

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. 484/JPR/2023
निर्धारण वर्ष / Assessment Years : 2010-11

Manohar Lal Alwani 85/331 Pratap Nagar, Sanganer, Jaipur.	बनाम Vs.	ITO, Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACVPA1181D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Deepak Sharma
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary (Addl.CIT)
सुनवाई की तारीख / Date of Hearing : 23/11/2023
उदघोषणा की तारीख / Date of Pronouncement : 04/12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2010-11 dated 29.05.2023, which in turn arises from the order passed by the AO, passed under Section 147/143(3) of the Income tax Act, 1961 (in short 'the Act') dated 26.12.2017.

2. The assessee has marched this appeal on the following grounds: -

“1. The very action taken u/s 147 r/w section 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 147 of the act dated 26-12-2017 also kindly be quashed.

2. The impugned assessment order u/s 147 of the act dated 26-12-2017 is bad in law and on the facts of the case for want of jurisdiction and various other reasons and hence the same kindly be quashed.

3. Ld.CIT(A) erred in law as well as on the facts of the case in passing the impugned order in haste despite being the fact that adjournment request was made on the date of hearing. The order has been passed without affording the adequate and reasonable opportunity of hearing. The impugned order having been framed in gross breach of natural justice kindly be quashed or alternatively be restore to the file of Ld. AO or Ld.CIT(A).

4. Ld.CIT(A) erred in confirming the disallowance of claim of cost of improvement of Rs.54,200 and deduction u/s 54F of Rs. 2,68,938/-in computing long term capital gain on sale of property.

5. Ld.CIT(A) erred in confirming the addition of Rs.15,17,142/-on account of alleged short term capital gain ignoring that assessee sold his right in house property (101/161 Pratap Nagar) for Rs. 21,000/-on 10-06-2004 which it acquired for Rs. 11,000/- on 21-05-2003 but the sale deed of house was duly executed during the year as POA by the assessee.

6. The assessee prays your Honours indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. The fact as culled out from the records is that in the case of the assessee information received for the financial transaction undertaken by the assessee. Based on that fact the case of the assessee was taken up for scrutiny by issue of notice u/s. 147 of the Act by taking appropriate approval from the office of the PCIT-3, Jaipur. The case of the assessee was transferred in pursuance

of order passed u/s 127 of the Act. Fresh notices were issued on various dates. The assessee submitted only part details, therefore, show cause notice dated 21.12.2017 was issued to the assessee. In response the Id. AR of the assess produced the bank statement and documents related to the capital gain. The Id. AR of the assessee contended that the assessee sold the land situated at plot No. 225, Shri Ram Vihar, Mahal Yojna, Jaipur for Rs. 10,00,000/- on dated 30.11.2009. The above said property was purchased by for Rs. 5,46,150/- in the F.Y. 2006-07 and further cost incurred for improvement of property Rs. 54,200/- at that time. The above transaction has been shown in the ITR u/s 148 with computation of income. The amount of sale proceeds was invested under section 54F of the Act in the house property purchased. The registered sales and purchase documents were placed on record. Further one more reason for reassessment was provided regarding sales of house at 101/161, Pratap Nagar, Jaipur. In reply of that assessee submitted that registration during the year 21.05.2023 for Rs. 11,000/- and sold that registration for Rs. 21,000/- on dated 10.06.2004. the sales consideration shown in the reasons of Rs. 10,17,512/- was due to the registry of the house was executed letter no. and before executing the registry the buyer paid the due

amount on allotment to the housing board under regularization. The documents executed regarding sale and purchase of the above mentioned registrations were placed on record. The Assessing Officer did not consider the submission of the assessee and has made an addition of Rs. 2,75,539/- being capital gain not appropriately offered by the assessee and Rs. 15,17,142/- added as undisclosed capital gain of the assessee.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:-

“3. I have carefully considered the facts of the case, assessment order dated 26.12.2017 passed under section 147r.w.s143(3) of Income-Tax Act, 1961 by the TRO-3(Income Tax), Jaipur, (hereinafter referred to as AO) for the Assessment Year 2010-11. The appellant has not filed any reply during the appellate proceedings despites providing several opportunities by this office.

3.1 In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken by the appellant, the case was posted for hearing on various dates, the details of which are as under:

Date of notice	Date of compliance	Status
15.01.2021	19.01.2021	No compliance
09.08.2021	20.08.2021	No compliance
04.05.2023	12.05.2023	No compliance

15.05.2023	26.05.2023	No compliance
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4. A final opportunity was given to the appellant on 15.05.2023 to file/furnish reply by 26.05.2023. The same was not complied with by the appellant. The aforesaid notices also remains uncomplied with. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but appellant has chosen not to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO's and in support of the grounds taken in appeal.

4.1 Section 114(g) of Indian Evidence Act, 1872 lays a presumption that evidence which could be and is not produced when, if produced, be unfavourable to the person who withholds it. In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. If the assessee fails to disprove or rebut with cogent evidence such facts and findings, no interference is required. In this case, the assessee did not choose to avail several opportunities at the appellate proceedings, which entails conclusion that he had no, evidence or say or explanation against the order of the AO. Ex- parte assessment/other order have its own inherent limitations as to its scope and extent. Hence, the assessee should not be allowed to be enriched or benefited unjustly for act of his own wrongs i.e. non-compliance or non- attendance of hearings. The Hon'ble High Court of Delhi, had delivered a decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. on 02.09.2011 (ITA No.798 of 2009) that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise, it would amount to give premium to the assessee for his negligence. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence, as it would expose falsity and non-genuineness. In this regards, the decision of the Hon'ble High Court of Mumbai in the case of M/s. Chemppol v/s Union of India Central Excise Appeal No.62 of 2009, clearly states that every court judicial body or authority, which has a duty to decide a dispute between two parties, inherently possesses the power to dismiss the case in default. For case of reference, relevant extract of Mumbai in the said case is reproduced below:

(i). While not inclined to depart from the view taken by the two High Courts, reference must be made to Sunderlal vs. Nandramdas AIR 1958 MP 260 where it was observed that though the Act does not give any power of dismissal, it is axiomatic that no court or tribunal is supposed to continue a proceedings before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power, which every tribunal possesses. This was approved in Dr. P Nalla Thampy vs. Shankar 1984 (Supp) SCC 63). In new India Assurance vs. Srinivasan (2000) 3 SCC 242, it was held that every court or judicial body or authority, which has a duty to decide a case between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter in behalf of the complainant who had instituted the proceedings. That is not the function of the court or for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore the court will be within the jurisdiction to dismiss the complaint for non-prosecution.

(ii). Accordingly, though the Rule conferring power on the Tribunal has been struck down, one cannot altogether lose sight of the rule that every court or tribunal has an inherent power to dismiss a proceeding for non- prosecution when the petitioner/appellant before it does not wish to prosecute the proceedings. In such a situation, unless the statute clearly requires the court or tribunal to hear the appeal/proceeding and decide it on merits it can dismiss the appeal/proceedings for non prosecution. The power must be exercised judiciously and taking into consideration all the facts and circumstances of the case."

4.2 The Hon'ble High Court of M.P. in the case of Tukojirao Holkar vs. CWT (223 ITR 480) had held that "if the party, at whose instance the reference is made at, fails to appear hearing... The court is not bound to answer the reference." Similarly their lordship, in case of CIT vs. B N Bhattacharya (118 ITR 461) (relevant pages 477 & 478) had held that the judicial pronouncement rendered by the Hon'ble High court of appeal does not mean merely filing of appeal but effectively pursuing it". Recently Hon'ble ITAT Delhi (ITR No.2006/Del2011 dated 19.11.2011) in the case of Whirlpool of India Ltd. DCIT had dismissed appeal for not attending hearing inferring that the assessee is not interested in prosecuting of appeal. Therefore, in another decision in the case of Chadha Finance Ltd. vs. ACIT (ITA No. 3013/Del/2011 date of order 20/12/2011) the Hon'ble ITAT had dismissed appeal for non- attending

hearing inferring that the assessee is not interested in pursuing the appeal. In this regard, I am also supported by the decision in the case of CIT vs. Multiplan India Pvt. Ltd. (381TD) 320(Del).

4.3. I have perused the grounds of appeal, statement of facts and the assessment order. The appellant has not produced any material to controvert the finding of A.O. on merits AO's order seems reasonable. Further, from the above conduct of the appellant, it is clear that the appellant is not interested in pursuing his appeal. In the event, I have no reason to interfere with the findings of the AO. In view of these facts, I am of the opinion that no interference is called for in the AO's assessment order and therefore, the grounds of appeal are dismissed.

5. In result, the appeal of the appellant is hereby dismissed.”

5. The Id. AR of the assessee started arguments on merits of the case as the merits of the case has not been appreciated by the Id. CIT(A).

6. Per contra, the Id. DR objected to the prayer of the assessee that on the one side that the assessee has taken a ground that he has not been given an appropriate opportunity of being heard by the Id. CIT(A). They have filed an adjournment application before the Id. CIT(A) and thereby the assessee is trying to bypass the route of deciding the case of the assessee by the Id. CIT(A) and therefore, he objected to the prayer of the assessee and prayed that if the assessee is interested in pursuing the merits of the case he first be heard before the Id. CIT(A).

7. We have heard the rival contentions and perused material available on record. The Bench observed that the impugned order passed by the Id. CIT(A) particularly in para-3.1 wherein it is recorded that notices dated 15.01.2021, 09.08.2021, 04.05.2023 & 15.05.2023 were issued but assessee has not preferred to file the submission and proceeded to decide the appeal for want of non-prosecution. The Ld. CIT(A) has failed to bring on record if alleged notices stated to have been issued to the assessee were ever served upon him nor the mode of issuance of notice has been given except stating that the same is sent on the email. However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the Id. CIT(A) and the Id. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question. In this view of the matter, the appeal of the assessee is restored to the file of the Id. CIT(A), with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the Id. CIT(A). Thus the appeal of the assessee is allowed for statistical purposes.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. CIT(A) independently in accordance with law.

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

Order pronounced in the open Court on 04/12/2023.

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:- 04/12/2023

*Santosh

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

1. अपीलार्थी / The Appellant- Manohar lal Alwani, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur.
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. 484/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar