

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 627/JP/2023
निर्धारणवर्ष/AssessmentYear :-2012-13

Shri Radhey Shyam Agarwal G-2, 419, Gautam Marg Rani Sati Nagar, Jaipur	बनाम Vs.	The ITO Ward 4(4) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAWPA 7205 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : None
राजस्व की ओरसे / Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 9/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 04 /12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 15-08-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as ld.CIT(A)/(NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case the ld. CIT(A) has erred in law by confirming the addition of Rs.20,60,000/- towards unexplained cash deposits in the bank account. The ld. CIT(A) has not considered the facts and circumstances of the case, failed to provide the opportunity of being heard to the assessee and passed the order which is against the law and against the basic principles of natural justice.

2. On the facts and in the circumstances of the case the ld. CIT(A) has erred in law by confirming the addition of Rs.53,08,000/- towards unexplained credits in the bank account. The ld. CIT(A) has not considered the facts and circumstances of the case, failed to provide the opportunity of being heard to the assessee and passed the order which is against the law and against the basic principles of natural justice.”

2.1 At the outset of hearing, the Bench noted that none attended on behalf of the assessee, when the case was called out for arguments, nor any written submission was filed by the assessee. Hence, the Bench decided to dispose off the case of the assessee based on the materials available on record.

2.2 Brief facts of the case are that the assessee as an individual had filed the return of income for the assessment year 2012-13 declaring total income of Rs.4,33,980/-. In the case of the assessee, the information was received by the AO that the assessee had deposited cash amounting to Rs.20,60,000/- in his bank accounts during the year under consideration. According to the AO, the assessee failed to respond to a notice issued u/s 133(6) of the Act. Hence, the proceedings for reassessment were initiated by way of issue of notice u/s 148 of the Act on 29-03-2019. According to the AO, the assessee did not comply with the notices sent by him to the assessee and thus the assessee did not file the return of income within the due period. Thereafter, a show cause notice was issued on 11-12-2019 and served upon him but that too remained uncompiled with. The AO completed the assessment u/s 144/147 of the Act and made additions of (i) Rs.20,60,000/-

being cash deposited in the bank account (ii) Rs.53,08,000/- being the unexplained credit entries in the bank account and (iii) Rs.1248/- being undisclosed bank interest to the income of the appellant.

2.3 Against the assessment order, the assessee carried the matter before the Id. CIT(A) as to the additions of Rs.20,60,000/- being cash deposited in the bank account and Rs.53,08,000/- being the unexplained credit entries in the bank account, made by the AO. The Id. CIT(A) dismissed the appeal of the assessee in limine by observing as under:-

“6.4 As such, it is clear that the appellant has nothing to submit in support of his contention made in the grounds of appeal, and therefore, I do not find any basis to interfere with the findings of the AO. It has been held by several courts that the law assists those who are vigilant and not those who sleep over their rights as found in the Maxim "Vigilantibus Non Dormientibus Jura Subveniunt". The maxim refers to the obligation of individuals to not only be aware of their rights under the law, but also to be vigilant while exercising or using the same. Hence, as an aware citizen, it was incumbent upon the appellant to be aware of the statutory provisions, to simultaneously comply with the requirements of law, and that it should pursue the legal remedies available diligently.

6.5 The Hon'ble High Court of Delhi, in the case of Moddus Media Pvt. Ltd. vs. M/s Scone Exhibition Pvt. Ltd. (RFA 497/201dated 18 May,2017), while holding that the appellant ought to be vigilant and pursue the appeal filed by it, had observed as under:-

“11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance.....After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants.....”

6.6 By its own act the appellant has failed to be vigilant and did not avail the opportunity to submit its point of view/contention, as it did not respond to various notices issued. The fact that the appellant did receive the order and filed the present appeal, but chose not to respond to any notices issued by this office clearly establish total disregard to the due

process of law. Therefore, the conclusion that the appellant could not controvert the findings given by the AO on merits of the issue either is Inescapable.

6.7 In view of the above, I am of the considered view that the Assessing Officer was justified in making additions of Rs. 20,60,000/- and Rs. 53,08,000/- in his order passed u/s 144/147 of the Act, and accordingly, the ground of appeal no. 1-2 of the appellant are dismissed.”

2.4 During the course of hearing, the ld. DR supported the order of the AO.

2.5 We have heard the ld. DR and perused the materials available on record. In this case, it is noted that the ld. CIT(A) has dismissed the appeal of the assessee in limine concurring with the additions made by the AO amounting to Rs.20.60 lacs and Rs.53.08lacs passed u/s 144/147 of the Act. It is also noted that the ld. CIT(A) at para 6.6 of his order mentioned that the” *Appellant has failed to remain vigilant and did not avail the opportunity to submit its point of view /contention as it did not respond to various notices issued.*” The Bench took into consideration the findings of the ld. CIT(A) who dismissed the appeal of the assessee in limine. Hence, from the entire conspectus of the case, the Bench feels that it does not want to go into merit of the case but it is imperative that the assessee must be provided one more opportunity of being heard by the ld. CIT(A) to contest the case before him. In this view of the matter, the assessee is directed to produce all the relevant papers concerning the additions so confirmed by the ld. CIT(A) (supra) to settle the dispute raised hereinabove

2.6 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.

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

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

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/12/2023

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Radhey Shyam Agarwal, Japur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(4), Jaipur
3. आयकरआयुक्त / The Id CIT (A)
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 627/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar