

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 577/JP/2023
निर्धारण वर्ष / Assessment Year : 2009-10.

Shri Krishan Kumar Yadav S/o Data Ram Yadav, VPO – Gothra, Teh – Tijara, Alwar.	बनाम Vs.	Income Tax Officer, Ward Bhiwadi, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AGMPY 7491 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal, CA

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 19/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/10/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 13.07.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2009-10. The assessee has raised the following grounds :-

"1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in passing order ex parte arbitrarily without providing proper opportunity to the assessee.

1.1 That the Id. CIT(A) has further erred in ignoring the fact that in the present case, physical hearing were taken place and assessee has filed the replies alongwith additional evidences on which remand report was also

sought thus the action of Id. CIT(A) in holding that assessee filed no reply is contrary to facts and thus consequent order deserves to be set aside.

2. On the facts and in the circumstances of the case, Id.CIT(A) has grossly erred in confirming the action of the AO in completing the assessment u/s 147 r.w.s. 144 without proper service of notice u/s 148 thus the proceedings so initiated deserves to be hold bad in law and consequent order passed deserves to be quashed.

3. On the facts and in the circumstances of the case, the Ld. CTT(A) has grossly erred in confirming the addition of Rs. 26,31,000/- made u/s 68 on account of deposit in the bank account arbitrarily without appreciating the source of the same.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in making addition of Rs. 16,377/- being the amount of interest credited in the bank arbitrarily.

5. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

The appeal filed by the assessee is delayed by 1 (one) day. The assessee has filed an application for condonation of delay, which reads as under :-

- “ 1. That the order was passed by NFAC, Delhi on 13.07.2023.
2. That the order was received by assessee who resides in the VPO – Gothara, Teh – Tijara, Alwar and due to remote location of assessee, there was difficulty in arranging appeal documents and delivering the same to the office of his counsel.
3. That the Counsel of assessee has filed the appeal as soon as office of the Counsel received all the documents pertaining to appeal.
4. Thus, it is submitted that the delay in filing the appeal is absolutely inadvertent and has occurred due to circumstances beyond the control of assessee.

5. That the assessee always has acted in bonafide and the delay is of only 01 days.”

2. Having considered the rival submissions as well as going through the contents of the application of the assessee, we are satisfied that the assessee has explained a reasonable cause for not filing the appeal within the period of limitation. Accordingly, we condone the delay of 1 (one) day in filing the present appeal.

3. The brief facts of the case are that the assessee is an Individual. As per the non-PAN Air information available with the Department, it was found that the assessee had deposited total amount of Rs. 26,31,000/- in cash during the F.Y. 2008-09 relevant to assessment year 2009-10 in his savings bank account maintained with SBBJ, Kishangarh Bas Branch, Alwar. Letters were issued on 21.08.2012 and 20.10.2015 under section 133(6) of the IT Act, 1961 but assessee have not responded to the said letters, therefore, taxability of above transactions could not be verified/ascertained. Thereafter, after recording reasons in writing to the satisfaction and belief of the AO that assessee's income to the extent of Rs. 26,31,000/- chargeable to tax has escaped assessment and after obtaining approval u/s 151(1) from the Pr. CIT, Alwar, the case of the assessee was reopened by issue of notice u/s 148 on 29.03.2016. Notice under section 142(1) along with query letter was issued on 29.09.2016 requiring the assessee to furnish return of income in compliance to notice issued on 29.03.2016 under section 148. But no compliance was made to the said notices. Therefore, a final show cause letter was issued vide no. 1445 dated 04.11.2016 giving the assessee a final opportunity to file objection/clarification in respect of the cash deposit of Rs. 26,31,000/- on or before

25.11.2016. On this day also neither any one attended nor furnished the information. Thus the AO observing that the assessee is not interested to furnish any evidence/explanation in support of his case, completed the assessment ex-parte under section 144 of the IT Act, 1961 i.e. best judgment assessment on the basis of material available on record, at a total income of Rs. 26,47,377/- by making addition of Rs. 26,31,000/- on account of undisclosed cash deposit in bank account and Rs. 16,377/- on account of undisclosed bank interest. Aggrieved by the assessment order, the assessee preferred appeal before the Id. CIT (A). Before the Id. CIT (A) also no one attended in response to notices sent and served on the assessee. Thus, the Id. CIT (Appeals) decided the appeal of the assessee ex-parte after considering the material available on record.

Now the assessee is in appeal before us.

3. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. Ground nos. 1, 1.1 & 2 are regarding upholding validity of assessment order passed under section 147 read with section 144 of the IT Act. On perusal of the records, we find that the AO issued a number of notices, however, the assessee has not responded to the notices issued under section 148/142(1) of the IT Act, 1961, and not furnished the required document/evidences in support of his case as required by the AO. At the appellate proceedings, the Id. CIT (A) issued various notices requiring the assessee to furnish documents/evidences in support of his case, but the assessee had neither responded to the notices nor filed any written submission in compliance to such notices issued, as under :-

Sr.No.	Date of Notice issued	Date of hearing	Remarks
1.	24.12.2020	12.01.2021	No Response
2.	01.11.2022	Enablement of Communication Window issued by NFAC	
3.	30.05.2023	14.06.2023	No Response
4.	23.06.2023	30.06.2023	No Response

The Id. CIT (A), therefore, following the various judicial pronouncements of Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharya, 118 ITR 461 (SC), Hon'ble Madhya Pradesh High Court in the case of Tukoji Rao Holkar vs. CIT, 223 ITR 480, Hon'ble Delhi High Court in the cases of CIT vs. Gold Leaf Capital Corporation Ltd. on 02.09.2011 in ITA No. 798 of 2009, and various other decisions of the Tribunal, opined that the *appellant is not willing to pursue the appeal and reserve his rights only mere filing of the memo of the appeal. Since the appellant has chosen not to attend the hearing and does not want to pursue any seriousness, I am left with no option but to decide the appeal on the basis of material available on records.* Thereafter, the Id. CIT (A) also dismissed the appeal of the assessee ex parte on the basis of material available on record.

4. Since the impugned order of the Id. CIT (A) was passed ex parte by upholding the assessment order passed under section 147 read with section 144 of the IT Act and thereby sustained the addition made by the AO on account undisclosed cash deposit in the bank account and undisclosed bank interest of Rs. 26,31,000/- and 16,377/- respectively, therefore, in the totality of facts and circumstances of the case and in the interest of justice, we are of the view that it will be reasonable to afford one more opportunity to the assessee to represent his case before the lower

authorities. We, therefore, set aside the ex-parte order of the Id. CIT (A) and restore the matter back to the file of the A.O. for fresh adjudication after providing a reasonable opportunity of being heard to the assessee. The assessee is granted one more opportunity to represent his case before the A.O. and directed to file necessary documents/evidences as required by the AO. In case the assessee fails to appear before the AO, the AO may decide the appeal on the basis of the material available on record.

4. As we have remanded the matter to the file of the AO for fresh adjudication after providing an opportunity to the assessee, the other grounds raised have become infructuous and the same are dismissed as being infructuous.

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

Order pronounced in the open court on 30/10/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/10/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Krishna Kumar Yadav, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO Ward 1(5), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 577/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar