

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 703/JP/2023
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. Usha Infra Plot No 09-10, Khasra NO. 358-359, Mahaveer Colony (Godha) Bijainagar Distt: Ajmer 305 624	बनाम Vs.	The ITO Ward -1 Beawar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAUFU 7351 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Vedant Agarwal, Adv.
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 01/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 06 /02/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 29-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2018-19 wherein the assessee has raised the following grounds of appeal.

“1. On the facts and circumstances of the case and in law also ld. Lower Authorities grossly erred in making the additions and passing the ex-parte order without providing opportunity of being heard.

2. On the facts and circumstances of the case and in law the AO grossly erred in making addition of Rs.97,68,619/- u/s 68 of the Act.

3. On the facts and circumstances of the case and in law also, the AO grossly erred in making addition of Rs.84,89,544/- by disallowing the trading expenses unlawfully.”

3.1 Apropos Ground 1 to 3 of the assessee, it noted that the ld. CIT(A) has dismissed the appeal on the ground that the assessee is not desirous of pursuing the grounds of appeal in spite of providing more opportunities to the assessee. The observations of the ld. CIT(A) as to dismissing the appeal of the assessee are mentioned as under:-

“4. Decision

4.1 The appeal was filed by the assessee on 23.04.2021 in appeal no. NFAC/2017- 18/10043387 against the order u/s 144 of the IT Act, 1961. In connection to the appeal, opportunities were provided to the assessee to substantiate his grounds of appeal on following dates:-

S.N.	Hearing notice issued on	Hearing fixed on
1	11-07-2022	26-07-2022
2	14-09-2022	29-09-2022
3.	24-11-2022	09-12-2022
4.	14-06-2023	22-06-2023
5.	21-09-2023	29-09-2023

Against all these notices there was no response from the assessee, as has been brought out above, it is evident that the appellant is not interested in filing any details during the appellate proceedings and avail the opportunity under the

principle of natural justice. In response to the notices issued, even adjournment was not sought. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.

4.2 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and Another (118 ITR 461) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in Sunderlal Mannalal Vs. Nandramdas Dwarkadas AIR 1958 MP 260 wherein it was observed:-

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses..."

4.3 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that it is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempt. Same is the position in case of all allowances, deductions, claims or loss, etc. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the

appellant to prove its case. The appellant has not availed any opportunity to do so.

From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the assessee to discharge its onus. However in this regard, various Tribunals have held that once an appeal is preferred before the CIT(A), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. This is fortified by Hon'ble High Court of Mumbai in the case of CIT Vs Premkumar Arjundas (HUF (2017) 297 CTR 614 (Bom)). Hence, respectfully following the above mentioned judicial pronouncements and in view of the facts of the case, the appeal is hereby dismissed.

In my considered view, the findings of the AO in the assessment order are self- speaking and do not require any interference. Hence the appeal is liable to be dismissed.

5. In the end result, the appeal is DISMISSED,

.2 During the course of hearing the ld. AR of the assessee prayed that one more chance should be given to the assessee to contest the case before the ld CIT(A).

3.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.4 We have heard both the parties and perused the materials available on record. It is noticed that the ld. CIT(A) has passed an ex-parte order on the ground of non-appearance before him and thus the assessee remained deprived off to contest the grounds of appeal before him. The Bench further noted that the

assessee neither submitted any documentary evidence or written submission in connection with his appeal before the Id CIT(A) to counter the same which indicates that the assessee is lethargic and not serious to pursue its case before the lower authorities in spite of multiple opportunities by the lower authorities. It is undisputed fact that the assessee was granted several opportunities by the Id. CIT(A) as mentioned in the Id.CIT(A)'s order to argue the case but the assessee remained non-cooperative and negligent in pursuing its case on the dates of hearing of the appeal for which the Bench awards cost of Rs.2,000/- and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the Id. CIT (A) for proof and thus the appeal of the assessee is restored to the file of the Id. CIT(A) 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. Thus the appeal of the assessee is allowed for statistical purposes.

3.5 Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by Id. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 06 /02/2024.

Sd/-

Sd/-

(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/02/2024

*Mishra

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

1. The Appellant- M/s.Usha Infra, Ajmer
2. प्रत्यर्था / The Respondent- The ITO , Ward 1, Beawar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 703/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar