

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

**I.T.A No.262/Kol/2023
Assessment year: 2017-18**

**Anil Kumar Jain.....Appellant
294A, B.B. Ganguly Street,
Bowbazar, Kolkata-700012.
[PAN: ACSPJ9843Q]**

vs.

CIT(A), NFAC, Delhi.....Respondent

Appearances by:

Shri Alok Kumar Ghosh, Advocate, appeared on behalf of the appellant.

Smt. Madhumita Das, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 20, 2023

Date of pronouncing the order : November 28, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 19.01.2023 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that under the facts and circumstances of the case the Ld. Appellate Authority erred in law and facts, in dismissing the appeal which has caused substantial denial of natural justice.

2. For that the Ld. Appellate Authority and the learned Assessing Authority erred in law and on facts in making an arbitrary addition u/s 69A of the Income Tax Act 1961, for an amount of Rs. 22731055.00 which

relates to deposits so made during the material period with the business bank accounts of the appellant.

3. For that the Ld. CIT (A) erred in law and on facts in observing that the notices alleged to have been issued by the Assessing Authority not only over mail but also through speed post which is very much contrary to the facts and entire observation is based on arbitrary assumption.

4. For that the Ld. Appellate Authority erred in law in observing that the appellant was not diligent in representing the case in proper manner and entire observation is based on arbitrary assumption.

5. For that the Ld. Assessing Authority as well as the Ld. Appellate Authority should have appreciated that while the entire deposits arose out of sale proceeds of drugs and medicines which are being dealt in by the appellant and while the same is duly recorded in books and return of income was prepared accordingly, the same cannot suffer tax again in desired manner.

6. For that your petitioner craves leave to add, alter, modify, or delete any of the grounds at the time of hearing of the appeal or before.”

3. At the outset, the ld. counsel for the assessee has brought our attention to the impugned order of the CIT(A) to submit that the same is an ex parte order. Even the impugned assessment order dated 12.12.2019 is also an ex parte order passed u/s 144 of the Act. The ld. counsel in this respect has submitted that this is the first year of the operation of the partnership firm. That the appellant had given the entire details to Shri Manoranjan Saha, Advocate, to look after the Income Tax matters. However, Shri Manoranjan Saha left the profession and did not pursue the case of the appellant before the lower authorities. Further, that the accountant who was looking after the accounts of Shri Anil Kumar Jain, one of the partners in his proprietorship concern, was not given employment in the partnership firm and left the job. Therefore, the required details could not be furnished before the lower authorities resulting into the aforesaid ex parte orders.

4. We have considered the above submissions of the assessee. Though the assessee has given reasons for non-appearance/non-compliance of the notices before the lower authorities, however, it is also apparent that the assessee somewhat has remained negligent in properly pursuing its matter before the lower authorities. However, in our view, in the interest of justice the assessee should be given an opportunity to present his case before the lower authorities and that the assessee can be burdened with costs for its failure to appear before the lower authorities. In view of this, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for de novo assessment subject to deposit by the assessee of Rs.10,000/- as costs in the Prime Minister Relief Fund and subject to furnishing of the receipt of the deposit amount to the Assessing Officer.

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

Kolkata, the 28th November, 2023.

Sd/-
[Rajesh Kumar]
लेखा सदस्य / **Accountant Member**

Sd/-
[Sanjay Garg]
न्यायिक सदस्य / **Judicial Member**

Dated: 28.11.2023.

RS

Copy of the order forwarded to:

1. Anil Kumar Jain
2. CIT(A), NFAC, Delhi
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches