

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 92/JP/2023
निर्धारणवर्ष/Assessment Year :2010-11

Shri Surjan Singh Meena 27, Pratap Nagar, Shastri Nagar Jaipur	बनाम Vs.	The JCIT Range-6 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AFFPM 7778 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Neeraj Lalwani, Proxy
राजस्व की ओर से / Revenue by: Ms. Chanchal Meena, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 29/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 14 /06/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 30-12-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2010-11 wherein the assessee has raised the following grounds of appeal.

“1. Order passed by the AO u/s 271D r.w.s. 274 of the Income Tax Act, 1961 and imposed a penalty of Rs.1.10 lacs on the basis of cash taken from his brother without considering the proviso to

Section 269SS of the Income Tax Act, has erred in fact and in law and be quashed.

2. The AO imposed penalty on the basis cash taken from his brother without considering the proviso of 269SS and without considering the actual facts, documents submitted at the time of assessment proceedings as well as intention of the assessee and has erred on fact and in law by the AO and imposing demand u/s 271D r.w.s. 274 of the Income Tax Act, 1961.

3. The assessee has filed the appeal to Id. CIT(A) against the order of penalty that time the Id. CIT(A) required the documents for appeal proceedings and explanation for grounds which was not submitted while asking by Id. CIT(A) because of the assessee legal heir was not appointed that time. Now as the legal heir Mrs. Shanti appointed to file appeal to ITAT on behalf of Surjan Singh Meena. Mrs. Shanti (legal heir) authorized Mr. Surendra Gupta to attend all matter related to appeal and to produce all the documents required for this.”

2.1 The Bench noted that when the case of the assessee was fixed for hearing/arguments then instead of Id. AR of the assessee, only proxy of the assessee appeared and application for seeking adjournment was filed without mentioning appropriate reasons. The Bench found that the adjournment application does not show any reasonable cause and thus the same was dismissed.

2.2 Brief facts in this case are that assessment u/s 147/143(3) for the A.Y. 2010-11 was completed on 25-12-2017 at the income of Rs. 2,43,370/-. During the course of assessment proceedings, it was noticed that the assessee had accepted the cash loan of Rs.1.10 lacs in F.Y. 2009-10 from Shri Sanuman Sahai, brother of the assessee. Hence, it is clear that the assessee was a beneficiary of cash loan to the tune of Rs.1.10 lacs which according to the AO is clear cut violation of Section 269SS of the Act. Accordingly, a notice u/s 271D of the Income Tax Act, 1961 r.w.s. 274 was issued on 29-10-2018 to the assessee fixing a date for hearing on 12-11-2018. In response to the notice, no one attended nor any reply was filed nor any adjournment was sought by the assessee. Therefore, a show cause notice was issued to the assessee on 28-11-2018 by the JCIT, Range-6, Jaipur for submitting his reply as to why penalty u/s 272A(1)© should not be levied fixing the date for hearing on 6-12-2018. However, in response to notice, neither the assessee appeared nor any reply was filed. Hence, the ld. JCIT, Range-6, Jaipur, in these circumstances had no other option except to impose penalty u/s 271D on the basis of the information available on record. Hence, the ld. JCIT, Range-6, Jaipur was convinced that the penalty u/s 271D is required to be levied in this case for violation of provisions of Section 269SS to the tune of Rs.1.10 lacs. Thus the ld. JCIT, Range-6, Jaipur after considering the facts and circumstances of the case,

penalty amounting to Rs.1.10 lacs being the sum equal to the amount of cash loan accepted by the assessee was levied upon the assessee u/s 271D of the Act.

2.3 In first appeal, the Id. CIT(A) has dismissed the appeal of the assessee in limine for the reason that the assessee did not appear before the Id. CIT(A) to contest the case in spite of various opportunities/ notices dated 09-02-2021, 07-12,2021 and 13-09-2022 and thus finally on 12-12-2022 the assessee was issued notice to submit its reply. The extract of the order of the Id. CIT(A) is reproduced as under:-

“During the appellate proceedings, it was noticed that no Form No. 35, statement of facts and grounds of appeal are available on portal. The appellant was requested to give its submission vide various notices dated 09-02-2021, 07-12-2021 and 13-09-2022 but no response was submitted by the appellant.

Finally on 12-12-2022, the appellant was issued notice to submit its reply and it was specifically mentioned in the notice that with Form No. 35, statement of facts and grounds of appeal may be given alongwith submission, otherwise appeal will be decided on merit but no reply has been received nor any adjournment is sought.

The aforesaid circumstances shows that the appellant is not interest in pursuing its appeal. The maxim ‘vigilantibus non-dormitentibus jura subvenient i.e. the law assists those who are vigilant and not those who sleep over their right, is applicable in this case.

Hon’ble ITAT in ITA No.1025-1027/CHD/2005 for the A.Y. 2002-03 in the case of M/s. Chhabra Land & Housing Ltd. after following the decision of Hon’ble Supreme Court in the case of B.N. Bhattacharjee & Others 118 ITR 461 (SC) held that the appeal does not mean merely filing of appeal but effectively pursuing the same.

Considering the above facts and material on record, it is held that assessing officer has made the addition on merits considering facts of the case and no infirmity is noticed in the order of the assessing officer. Hence, the appeal of the assessee is dismissed

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

2.5 We have heard the ld. DR and perused the materials available on record. The Bench noted that the AO and the ld. CIT(A) have passed the ex-parte order and the assessee is deprived off to contest the case before the lower authorities. The Bench feels that the assessee should be provided one more opportunity to contest his case before the AO as the assessee could not advance his arguments as to the penalty imposed by the AO u/s 271D of the Act. It is also noted that the assessee remained negligent to pursue his case. Thus the appeal of the assessee is restored to the file of the 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 assessment proceedings before the AO. Thus the appeal of the assessee is allowed for statistical purposes.

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

3.0 In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14 /06/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14 /06/2023

*Mishra

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

1. The Appellant- Shri Surjan Singh Meena, Jaipur
2. प्रत्यर्थी / The Respondent- The JCIT, Range-6, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 92/JP/2023)

आदेशानुसार / By order,

Asstt. Registrar