

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. 516, 517 & 518/JP/2023  
निर्धारण वर्ष / Assessment Year : 2010-11.

Shri Jafar Khan, Kalani & Company, Chartered Accountants, 5 <sup>th</sup> Floor, Milestone Building, Gandhi Nagar Turn, Tonk Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward – 2, Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AHLPK 0080 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 26/10/2023

उदघोषणा की तारीख / Date of Pronouncement: 30/10/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These three appeals by the assessee are directed against separate orders all dated 19.05.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2010-11. The assessee has raised the following grounds :-

**ITA NO. 516/JP/2023:**

1. The Id. CIT (A), NFAC has erred on facts and in law in deciding the appeal of assessee ex-parte without issuing the notice at the address and email id mentioned in Form No. 35.

2. The Id. CIT (A), NFAC has erred on facts and in law in confirming the addition of Rs. 6,37,500/- by treating the investment made in Plot No. 121, Sanjay Nagar B, Jhotwara, Jaipur as unexplained investment.
3. The appellant craves to alter, amend and modify and ground of appeal.
4. Necessary cost be awarded to the assessee.

**ITA NO. 517/JP/2023:**

1. The Id. CIT (A), NFAC has erred on facts and in law in deciding the appeal of assessee ex-parte without issuing the notice at the address and email id mentioned in Form No. 35.
2. Under the facts & circumstances of the case, the order passed u/s 271(1)(c) is illegal & bad in law and be quashed.
3. The Id. CIT (A), NFAC has erred on facts and in law in confirming the levy of penalty of Rs. 1,36,000/- u/s 271(1)(c) of IT Act, 1961.
4. The appellant craves to alter, amend and modify and ground of appeal.
5. Necessary cost be awarded to the assessee.

**ITA NO. 518/JP/2023:**

1. The Id. CIT (A), NFAC has erred on facts and in law in deciding the appeal of assessee ex-parte without issuing the notice at the address and email id mentioned in Form No. 35.
2. The Id. CIT (A), NFAC has erred on facts and in law in confirming the levy of penalty of Rs. 10,000/- u/s 271(1)(b) of IT Act, 1961.
3. The appellant craves to alter, amend and modify and ground of appeal.
4. Necessary cost be awarded to the assessee.

All the appeals filed by the assessee are delayed by 24 days. The Id. A/R of the assessee has filed applications along with Affidavit of the assessee for condonation of delay. The reasons for delay are mentioned in the Affidavit are as under :-

- “ 1. That I am engaged in the business of plying & hiring of buses. I filed my return of income for AY 2009-10 declaring income of Rs. 1,38,000/-
2. That during the AY 2010-11 I purchased a residential house on 02.02.2010 for Rs. 6,25,000/- on which registration & other expenditure of Rs. 42,750/- was incurred. Thus the total cost of the property was Rs. 6,67,750/-.
3. That for AY 2010-11 I have not filed the return as my income was below the taxable limit. However, income tax department issued notice u/s 148 and in response thereto I filed the return declaring income of Rs. 1,21,080/-. However, AO completed the assessment ex parte u/s 144 by treating the investment of Rs. 6,37,500/- made in the house property as unexplained.
4. That against the said addition, I filed appeal before Id. CIT (A) on 28.07.2018. In Form No. 35 the address at which notice may be sent was given of M/s. Kalani & Company, Jaipur with e-mail id of [anuhal@kalanico.com](mailto:anuhal@kalanico.com). However, no notice was issued at that address and e-mail id.
5. That while browsing my e-portal on 02.08.2023 to know about the position of my appeal, it came to the notice of my counsel that appeal order and the penalty order has been passed National Faceless Appeal Centre (NFAC) ex-parte on 19.05.2023 by dismissing the appeal.
6. That since the said order came to the notice only on 02.08.2023, the present appeal is filed with a request to condone the delay of 24 days in filing the appeal from the date order (24 days) though from the date of knowledge of the order there is no delay.”

2. Having considered the rival submissions as well as going through the contents of the Affidavit of the assessee, we are satisfied that the assessee has explained a reasonable cause for not filing the appeals within the period of limitation. Accordingly, we condone the delay of 24 days in filing the present appeals.

**ITA NO. 516/JP/2023 :**

3. The brief facts of the case are that the assessee is an Individual. The assessee filed his return of income on 31.03.2011 declaring total income of Rs. 1,21,080/-. The AO issued notice u/s 148 on 24.03.2017 requiring the assessee to

furnish the return of income and subsequent notices under section 142(1) of the IT Act but since the assessee could not comply with these notices, AO on the basis of information that assessee has purchased a plot during the year at 121, Sanjay Nagar-B, Jhotwara, Jaipur for Rs. 6,37,500/- (Rs. 6,25,000 + 12,550) made addition for the same by treating it as investment made from undisclosed sources by passing an ex-parte assessment order dated 15.12.2017. Aggrieved by the assessment order, the assessee filed an appeal before the Id. CIT (A), who observed that assessee has not complied with the notices issued. Accordingly, the Id. CIT (A) confirmed the addition made by the AO.

Now the assessee is in appeal before us.

4. Before us, the Id. A/R submitted the written submissions as under :-

“ At the outset it is submitted that none of the notices issued by Id. CIT (A) was served on the email/postal address provided in Form No. 35. Thus such notices never came to the knowledge of assessee as he is not computer savvy. Further, in the e-filing portal only two notices dated 19.04.2023 & 27.04.2023 are appearing which are during non Covid period. Therefore, order passed by Id. CIT (A) without serving notice on the assessee and without providing adequate opportunity of hearing is illegal and bad in law.

The Id. A/R, on merit, submitted that source of purchase of plot for Rs. 6,37,500/- is out of realization from debtors and cash available with the assessee. The position of debtors and cash, before and after purchase of plot is as under :-

Particulars	As on 31.03.2009	As on 31.03.2010	Difference
Debtors	9,57,909	3,39,826	6,18,083
Cash in hand	4,69,069	79,706	3,89,363

From the above it is evident that assessee has purchased the plot out of realization from debtors and cash available with him. Copy of balance sheet as on 31.03.2009 and 31.03.2010 is enclosed. Thus source of investment is fully explained.

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

5. On the other hand, the Id. D/R supported the orders of the authorities below.
6. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. Ground no. 1 is regarding deciding the appeal of the assessee ex-parte without issuing the notice at the address and email id mentioned in Form No. 35 thereby passing the assessment order 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) decided the appeal ex-parte by dismissing the appeal of the assessee by observing in para 2 of his order as under :-

*"2. It is seen that the impugned addition made on account of unexplained investment in this assessment order is due to AIR information for which the appellant did not provide the required*

*evidence neither before the Assessing Officer nor has he given any explanation before me, although so many notices have been issued to him for this appeal proceeding.”*

7. 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 unexplained investment in purchase of plot, 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.

8. As we have remanded the matter to the file of the AO for fresh adjudication after providing an opportunity to the assessee, the other ground raised has become infructuous and the same is dismissed as being infructuous. The appeal of the assessee is allowed for statistical purposes.

**ITA No. 517/JP/2023.**

9. Since we have set aside the order of the Id. CIT (A) in quantum appeal as discussed herein above for adjudicating the matter afresh after providing an

opportunity to the assessee, the penalty appeal in ITA Nos. 517/JP/2023 has become infructuous and the AO would be free to initiate penalty proceedings, if required while passing the fresh order. Thus the appeal is allowed for statistical purposes.

**ITA NO. 518/JP/2023 :**

6. So far as appeal in ITA No. 518/JP/2023 is concerned, we have heard rival contentions and perused the material on record. We note that assessee is engaged in business of plying of passenger buses and mostly remains out station in course of his business activities, for this reason the notices issued by the AO could not be complied with. There appears to be no malafide intention in not complying with the notices. Therefore, in view of decision of Hon'ble Supreme Court in case of Hindustan Steel Ltd. vs. State of Orissa, 83 ITR 26 (SC), we delete the penalty levied under section 271(1)(b) of the Act. Thus the appeal of the assessee is allowed.

5. In the result, appeal of the assessee in ITA Nos. 516 & 517/JP/2023 are allowed for statistical purposes and appeal in ITA No. 518/JP/2023 is allowed.

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 Jafar Khan, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward-2 Sikar.
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. 516, 517 & 518/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar