

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. 575/JPR/2023
निर्धारण वर्ष / Assessment Years : 2021-22

Madhu Goyal A-6, Career Township Tekhda, Kota.	बनाम Vs.	ITO, Ward, Kota.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BVNPG 2529 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओरसे / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 19/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 16 /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 23.08.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] for the assessment year 2021-22.

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

" 1.1 The impugned order u/s 143(3) of the I.T. Act, 1961 dated 23.12.2022 as well as the notices and proceedings or action so taken by the Id. AO are illegal,

bad in law, barred by limitation, without jurisdiction, and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed.

1.2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in passing the Exparty order and confirming the order of the Id. AO without providing adequate and reasonable opportunity of being heard and not considering the material on record in the gross breach of natural justice. Hence the same entire addition may kindly be deleted and the assessment order may kindly be quashed.

2. Rs.4,75,36,871/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.4,75,36,871/- made by the Id. AO on account of 25% disallowance u/s 37(1) of total purchases of Rs.19,01,47,485/- alleging the same as bogus purchase. The Id. AO also erred in making the additions without invoking the provisions of Sec. 145(3) or without rejecting the books of accounts. The Ld. CIT(A) and AO have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

3. Rs.2,75,33,030/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.2,75,33,030/- made by the Id. AO on account of 100% disallowance u/s 37(1) of total purchases of

Rs.2,75,33,030/- alleging the same as bogus purchase. The Id. AO also erred in making the additions without invoking the provisions of Sec. 145(3) or without rejecting the books of accounts. The Ld. CIT(A) and AO have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

4. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

5. That the appellant prays your Honour indulgence to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee is engaged in the business of wholesale of metals and metal scrap. The assessee has shown her income under the heads 'Profit and Gains from business or profession' during the year under consideration. The assessee has e-filed her ITR in the status of individual in ITR-3 u/s 139(1) for A.Y. 2021-22 on 19.02.2022 declaring income of Rs. 8,35,070/-. The ITR was process by the CPC on 25.03.2022 at income of Rs. 8,35,070/-. The case was selection for complete scrutiny under the CASS on the issue of business purchases. The notice u/s 143(2) dated 28.06.2022 was issued and served on the assessee by the NaFAC. Thereafter, notice u/s 142(1) of the act were issued on as many as 9 occasions. The assessee did not comply with the statutory notices dated 05.09.2022, 30.09.2022, 14.10.2022 , 31.10.2022 and 09.11.2022 and penalty proceedings u/s 272A(1)(d) of the I.T. Act, 1961 were also initiated for non-compliance of notices u/s 142(1) of the Act .

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that various notices were issued on 26.07.2023, 07.08.2023 & 15.08.2023 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:-

“5.3. It is worth mentioning that the appellant has been habitually non-compliant. Even in the present appellate proceedings, he has remained non-compliant and has not filed even a letter seeking an adjournment.

5.4 Due to the non-compliant attitude of the appellant, the appeal has to be decided on merits and facts available on record. I have carefully perused the grounds of appeal, statement of facts and the assessment order to look for any fact which may be helpful in furthering the cause of the appellant, but could not find any. The A.O had made the addition specifically because the appellant failed to give any satisfactory explanation regarding the purchases, despite being provided with reasonable opportunity. Even during the present appellate proceedings, the appellant failed to give any submission / evidence whatsoever and chose to remain non-compliant. The facts stated in the grounds of appeal are very cryptic, vague and general in nature and do not come to rescue of appellant. Thus, the appellant has not discharged the primary onus of explaining her case. The appellant has not produced any material to controvert the finding of A.O. on merits. Further, from the above conduct of the appellant, it is clear that the appellant is not interested in pursuing her appeal. In the event, I have no reason to interfere with the findings of the AO. In view of these facts, I am of the opinion that no interference is called for in the AO's assessment order and therefore, the grounds of appeal are dismissed.

6. Accordingly, the appeal of the appellant is hereby dismissed.”

5. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) 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 Id. AO in the interest of equity and justice.

6. Per contra, Id. DR objected to the prayer of the assessee.

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 ld. CIT(A) has mentioned in his order that even before the ld. AO the assessee has not produced any material where the AO has made the addition specifically on the reason that the assessee failed to give any satisfactory explanation regarding the purchases, despite being provided with reasonable opportunity before us. The ld. AR of the assessee submitted that they intend to file the additional evidence before the lower authority, as the husband of the assessee was not well and therefore, she could not appear before the ld. CIT(A) and ld. AO also. However, the Bench feels that the assessee because of the above reasons could not advance her arguments/submissions to contest the case before the lower authorities and have considered the prayer 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 ld. 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 16/01/2024.

Sd/-

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

दिनांक / Dated:- 16/01/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Madhu Goyal, Kota.
2. प्रत्यर्थी / The Respondent- ITO, Ward, Kota.
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 575/JPR/2023)

Sd/-

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

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar