

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. 532/JPR/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Arun Mathur R-11, Shastri Nagar, Bharatpur.	बनाम Vs.	ITO, Ward-1, Bharatpur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AKBPM 2589 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Anoop Bhatia (C.A.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 01 /01/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 08.06.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2011-12.

2. The assessee has raised the following grounds of appeal:-

"1. That the order passed by the Id. CIT(Appeals) dated 08.06.2023 is bad-in-law since the Id. CIT (Appeals) has accepted the Returned Income of the assessee but at the same time decided the appeal against the assessee.

2. That the Id. CIT (Appeals) has erred in not issuing the demand notice u/s 156 of the Income-tax Act, 1961. Hence the order passed by him is null and void in the eyes of law.

3. That the Id. CIT(Appeals) has erred by not providing the Show Cause Notice before passing the assessment order, thus, the impugned order was passed without following the principles of natural justice and in gross violation of the scheme of faceless assessment.

4. That having regard to the facts and circumstances of the case, the Id. AO has erred in law and on facts that the reasons recorded for reopening of the case u/s 148 of the Act is that cash deposits amounting to Rs. 13,62,900 have been made in the bank account does not indicate that these deposits constitute an income which has escaped assessment. Therefore, the reason of initiating the case proceedings u/s 147 is void-ab-initio and be kindly deleted/excluded from assessment.

5. That, on the facts and circumstances of the case, the Id. AO has erred to make proper investigation of the documents submitted before him before making addition of Rs. 10,73,000/-.

6. That The Id. CIT(A) has erred in passing an order u/s 250 of the Income-tax Act, 1961 without giving reasonable opportunity of being heard to the appellant hence the order passed by him being against the principles of natural justice is bad in law and requires to be cancelled.

7. That the Appellant craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing."

3. Brief facts of the case are that the information available in NMS data, it was noticed that no return of income for A.Y. 2011-12 was filed by the assessee. Accordingly, notice U/s 148 of the I.T. Act, 1961 was issued on 27.03.2018 after

getting prior approval of the Pr. CIT, Alwar on the ground that the assessee had deposited Rs. 11,02,900/- in cash on 15.04.2010 with IDBI, Bank Ltd., Bharatpur and Rs.2,60,000/- deposited with ICICI bank Ltd. on 27.07.2010 during the F.Y. 2010-11. In compliance to notice u/s 148 of the I.T Act, 1961, the assessee filed return of income for A.Y. 2011-12 on 18.11.2018 after a duration of approx 9 months from the issue of notice under section 148, showing total income of Rs.1,51,810/- (Income from business and Profession at Rs.1,02,100/- and Income from other sources at Rs.49,759/-). The case has been selected for scrutiny and addition of Rs. 10,73,000/- has been made by the AO without observing facts and withdrawal from the banks it is bad in law. Conclusively, the AO made addition in the hands of the assessee by holding as under:-

“4. Thereafter, the cash flow statement for the financial year 2010-11 was prepared on the basis of bank account statements of ICICI & IDBI bank placed on record and opening balance of cash in hand is taken as zero while preparing the cash flow statement. It is evident from the cash flow statement that some of the cash deposit was from earlier cash withdrawals and it is appropriate to consider that the cash deposits during April & May 2010 was out of cash in hand maintained with the assessee as on 01.04.2010 as some of the cash in hand would be there as on 01.04.2010. However, the source of Rs. 10,73,000/- (Rs. 8,23,000/- Rs. 2,50,000/-) as reflected in cash flow statement remained unexplained as no proper documentary evidences were furnished by the A/R of the assessee. Hence, an addition of Rs. 10,73,000/- on account of undisclosed income from undisclosed sources, is made to the total income of the assessee under the head income from other sources.”

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

5. Decision: In this case, the addition has been made by the Assessing Officer of Rs. 10,73,000/- on account of undisclosed income from undisclosed sources. The cash deposit was made in the bank account but no explanation was given regarding cash deposit before the Assessing Officer. The Assessing Officer also made the cash flow statement as no documentary evidence was filed before the Assessing Officer of the cash deposits and hence made the addition.

5.1 Now before me in the appellate proceedings, despite multiple notices no submission has been filed. I have gone through the grounds of appeal and statement of facts filed by the appellant. Nothing is written on the cash deposits. No books of accounts or bank statements or source of deposits have been annexed. Hence, the addition of the Assessing Officer is confirmed and the appeal of the appellant is dismissed.

6. In the result, the appeal of the appellant is dismissed.”

5. The Id. AR for the assessee submitted it is ex-party order before Id. CIT(A) and further submitted that the assessee could not furnish his complete details before the Id. AO and requested to set aside the matter before the Id. AO.

6. Per contra, the Id. DR has no objection to remand bank the case.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee has been selected for scrutiny and addition of Rs. 1073000/- has been made by the ld. AO without observing facts and withdrawal from banks. Though the ld. DR objected to the prayer of the assessee but looking to the fact of the case that assessee being small person working privately as self employed. Nothing is written on the cash deposits. No books of accounts or bank statements or source of deposits have been annexed. We find force in the arguments of the ld. AR of the assessee, therefore, bench feels that the assessee should be heard on merit rather than to dismiss the appeal on the technical reasons. Considering that prayer of the assessee, we find force in the arguments advanced by the ld. AR of the assessee and considering the totality of the facts we consider deem fit to remand back the matter before the ld. AO to decide afresh on merit. Therefore, considering that contentions and ongoing through the orders of the lower authorities we are of the considered view that the assessing officer should hear the assessee's submission on merits after affording proper opportunity of being heard and pass speaking order in the matter in accordance with the law. At the same time assessee is directed to represent and present all the facts before the assessing officer and should not ask for the adjournment on frivols grounds.

At this stage we remand back the issues raised without commenting upon the merits of the case and the Id. AO is directed to complete the assessment as per law.

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

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Order pronounced in the open court on 01/01/2024.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 01/01/2024

*Ganesh Kumar, PS

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

1. The Appellant- Arun Mathur, Bharatpur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 532/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar