

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 715/JPR/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Dinesh Sharma B-7, Mittal Colony Bari Road, Dholpur-328001.	बनाम Vs.	ITO, Ward-4, Bharatpur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BMAPS 5715 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Rahul Pandya (Adv.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 09/01/2024
उदघोषणा की तारीख / Date of Pronouncement : 19/01/2024

आदेश / ORDER

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

This appeal is filed by the assessee against the order of Id. CIT(A) dated 28.09.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC/Id.CIT(A)"] for the assessment year 2011-12.

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

“1. The learned Assessing Officer has erred in law as well as the fact and circumstances of the case in making addition on account undisclosed cash deposited Rs. 10,37,000/- considering facts and legal provisions of the case.

2. The Ld. AO has further erred on facts and in law in making an addition for entire credits whereas the same were immediately withdrawn and given to parties related to business activities.

3. The assessee reserves its right to add, alter, modify, delete or amend all or any of the grounds of appeal before or at the time of hearing of appeal.”

3. Brief facts of the case are that the assessee is an individual, who did not file his return of income for the concerned assessment year. As per the details available with the Assessing Officer, the assessee had deposited cash amounting to Rs. 10,37,000/- in HDFC bank during the relevant assessment year. Accordingly, the case was reopened and notice u/s 148 of the Act was issued to the assessee. The assessee did not file return of income in response to notice u/s 148 of the Act. Thereafter, notices were issued u/s 142(1) of the act, however, there was no compliance from the assessee to any of these notices. Accordingly, the assessment u/s 144 of the act was completed by the Assessing Officer on 12.11.2018 assessing income at Rs. 10,37,000/- after making addition of Rs. 10,37,000/- on account of unexplained cash deposits.

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 notices were issued on 27.01.2021,

02.09.2021, 01.09.2023 and 12.09.2023 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 by the Ld. CIT(A), he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the ld. CIT(A) is reproduced as under:-

“5.1 Ground Nos. 1 and 2: Both these grounds deal with the common issue, i.e. addition of Rs. 10,37,000/- made to the income of the appellant. Hence, these two grounds are taken up together and decided as under.

5.1.1 In this case, it was observed that no return of income had been filed by the appellant u/s 139 of the Act. Further, the appellant did not file return of income in response to notice u/s 148 of the Act issued by the A.O during the course of assessment proceedings. Furthermore, he did not comply with any of the statutory notices issued by the A.O. Due to non-compliance of notices issued, the AO completed the assessment ex-parte u/s 144 of the Act and made addition amounting to Rs. 10,37,000/- .

5.1.2 The non-cooperative nature of the appellant continued in the appellate proceedings also. The appellant merely filed the appeal and thereafter, he did not respond to any of the notices issued, as has been stated above. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant has not even bothered to pursue this appeal in any productive manner. Thus, the appellant seems to be a habitual offender, who is not interested to lead evidence in his own case.

5.1.3 Coming back to the main grievance of addition made in this case, it was observed that the appellant did not submit any evidence regarding the nature and source of the cash deposited in his bank account. As per the provisions of Section 69A of the Act, if the assessee is found to be the owner of any money and such money is not recorded in the books of accounts and the assessee offers no explanation about the nature and source of

acquisition of such money, or the explanation provided by the assessee is not found to be satisfactory, the said money is then deemed to be the income of the assessee for that financial year. All these conditions are satisfied in this case. The cash was found to be deposited in the bank account of the appellant. The appellant had not filed the ITR for that said year and he had not filed any explanation regarding the nature and source of the said cash deposits. In the absence of documentary evidences, the nature and source of acquisition of the cash deposit remains unexplained. In such circumstances, as per the provisions of Section 69A, the said cash deposits are deemed to be the income of the appellant.

5.1.4 In view of the above facts and circumstances of the case, it is clear that the appellant has failed to prove the nature and source of money received in his bank account. This being so, his case is covered by Section 69A of Income Tax Act and hence, the addition of Rs. 10,37,000/- is confirmed u/s 69A of Income Tax Act, 1961. Hence, ground nos. 1 and 2 are hereby dismissed.

5.2. Ground No.3: The appellant has not added, altered, modified, deleted or amended any or all of the above grounds of appeal during the appellate proceedings. Hence this ground of appeal is dismissed.

6. In the result, the appeal filed by the appellant is dismissed.”

5. During the course of hearing, the ld. AR for the assessee prayed that the Id. 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. In support, the ld. AR for the assessee filed an

affidavit stating the reasons for his non-compliance before the Id. CIT(A) and Id.

AO and the same is reproduced as under:-

“I Dinesh Sharma son of Shri Ramgopal Sharma, aged 41 years, resident of B-7 Mittal Colony, Bari Road, Dholpur-328001 (Rajasthan) do hereby solemnly affirm and declared as under:-

1. That the appeal has been prepared & filed before the Hon’ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur under my instructions.
2. That my registered Address in Rajasthan is B-7 Mittal Colony, Bari Road, Dholpur-328001.
3. That I have not received any Notices/Assessment order from Learned Assessing Officer at my registered address. Further on receipt of demand notice, I obtained the certified copy of order & engaged an Chartered Accountant to prepare & file the Appeal against the order passed by the Learned Assessing Officer.
4. That I have not received/informed about the Notices issued from Learned CIT(Appeals) due to CA who prepared and filed the Appeal before CIT(Appeals) has mentioned his email ID mangal68974@gmail.com & not informed me. Further I have not received hard copy of the notices issued against the order passed by the CIT(A) at my address.
5. That the Email ID updated on my Income Tax Portal Profit was aktaxservices34@gmail.com but no notices received on the said email ID from any of the Authorities.
6. That I further solemnly affirm and declare that this affidavit of mine is correct and true, no part of it is false and nothings material has been concealed therein.”

6. Per contra, the Id. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the Id. CIT(A) should be sustained.

7. We have heard both the parties and perused the materials available on record. The Bench observed that the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the ld. CIT(A) and ld. AO as mentioned in his order. 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 assessment completed ex-parte order. Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of several notices, it is evident in the ld. CIT(A) order. However, the Bench feels that the assessee has filed an affidavit stating that he 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 purposed.

Order pronounced in the open court on 19/01/2024.

Sd/-

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

दिनांक / Dated:- 19/01/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Dinesh Sharma, Jdholpur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4, Bharatpur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 715/JPR/2023)

Sd/-

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

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar