CIT(A) four notices were issued to the consultant of the assessee. But the consultant has not informed to the assessee and assessee being illiterate and not computer savvy and reside in village area, the assessee could not plead his case on merits. The assessee intend to explain deposit of cash into the bank account, based on the fact that the same is on account of sale proceeds of the property. Therefore, in the interest of justice, the assessee prayed that even the order passed u/s 144 read with section 148 was ex-party one more chance be given to the assessee in the interest of justice, considering the merits of the case.

6. Per contra, the Id. DR objected to the prayer of the Id. AR and submitted that both the order of lower authorities is ex-party. Therefore, the prayer at this stage, by set a side again to the lower

authority is not correct approach of the assessee. Thus, the assessee's appeal is not maintainable. Alternatively, he submitted that if the bench is intended to set aside the issue, then it should be with the cost.

7. In the rejoinder of Id. AR of the assessee submitted that the assessee had already paid a sum of Rs. 10,000/- as cost of filing the present appeal and he being small assessee the cost may be waived.

8. We have heard the rival contentions and perused the material placed on record. The bench noted that both the orders of lower authorities are on ex-party. The Id. AR of the assessee submitted that the assessee intended to explain the source of cash deposit into bank account being the proceeds of the sale of property. Thus, considering the merits of the case and as the Id. AO has added to whole cash deposited into bank account as income of the assessee seems to be reconsidered after hearing the assessee on its merits. After perusal of the requisite records before the AO. Based on these set of facts we are inclined to accept the request of the Id. AR of the assessee to set aside the case to the file of the Id. AO to decide the case of the assessee on merits after giving proper

opportunity of being heard to the assessee. At the same time, the assessee is directed to represent and present all the facts before the Id. AO and should not ask for adjournment on trifles grounds. At this stage, we remand back the matter without commenting upon the merits of the case and Id. AO is directed to pass an order in accordance with law.

In terms of these observations, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/10/2023

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:- 17/10/2023

\*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Sh. Ranjeet Singh, Alwar
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, Alwar
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. 439/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar