

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" 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. 206/JPR/2023
निर्धारण वर्ष / Assessment Years : 2017-18

Rajesh Kala 1, Deewan Ji Ki Nasia, Opp. SMS Hospital, Tonk Road, Jaipur.	बनाम Vs.	CIT, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACQPK1887 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms Sweta Kawar (C.A.) &
Shri Prateek Jain (C.A.)

राजस्व की ओरसे / Revenue by: Shri Ajay Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 31/10/2023

उदघोषणा की तारीख / Date of Pronouncement: 19/01/2024

आदेश / ORDER

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

This is an appeal filed by the assessee against orders of the Ld. CIT(A), National faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] dated 07.02.2023 for the assessment year 2017-18.

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

"1. The Ld. Commissioner of Income Tax (Appeals) erred in addition of Rs. 2726500/- in the total income for unsecured loan as unexplained credit u/s 68.

The action of the ld. Commissioner of Income Tax (Appeals) is illegal, unjustified and against the facts of the case. Relief may please granted by deleting the addition.

2. The Ld. Commissioner of Income Tax (Appeals) erred in addition of Rs. 7493500/- in the total income for cash deposited in bank account during the demonetization period as unexplained credit u/s 68. The action of the Ld. Commissioner of Income Tax (Appeals) is illegal, unjustified and against the facts of the case. Relief may please be granted by deleting the addition.

3. The assessee craves its rights to add, amend or alter the ground on or before the hearing.”

3. Brief facts of this case are that the assessee is engaged in retail trading of Medicine and related product and has e-filed his return of income for the assessment year 2017-18 on 29.01.2018 declaring total income of Rs. 23,04,840/- which was processed u/s 143(1) of the Act. Further the case was selected for scrutiny through CASS. Notice u/s 143(2) of the Act was issued to the assessee on 28.09.2018 through ITBA system which was duly served upon the assessee. Thereafter, notices u/s 142(1) of the Act along with questionnaires were issued from time to time requiring certain details/information through electronically mode. Further, notice u/s 142(1) of the Act was issued on 07.10.2019 due to change of incumbent. The assessee did not comply with theses notices. The order u/s 144 of the Act was passed on 28.11.2019, assessing the income at Rs. 1,29,11,690/- after addition of Rs. 27,26,500/- on account of bogus unsecured loan u/s 68 of the Act,

addition of Rs. 74,93,500/- on account of unexplained credit u/s 68 of the Act and disallowance of Rs. 3,86,852/- being 10% of total in direct expenses.

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 05.01.2021, 01.11.2021, 14.01.2022 and 05.01.2023 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) he passed ex-parte order. The extract of the finding of the Id. CIT(A) is reproduced as under:-

“5. Ground No. 1 to 3: in ground No. 1, the appellant has challenged that the AO has erred in making addition of Rs. 27,26,500/- for unsecured loans by treating unexplained credit u/s 68 relief may please be granted by deleting the addition. In ground No. 2, the appellant has challenged that the AO has erred in making addition of Rs.74,93,500/- for cash deposited during demonetization period by treating unexplained credit in books u/s 68, relief may please be granted by deleting the addition. In ground No. 3, the appellant has challenged that the AO has erred in making addition of Rs.3,86,852/- for disallowance of 10 percent of total indirect expenses, relief may please be granted by deleting the addition.

5.1. The appellant filed his income tax return for A.Y. A.Y. 2017-18 on 29.01.2018 declaring total income at Rs.23,04,840/-. The case was selected for scrutiny through CASS. Order u/s 144 was passed on 28.11.2019, assessing the income at Rs.1,29,11,690/- after addition of Rs.27,26,500/- on account of bogus unsecured loan u/s 68 of the Act, addition of Rs.74,93,500/- on account of unexplained credit u/s 68 of the Act and disallowance of Rs.3,86,852/- being 10% of total indirect expenses. The appellant did not comply with the notices issued by the AO. During year under consideration the appellant was engaged in retail trading of Medicine and related product.

5.1.1. The AO observed that the appellant had shown unsecured loan amounting to Rs.27,26,500/-. Despite given many opportunities, the appellant failed to submit the documentary evidences to verify the source and genuineness of the unsecured loans. The AO treated the amount Rs.27,26,500/- shown as unsecured loans as unexplained credit in

the books under the provisions of section 68 of the Act, 1961 and added back to the total income the appellant.

5.1.2. On perusal of ITS data, the AO found that during demonetization period, the appellant had deposited cash amounting to Rs. 74,93,500/- in his bank account. Despite repeated opportunities provided to the appellant to file his explanation regarding source of the cash, the appellant did not file any reply till the date of passing of assessment order. As the source of cash deposited during demonetization period was not verifiable, the AO treated the cash deposited during demonetization period in bank account amounting to Rs.74,93,500/- as unexplained credit in the books under the provisions of section 68 of the Act.

5.1.3. The AO has noted that the appellant had debited total indirect expenses of Rs.38,68,525/- in the P&L account which were not verifiable as the appellant did not submit relevant ledgers, bills and vouchers to substantiate the claim of expenses. The AO admitted that without these expenses, business of the appellant cannot function and therefore, the AO disallowed 10% [Rs.3,86,852/-] of total expenses to cover up possible leakage of the revenue.

5.2. All the facts of the case, Grounds of appeal, statement of facts, and the assessment order are considered. In the statement of facts, the appellant has only mentioned the disallowances and has not given any explanation or justification nor has filed any documentary evidence supporting the Grounds of appeal. In/absence of any evidence substantiating the source and genuineness of the parties of the unsecured loan, the addition of Rs.27,26,500/- for unsecured loans as unexplained credit u/s 68 is upheld. Similarly, in absence of any evidence substantiating the source of the cash deposited during demonetization period Rs. 74,93,500/-; the addition of the same as unexplained credit in books u/s 68 is also upheld. In view of the above discussion, appeal on ground nos. 1 & 2 are dismissed.”

5. Feeling dissatisfied from the above order of the Id. CIT(A) the assessee has preferred the present appeal before the Tribunal on the grounds as stated in para 2 above. In support of the various grounds so raised by the Id. AR of the assessee reiterated the written submission made before the Id. CIT(A) and the same is reproduced hereinbelow:-

“1. Your honor, in this case, assessee filed his return of income for the Assessment Year 2017-18 on 29.01.2018, declaring a total income of Rs. 23,04,840/-.

2. The Assessee's case was selected for scrutiny as per the notice u/s 143(2) dated 28.09.2018. Thereafter, notices under section 142(1) along with questionnaires were issued on 07.10.2019, 21.10.2019 and 16.11.2019.

3. It is humbly submitted that assessee was not aware about the Income Tax Laws and his return of income for AY 2017-18 was filed by his tax consultant. He was unaware of abovementioned notices issued and ongoing proceedings and therefore the same could not be responded.

4. We wish to bring to the kind attention of this Honorable Tribunal that these notices were sent on email address "dkj14@yahoo.com" which was mentioned in the income tax return for AY 2017-18. This email address does not belong to the assessee rather it belongs to the tax consultant who filed the return. Regrettably, the tax consultant did not inform the assessee of the notices and owing to this lapse in communication, the assessee remained unaware of these critical notices, leading to a missed opportunity to participate and cooperate in the assessment proceedings.

5. Due to this oversight and lack of knowledge, assessee could not appear during the assessment proceedings. Consequently, the assessment was completed ex-parte u/s 144 on 28.11.2019, where assessee's total income was assessed to be Rs. 1,29,11,690/ against the return income of Rs. 23,04,840/-.

6. Realizing the gravity of the oversight, the tax consultant, in an attempt to rectify the situation filed an appeal before the Commissioner of Income Tax (Appeals) on 27.12.2019 against the ex-parte assessment order. In doing so, the consultant, in a continued oversight, used his email address "djain75@yahoo.com as the primary mode of correspondence with the department. It is deeply regrettable to note that pivotal communications and critical notices from the CIT, intended for the assessee, were instead received by the consultant.

7. Your honor, upon realizing no updates were forthcoming, the assessee approached the department directly for clarity. This action revealed the existence of the CIT's order on dated 07.02.2023 and related notices. Learning about these critical communications and realizing he had been uninformed, the assessee decided to take immediate corrective steps. To ensure fairness and in pursuit of natural justice, the assessee has approached this Honorable Tribunal with this appeal. We respectfully request a thorough consideration of the case, taking into account the challenges faced due to the aforementioned communication issues.

8. Your Honor, there is no mala fide intent behind the non-response to the aforementioned notices. The reasons outlined are genuine, unforeseen and entirely beyond assessee's control. We wish to emphasize that the assessment, being pitched high due to non-responsiveness, doesn't accrue any benefit to assessee. Upholding the principles of natural justice, we humbly pray for

another opportunity to represent assessee's case before this esteemed Tribunal. Furthermore, in order to assure the Tribunal of the absence of any mala fide intent on the part of the assessee, a separate affidavit affirming the same has also been duly attached.

9. Further, for the proposition that a fresh opportunity should be provided in cases of bona fide non-appearance, reliance is placed on the following judgments:

- Ravi Prakash Sharma Vs ITO (ITAT Jaipur) ITA No. 265 & 266/JPR/2023 dated 27.06.2023

“We have heard both the sides and perused the materials available on record. The Bench noted that the AO and the Id. CIT(A) have passed the ex- parte order and the assessee is deprived off to contest the case before the lower authorities. The Id. AR for the assessee fail to produce documentary evidence/submission in response to the appeal filed by the assessee hence, the order passed in both proceedings are ex-parte. Before us the id. AR for the assessee has filed an affidavit and paper book on going through the affidavit we found a reasonable cause for not appearing before both the proceedings. Taking into consideration the present facts and circumstances of the case, we feel to remand back to the AO admitting the evidences filed before us. The Interest of natural justice, we direct the Assessing Officer to take a consistent view of the matter after considering the submission of the assessee for both the years.”

- SHRI HARMINDER SINGH, VERSUS THE ITO, WARD-2, JAGRAON 2023 (7) TMI 461 ITAT CHANDIGARH

It is noted that the AO has passed the order u/s 144 read with Section 147 dated 14.12.2018 wherein an addition of Rs. 49,40,750/- has been made for failure on the part of the assessee to provide necessary explanation in respect of the source of cash deposits in his bank account maintained with Axis Bank Ltd. Further, even before the Id. CIT(A), though notices have been issued which were not responded to and which has resulted in ex-parte order so passed by the Id. CIT(A). We, therefore, find that both before the AO as well as before the Id. CIT(A), the additions have been made and confirmed without considering the explanation which the assessee may like to submit in support of the source of the cash deposit in his bank account maintained with Axis Bank. Therefore, in the interest of substantial justice and fair play, the assessee deserves one we more opportunity and the believe matter that is, accordingly, set aside to the file of the AO to decide the same afresh after providing reasonable opportunity to the assessee. Needless to say. the assessee shall file the necessary information and documentation in support of his claim explaining the source of the cash deposit and attend to the proceedings before the AO and ensure timely completion of the proceedings without seeking unnecessary adjournments in the matter.

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

- Goldstone Trading Company (P.) Ltd. v. Assistant Commissioner of Income-tax (2022] 141 taxmann.com 392 (Mumbai - Trib.)

Section 250 of the Income-tax Act, 1961 Commissioner (Appeals) Procedures of (Ex parte order) Assessment year 2005-06 - Assessee failed to appear for hearing before Commissioner (Appeals) and requested for adjournment of proceedings However, Commissioner (Appeals) rejected said request and passed an ex parte order against assessee Whether since assessee had bona fide reasons for non-appearance and assured full co-operation with Commissioner (Appeals) for expeditious disposal of appeal, matter was to be remanded to Commissioner (Appeals) for adjudication de novo after affording another opportunity of hearing to assessee - Held, yes [Para 5] [Matter remanded)

- Amritha Raj Vs-ACIT (ITAT Bangalore) ITA Nos. 161 & 162/Bang/2022
The learned A.R. submitted that the assessee could not appear before the learned CIT(A) for reasons beyond her control. Since the CIT(A) passed the orders ex-parte, the assessee has filed these appeals challenging the decision of the learned CIT(A). The learned A.R. submitted that the assessee has a good case on merits and accordingly prayed that the appeals may be heard.

I heard the parties and perused the record. I notice that the learned CIT(A) has passed the impugned order ex-parte, without hearing the assessee, since the assessee did not appear before him despite of giving several opportunities. The learned A.R. submitted that the assessee was under the bona fide belief that the undisclosed income shall be assessed in the hands of the assessee's husband. However, this explanation does not support the case of non-appearance. At the same time, the natural justice would call for giving opportunity of hearing to the assessee. Accordingly in my view the assessee may be provided with one more opportunity to present her case properly before the CIT(A).

10. Your honor we deeply regret the inadvertent non-compliance and oversight, resulting from circumstances that were entirely beyond assessee's immediate control. It is pertinent to clarify that there was not a deliberate act of evasion or oversight. Instead, it arose from the unfortunate situation of not being kept informed by assessee's consultant.

11. We assure this Honorable Tribunal of our utmost cooperation in all forthcoming proceedings and sincerely pray for an assessment that is just, equitable and in consonance with the provisions of the law.

12. It is our humble prayer that appeal be admitted, considered and favorably entertained in the interest of justice. We firmly believe in the merits of our case and respectfully request that the appeals be given a hearing.

13. In the interest of upholding the tenets of natural justice and equity, we also earnestly appeal to this Honorable Tribunal to consider a remand back of the case. Such a gesture would not only

provide the assessee with a fair opportunity to present the case in its entirety but would also serve as a testament to the justice system's commitment to ensuring fairness in its proceedings.”

6. The ld. AR of the assessee also filed an affidavit in support of the submissions which reads as under:-

“I, Rajesh Kala, aged 51 years, S/o Shri Phool Chand Kala, currently residing at Jaipur, do hereby solemnly affirm and declare as under:

1. That I am the appellant in the matter and am well-acquainted with the facts and circumstances of the case.
2. That I had duly filed my return of income for the Assessment Year 2017- 18, declaring a total income of Rs. 23,04,840/-
3. That due to reasons genuinely beyond my control, I was unable to respond to the notices issued during the assessment proceedings. The primary reason for this inadvertence was my lack of awareness about the notices, as they were sent to my consultant's email ID and I was unfortunately not informed about them on time.
4. That there was no mala-fide intention or deliberate act on my part to evade or neglect the assessment proceedings. The oversight was purely unintentional and arose from the lack of communication from my consultant, which were out of my control.
5. This affidavit is provided in support of the submissions presented by my Authorized Representative (AR) to assure the Honorable Tribunal of the genuineness of my reasons and the absence of any mala fide intent.
6. That I assure the Tribunal of my full cooperation in future proceedings and sincerely pray for a just and equitable assessment, in consonance with the law.”

7. During the course of hearing, the ld. AR for the assessee prayed that the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO in the interest of equity and justice.’

8. Per contra, the ld. DR relied on the orders of the ld. CIT(A).

9 We have heard both the parties and perused the materials available on record. The Bench observed that the assessee could not appear during the assessment proceedings. Consequently, the assessment was completed ex-parte u/s 144 of the Act on 28.11.2019, where assessee's total income was assessee to be Rs. 1,29,11,690/- against the return of income of Rs. 23,04,840/-. Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of several notices as it is evident in the ld. CIT(A) order. Before us, ld. AR for the assessee submitted that order of ld. AO and that of the ld. CIT(A) are ex-parte and if given one chance then assessee has a merit in his case. Therefore, the Bench feels that the assessee because of the above reasons could not advance his arguments/submissions to content the case before the lower authorities and the ld. AR for the assessee also relied on the contest of affidavit before us so as to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee. Considering the overall facts, averments made in affidavit, we direct the ld. AO 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.

10. 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 purposes

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

Sd/-

(राठौड कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/01/2024

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Rajesh Kala, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT, Jaipur.
3. आयकरआयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 206/JPR/2023)

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar