

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 670/JPR/2023  
निर्धारण वर्ष / Assessment Year : 2018-19

|  |             |                              |
|--|-------------|------------------------------|
| Yash Paul Mehta<br>Opp. Maya Mandir Cinema, Jaipur<br>Road, Ajmer. | बनाम<br>Vs. | ITO,<br>Ward-2(1),<br>Ajmer. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AOBPM 2580 E                |             |                              |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent      |

निर्धारिती की ओरसे / Assesseeby : Shri Arpit Vijay (C.A.)  
राजस्व की ओरसे / Revenue by : Shri Arvind Kumar(CIT)

सुनवाई की तारीख / Date of Hearing : 19/12/2023  
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 11.09.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2018-19.

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

*"1. The Ld. CIT(A) has grossly erred in not providing proper opportunity of being heard and dismissing the appeal on the basis that no representation has been made by the*

*appellant, despite the fact that adjournment application was filed on medical grounds, is against the cardinal principal of natural justice and accordingly the order deserve to be quashed.*

*2. The Ld. CIT(A) has grossly erred in confirming the action and finding of the Ld. AO regarding making disallowance of Interest Expenses of Rs. 85,79,766/- and Rs. 8,74,885/ being 25 percent of the total expenses (other than Interest) of Rs. 34,99,543/- debited to Profit & Loss A/c.*

*3. The Ld. CIT(A) has grossly erred in confirming the action and finding of the Ld. AO regarding making addition of Rs. . 12,96,000/- on account of Notional Interest on Loans and Advances given of Rs. 1,08,00,000/- as Shown in Balance Sheet.*

*4. The Ld. CIT(A) has grossly erred in confirming the action and finding of the Ld. AO regarding making addition of Rs. 45,00,000/- on account of Unsecured Loans taken, treating the same as Unexplained Cash Credit u/s 68 of the IT Act 1961*

*5. The Ld. CIT(A) has grossly erred in confirming the action and finding of the Ld. AO regarding disallowing the benefit of Indexed Cost of Acquisition of Rs. 1,88,08,800/- and treating the entire sales consideration of Rs. 5,26,00,000/- on account of sale of immovable property as Unexplained Cash Credit u/s 68 of the I.T. Act, 1961 instead of Capital Gain of Rs. 3,37,91,200/- declared by the appellant.*

*6. That the appellant craves the right to add, delete, amend or abandon any grounds of appeal either before or at the . time of hearing of appeal. Therefore it is humbly prayed to delete the relevant disallowances/addition made to the returned income.”*

3. Brief facts of the case are that the assessee is an Individual who derived his Income/loss from Business or Profession, Capital Gains and Other Sources. The assessee filed its return of income for the A.Y.2018-19 on 02.08.2018 declaring total income of Rs.2,29,29,640/-. A notice u/s. 143(2) of IT Act, 1961 was issued and assessment was completed by Ld. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, National e-Assessment Centre,

Delhi, u/s.144 r.w.s 144B of The I.T. Act, 1961 vide assessment order dated 27.04.2021 at an assessed income of Rs.5,71,00,000/-. The Ld. AO has made disallowances of Interest Expenses of Rs.85,79,766/- and Rs.8,74,885/- being 25 per cent of the total expenses (other than interest) of Rs. 34,99,543/- debited to Profit & Loss A/c. The Ld. AO also made an addition of 12,96,000/- on account of notional interest on Loans and Advances given of Rs.1,08,00,000/- as shown in Balance Sheet of the assessee and thereby computed total business loss of Rs. 1,10,900/- instead of Rs. 1,10,38,309/- as declared by the assessee. The Ld. AO further made an addition of Rs.45,00,000/- on account of Unsecured Loans taken treating the same as Unexplained Cash Credit u/s 68 of the I.T. Act, 1961. The Ld. AO further without allowing the benefit of Indexed Cost of Acquisition of Rs.1,88,08,800/- treated the entire sales consideration of Rs.5,26,00,000/- on account of sale of immovable property as Unexplained Cash Credit u/s 68 instead of Capital Gain of Rs. 3,37,91,200/- declared by the assessee. Hence, the total additions and disallowances of Rs.3,40,59,451/- have been made to returned income.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) observed that various notices were issued on 17.07.2023, 25.07.2023, 02.08.2023, 10.08.2023 & 22.08.2023 and requiring

the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued the Id. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the Id. CIT(A) is reproduced as under:-

“6.2 Ground No. 2 is raised stating that the AO is not justified in making disallowance of interest expenses of Rs. 85,79,766/- and Rs. 8,74,885/- being 25 per cent of the total expenses ( other than interest) of Rs. 34,99,543/- debited to profit & loss A/c.

6.2.1 In this regard, it is pertinent to repeat the discussion in this regard by the AO in the impugned assessment order which is as under:

.....4. During the course of assessment proceedings, on verification of the return of income filed for the A.Y.2018-19, it is seen that assessee has received/taken loans of Rs 45,00,000/- The assessee was therefore asked to furnish the confirmation, copy of bank statement highlighting the loan amount received and copy of return of income filed by the lenders for the A.Y.2018-19 to the identity, creditworthiness and genuineness of the lenders. As the assessee failed to furnish the relevant details and as the assessee is unable to prove the identity, creditworthiness and genuineness of the lenders, the loans received/taken of Rs 45,00,000/- by the assessee is treated as bogus loans and the same is treated as unexplained cash credit u/s68 of the Act and added to the total income of the assessee.

As loans received/taken by the assessee is treated as unexplained cash credit u/s.68 of the Income-tax Act, interest expenses of Rs.85,79,766/- debited in the profit and loss account is also disallowed and added back to the total income of the assessee.

3.1 Further the assessee has not furnished any explanation / documentary evidence in support of expenses claimed of Rs.34,99,543/- (excluding interest paid) in the profit and loss account, it is not possible to verify the expenses claimed by the assessee and therefore, the same is disallowed. At the same time, it is also true that for earning professional receipts, the assessee must have incurred some expenses. Considering the nature of business of the assessee 75% of total expenses claimed in Profit and Loss account is allowed as expenses incurred for earning tuition income and balance 25% of expenses Le., Rs.8,74,885/- is disallowed and added to the total income of the assessee."

6.2.2 From the above, it is clearly understood that in the absence of any explanation with supporting documentary evidence to prove the genuineness of the claim of the assessee in respect of the loan taken/received to the tune of Rs.45,00,000/- (which was disallowed u/s.68 of the Act), interest claimed on loans taken/received to the tune of Rs.85,79,766/- was also added back to the income returned by the assessee/appellant by the AO while completing the impugned assessment order. The appellant could not prove his contentions during the course of the appeal proceedings too. In view of this, the contentions raised in the form of mere grounds of appeal without any proper explanation and documentary proof is not tenable.

6.2.3 Further, the appellant has also contended that the AO has erred in adding back Rs.8,74,885/- being 25 per cent of the total expenses (other than interest) of Rs.34,99,543/- debited to Profit & Loss A/c.

6.2.4 In this regard, it is pertinent to mention here that the AO has clearly stated in the assessment order that the assessee/appellant failed to furnish any explanation/documentary evidence in support of expenses claimed to the extent of Rs. 34,99,543/- (excluding interest paid) in the profit and loss account and in view of this, it was not possible to him to verify the expenses claimed and thus, disallowed. The AO also interpreted that to earn professional receipts, the assessee/appellant must have incurred some expenses and disallowed 25% of the expenses claimed which worked to Rs.8,74,885/- The assessee/appellant failed to furnish proper explanation with credible documentary evidence to prove the genuineness of the same both during the course of the assessment proceedings as well as during the course of the first appeal proceedings in spite of availing reasonable number of opportunities to do so. Thus, the appellant's contentions in this regard are not acceptable. In view of this, Ground No.2 is dismissed.

6.3 Ground No.3 is raised stating that the AO is not justified in making addition of Rs.12,96,000/- on account of notional interest on loans and advances given of Rs.1,08,00,000/-.

6.3.1 This issue is discussed by the AO in the impugned assessment order as under: -

4. Further on verification of the balance sheet of the assessee for year ending 31.03.2018 it is seen that assessee has given loans and advances amounting to Rs. 1,08,00,000/- but has not disclosed any interest income. No prudent businessmen will take interest bearing loans and give loans and advances without interest. Therefore, proportionate interest @12 p.m. (1,08,00,000 x 12%) i.e. Rs.12,96,000/- is treated as income of the assessee and added to the total income of the assessee.

6.3.2 It is evident from the impugned assessment order that the assessee/appellant didn't respond to any of the notices issued during the course of the assessment proceedings. In

view of this, the AO has rightly added back 12% of Rs.1,08,00,000/- which shown as loans and advances by the assessee in the balance without disclosing any interest earned from it. In the absence of any explanation / evidence to prove this contention during the course of the appeal proceedings too in spite of affording sufficient number of opportunities for the same, mere contentions raised in the form of ground No.3 is not tenable and thus, Ground No.3 is dismissed.

6.4 Ground No.4 is raised stating that the AO is not justified in making addition of Rs 45,00,000/- on account of Unsecured Loans taken treating the same as Unexplained Cash Credit u/s 68 of the I.T. Act, 1961.

6.4.1 This issue is narrated by the AO in para 4 of the impugned assessment order. The AO has noticed that the assessee/appellant has received / taken loans to the tune of Rs.45,00,000/-. But, the assessee/appellant failed to furnish the particulars called for in this regard by the AO to prove the veracity of the same such as identity and creditworthiness of the lenders. Thus, the same was treated as bogus and added back to the income returned by the assessee u/s.68 of the Act. The appellant could not prove the genuineness of the same during the course of the appeal proceedings too in spite of affording reasonable number of opportunities to do so. Thus, mere contentions raised in the form of the GroundNo.4 are not tenable in the absence of proper explanation and credible documentary evidence in support of the same and Ground No.4 is dismissed.

6.5 Ground No.5 is raised stating the AO is not justified in disallowing the benefit of Indexed Cost of Acquisition of Rs. 1,88,08,800/- and treating the entire sales consideration of Rs.5.26,00,000/- on account of sale of immovable property as Unexplained Cash Credit u/s 68 instead of Capital Gain of Rs.3,37,91,200/- declared.

6.5.1 This issue is discussed in para 5 of the impugned assessment order as under:

5 During the course of assessment proceedings and on verification of the ITR filed by the assessee for the A.Y.2018-19, it is seen that the assessee has reported Nil figures in schedule Assets and liabilities of ITR. Therefore assessee was asked furnish the reasons for reporting Nil figure in schedule Assets and Liabilities of ITR considering the total income report. Further on verification of ITR filed by the assessee for A.Y.2018-19 is seen that the assessee has shown long term capital gain on sale of immovable property of Rs.3,37,91,200/- after claiming cost of acquisition with indexation of Rs. 1,88,08,800/-. As the assessee has not furnished the details regarding the assets held by him, date and cost of acquisition etc., the entire sale consideration of Rs.5,26,00,000/- is treated as unexplained cash credit u/s 68 of the Income Tax Act.

6.5.2 It is very clear from the above that the assessee / appellant had reported 'nil' figure in the schedule of assets & liabilities in the ITR, but on further verification of the ITR filed

for the AY 2018-19, the AQ noticed that the assessee/ appellant had shown long term capital gain on sale of immovable property at Rs 3,37,91,200/- and the indexed cost of acquisition claimed was Rs. 1,88.08,800 in the absence of particulars furnished regarding the assets held by the assessee/appellant i.e., the date and cost of acquisition, etc., the entire sale consideration of Rs.5.26.00,000 is treated as unexplained cash credit w's.68 of the Act The appellant didn't furnish any details in this regard to prove the genuineness of his claim of deduction towards long term capital gain, during the course of the appeal proceedings too in spite of availing reasonable number of opportunities to do so. Thus, Ground No.5 is treated as dismissed

6.6 Ground No.& doesn't require separate adjudication as the appellant has not raised any additional grounds of apps during the course of the appeal proceedings

7. Accordingly, the appeal of the Appellant for A.Y. 2018-19 is dismissed.”

5. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) and the AO has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO in the interest of equity and justice.

6. Per contra, ld. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the ld. AO and therefore, in that case the Bench feels the matter may be restored to the file of the Assessing Officer.

7. We have heard both the parties and perused the materials available on record. The bench noted from the order of ld. CIT(A) that the appeal of the assessee was dismissed by the ld. CIT (A) for want of non-prosecution of the

appeal. The assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessee completed ex-parte assessment u/s 144 of the Act on 27.04.2021. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that *“The Ld. CIT(A) has grossly erred in not providing proper opportunity of being heard and dismissing the appeal on the basis that no representation has been made by the appellant, despite the fact that adjournment application was filed on medical grounds, is against the cardinal principal of natural justice and accordingly the order deserve to be quashed.”* However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the lower authorities and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, 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 ld. AO.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO 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. AO independently in accordance with law.

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

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

Sd/-  
(राठौड़कमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

Sd/-  
(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

दिनांक / Dated:- 01/01/2024

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Yash Paul Mehta, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 670/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar