

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 493/JP/2023
निर्धारण वर्ष/Assessment Year : 2010-11.

Shri Prem Chand Yadav, 334, Bhura Patel Nagar, Ajmer Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 2(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAOPY 4626 L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Mohammed Shafi, Advocate

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

सुनवाई की तारीख/ Date of Hearing : 05/12/2023
उदघोषणा की तारीख/ Date of Pronouncement: 19/12/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 31.05.2023 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 :-

1. That proceeding initiated u/s 147/148 is illegal and against the law and the Id. CIT (Appeals) grossly erred in sustaining the proceeding u/s 147/148.
2. That the addition made on account of disallowance of 20% of cost of construction is illegal and against the law as the Id. Assessing Officer.

3. That the addition made on account of disallowance of 20% of cost of construction is illegal and against the law as the Id. Assessing Officer.
4. That the addition of Rs. 13,08,400/- on account of unexplained cash deposited into bank account is illegal and against the law.
5. That the Id. Assessing Officer is erred in initiation the penalty u/s 271(1)(c) and 271(1)(b).
6. That the Id. Assessing Officer is erred in initiation the penalty u/s 271F.
7. The assessee craves leave to add/alter any of the grounds of appeal during the course of hearing.

The appeal filed by the assessee is barred by limitation and delayed by 1 day. The assessee has filed application requesting condonation of delay. The reasons for delay are mentioned in the application are as under :-

“ MAY IT PLEASE YOUR HONOURS,

The humble appellant most respectfully bags to submit as under :-

1. That the Id. Commissioner of Income Tax (Appeals), National Faceless Appeals Centre has decided the appeal of mine vide order dated 31.05.2023.
2. That I came to know about this order dated 31.05.2023 of CIT (A) on 01.06.2023.
3. That the appeal against the order of the CIT (A) was prepared and dispatched by my counsel on 28.07.2023 by the speed post and expected to be delivered on 29th or 30th day of July of 2023 because the dispatch and delivery place is at Jaipur only, but it was delivered on 31.07.2023.
4. That due to late delivery of the Post by the postal department the delay of 1 day is occurred.
5. That the delay so occurred is not on account of delay from my side, it is only because of late delivery by the postal department.

6. That the delay so occurred in appeal is bonafide not intentional, this is because of the reasons mentioned in the above paras, hence requested to be condoned.

PRAYER

It is therefore, humbly prayed that the present application under section 5 of Limitation Act may kindly be allowed and condone the delay of just 1 day in filing of second appeal.

It is further humbly prayed that the appeal filed by me may be treated to been filed in time.

Humble Appellant
Sd/-
Prem Chand Yadav
Individual "

Date : 05.12.2023.

2. Having considered the rival submissions as well as going through the contents of the application of the assessee, I am satisfied that the assessee has explained a reasonable cause for not filing the appeal within the period of limitation. Accordingly, I condone the delay of 1 (one) day in filing the present appeal.

2. The brief facts of the case are that the assessee is an Individual. The assessee filed his return of income for the AY 2010-11 on 30.03.2011 declaring total income of Rs. 4,85,810/-. Out of which Rs. 3,04,643/- from short term capital gain and Rs. 76,312/- from business income. The AO received information that the assessee has sold immovable properties at Jaipur for a total consideration of Rs. 1,29,66,040/- in the year under consideration. The Sub Registrar, Jaipur has adopted the sale consideration of properties sold at Rs. 1,26,89,105/- for stamp duty purposes. As per I.T. Act, 1961 the higher value of two values is to be adopted for purposes of calculation of capital gain. Further, assessee has deposited cash of Rs.

14,20,000/- in his savings bank account maintained with IDBI Bank. Therefore, having reason to believe that income of Rs. 1,43,86,040/- has escaped assessment, the case of the assessee was reopened by issuing notice under section 148 of the IT Act on 29.03.2017 after recording proper reasons and obtaining necessary approval from competent authority which stands duly served upon the assessee. Subsequently, notice under section 142(1) along with query letter was issued on 12.07.2017 fixing the case for hearing on 01.08.2017. On the request of the assessee case was adjourned to 17.08.2017. Again the case was adjourned to 24.08.2017 on the request of the assessee. But none appeared on the given date. Thus a show cause notice vide letter no. 2234 dated 08.12.2017 to complete the assessment under section 144 of the IT Act, requiring the assessee to submit source of purchase of property and details of capital gain paid in the sale of property in addition to source of cash deposited in the bank account of the assessee. Since the assessee has failed to produce the documentary evidences, again a show cause notice was issued to the assessee requiring the assessee to submit source of cash deposit, purchase of property and proof of capital gain tax paid and produce the documentary evidence in respect of expenses incurred against the civil construction work receipts. The assessee was provided opportunity to explain/file documentary evidences on 26.12.2017. The assessee has not responded to the show cause notice, therefore, the AO completed the assessment under section 144 of the IT Act vide his order dated 27.12.2017 assessing the total income at Rs. 26,16,550/-. Aggrieved by the assessment order, the assessee preferred appeal before the Id. CIT (Appeals). In appellate proceedings under section 250 of the IT Act, the Id. CIT (A)

issued notices on 24.12.2020, 21.12.2021, 22.03.2022 and 23.05.2023 fixing the date of hearing on 30.12.2020, 05.01.2022, 06.04.2022 and 30.05.2023 respectively. However, there was neither any response on the prescribed date nor any submission was filed. Since the assessee has not complied with the above notices, the Id. CIT (A) decided the appeal of the assessee ex-parte on the basis of material available on record, and thereby dismissed the appeal of the assessee.

Now the assessee is in appeal before the Tribunal.

3. I have heard the 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 24.12.2020, 21.12.2021, 22.03.2022 and 23.05.2023 asking the assessee to file reply/details in support of the grounds of appeal on 30.12.2020, 05.01.2022, 06.04.2022 and 30.05.2023 respectively. However, there was neither any response on the prescribed date nor any submission was filed. Therefore, the Id. CIT (A) decided the appeal of the assessee ex-parte by observing in para 6 of his order as under :-

“6. Decision: I have gone through the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant was given more opportunities but appellant failed to avail the opportunity of being heard on the fixed date of hearings. During the appellate proceedings, the appellant has not complied with even for once nor filed any written submission. In absence of the written submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. If the appellant claims that the assessment order is objectionable he should file the supporting evidences. However, the appellant failed to avail the same by non-complying. Therefore, it is presumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous. In the case Anil Goel vs. CIT (2008) 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under :-

4. *It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorized representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.*

5. *The Tribunal also found that non-recording of reasons in support of order passed by CIT (A) would not amount to committing any illegality because the CIT (A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT (2001) 248 ITR 577 has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT (A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisonal authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisonal authority."*

In this circumstances narrated herein above, I am left with no option except to the confirm order of assessing officer passed u/s 143/147 of the I.T. Act, 1961. Therefore, the Assessing Officer's order is confirmed and the grounds of appeal are dismissed."

3.1 Before me, the Id. A/R of the assessee submitted that the assessee could not appear before the Id. CIT (A) for the reason that the assessee was not informed by his counsel about the dates of hearing of the appeal which resulted in non filing of the documents/evidences in support of the grounds raised by the assessee in the appeal. Since the impugned order of the Id. CIT (A) was passed ex parte by upholding the assessment order under section 147 read with section 144 of the IT Act, whereby the AO made additions, therefore, in the totality of facts and circumstances of the case and in the interest of justice, I am of the view that it will

be reasonable to provide one more opportunity to the assessee. I, 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, one more opportunity is granted to the assessee, and the file is restored back to the A.O. for consideration afresh after providing a reasonable opportunity of being heard to the assessee, subject to cost of Rs. 2,000/- for negligent attitude during income tax proceedings, to be deposited in the Prime Minister's Care Fund and proof thereof should be produced. The assessee is further directed to furnish necessary documents/evidences as required by the AO. In case the assessee fails to appear before the A.O., the AO may decide the appeal on the basis of the material available on record.

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

Order pronounced in the open court on 19/12/2023.

Sd/-

(संदीप गोसाईं)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Prem Chand Yadav, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(3), 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. 493/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar