

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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. 510/JP/2023
निर्धारण वर्ष/Assessment Year : 2016-17.

Mayank 11/456, Malviya Nagar, Jaipur.	बनाम Vs.	The ACIT Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. BOQPM 2126 E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashok Kanodiya, CA

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

सुनवाई की तारीख/ Date of Hearing : 02/11/2023

उदघोषणा की तारीख/ Date of Pronouncement: 28/11/2023

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 26.06.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC) Delhi passed under section 250 of the IT Act, 1961 for the assessment year 2016-17. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case learned CIT (Appeal) was not justified while confirming the order passed by AO u/s 144 assessing total income Rs. 57,18,990/- with NIL demand which was rectified by AO u/s 154 taxing income u/s 115BBE on Rs. 54,52,578/- and raising total demand Rs. 23,88,450/- without ensuring service of notice.
2. Under the facts and circumstances CIT (Appeal) was not justified while confirming the addition amounting to Rs. 54,52,578/- u/s 68, which was not the subject matter of order passed by AO.

3. Under the facts and circumstances of the case CIT (Appeal) was not justified while presuming sales proceeds and deposit of cash withdrawal amounting to Rs. 54,52,578/- as unexplained cash credit u/s 68.
4. Assessee craves to add alter any of the grounds of appeal before or at the time of hearing.

2. The brief facts of the case are that the assessee e-filed his return of income for the year under consideration on 31.03.2017 declaring total income of Rs. 2,66,410/-, which was processed under section 143(1) of the IT Act, 1961. The case of the assessee was selected for limited scrutiny under CASS. Notice under section 143(2) of the IT Act was issued on 18.09.2017 which was duly served upon the assessee through e-filing website of Income Tax Department. Subsequently, notices under section 142(1) of the IT Act were issued on 12.09.2018, 20.10.2018, 06.11.2018 and 08.12.2018 requiring the assessee to file certain details/information/clarification. In compliance to these aforesaid notices, neither the assessee uploaded any reply/details/information nor sought any adjournment on e-filing/ITBA portal. A final opportunity was given to the assessee vide notice dated 17.12.2018 asking the assessee to show cause by 19.12.2018 as to why his case may not be decided on the basis of material available on record ex-parte under section 144 of the IT Act. Since no compliance was made by the assessee, the AO completed the assessment ex-parte vide order dated 24.12.2018 on the basis of material available on record at a total income of Rs. 57,18,988/- by making an addition of Rs. 54,52,578/- on account of unexplained cash deposits in savings bank account. Aggrieved by the order of assessment, the assessee preferred an appeal before the Id. CIT (A). The Id. CIT (A) NFAC dismissed the appeal of the

assessee ex-parte vide order dated 26.06.2023 as the assessee has neither appeared nor filed required details/information.

Now the assessee is in appeal before us.

3. We have heard rival contentions, perused the material on record and gone through the orders of the revenue authorities. At the appellate proceedings, the Id. CIT (A) issued notices dated 13.01.2021 and 22.05.2023 fixing the hearing on 21.01.2021 and 29.05.2023 respectively but in response to the Notice of Hearing neither appellant nor his representative filed/forwarded any submissions. Therefore, the Id. CIT (A) decided the appeal of the assessee ex-parte on the basis of material available on record relying upon various judicial pronouncements of Hon'ble Supreme Court, Hon'ble High Courts and the decisions of Tribunal by observing in para 8 of his order as under :-

"8. Thus it was imperative on the appellant to prove identity, genuineness of the transaction. In this case the appellant has failed to prove that the transaction was genuine. He failed to explain the source of the deposits. Having failed to discharge his onus and explain the source of investment, the addition of Rs. 54,52,578/- has been aptly made. The assessment was completed total of Rs. 57,18,990/- is fully justified and it should be added u/s 68 as undisclosed income of the appellant. The ground of appeal is dismissed."

We find that inspite of sufficient opportunities of being heard given by the revenue authorities to the assessee, the assessee has not complied with the notices and failed to prove identity, genuineness of the transaction and

explain the source of deposit of cash in the bank account of the assessee. The Id. CIT (A) accordingly dismissed the appeal of the assessee ex-parte.

4. Since the impugned order of the Id. CIT (A) was passed ex parte for non compliance of the notices issued and not explaining the source of deposit in the bank account of the assessee, by upholding the assessment order passed under section 144 of the IT Act, whereby the AO made addition of Rs. 54,52,578/- on account of unexplained cash deposits under section 68, 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 provide one more opportunity to the assessee. We, thus, set aside the ex-parte order of the Id. CIT (A). Be that as it may, without going into merits, considering the interest of natural justice, we 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.

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

Order pronounced in the open court on 28/11/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated: 28/11/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Mayank, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-7, 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. 510/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

