

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

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

आयकर अपील सं./ITA No. 743/JP/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Vijender VPO: Chaproli, Mania, Dholpur – 328 001	बनाम Vs.	The ITO Ward 4 Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKOPV 5657 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rahul Pandiya, Adv.
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 18/01/2024
उदघोषणा की तारीख / Date of Pronouncement: 15 /02/2024

आदेश / ORDER

PER: SHRI SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 12-09-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 wherein the assessee has raised the following ground of appeal.

“The AO has erred in law as well as the facts and circumstances of the in making addition on account undisclosed cash deposited of Rs.38,45,960/- without considering the facts and legal provisions of the case.

2.1 At the outset of the hearing, the Bench noted that there is delay of 388 days in filing the appeal by the assessee for which the assessee filed an application for condonation of delay alongwith affidavit and mainly praying therein as under to condone the delay:-

- (a) That we have not received hardcopy of the order passed by ld. CIT(A) at my address thus the assessee was not aware of the order.
- (b) That non-receipt of notices and orders.
- © That due to low return income my regular consultant did not check the income tax portal.
- (d) That on receipt of recovery notices my consultant checked the income tax portal and informed that the order has been passed by ld. CIT(A) on dated 12-09-2022.
- (e) That the delay in filing the appeal is neither intentional nor willful but due to genuine and sufficient reasons shown hereinabove.
- (f) That in interest of justice, the present application is allowed and the delay in filing of appeal is condoned so that the matter can be adjudicated upon its merit
- (g) It is, therefore, most respectfully prayed that this application may kindly be allowed and delay of 388 days in filing the appeal may kindly be condoned and the matter may kindly be heard on its merit in the interest of justice. Such other orders as deem fit and proper in the facts of the case may kindly be passed.’’

2.2 On the other hand, the ld. DR objected to such delay made by the assessee in filing the appeal.

2.3 We have heard both the parties and perused the affidavit of the assessee and feel that there is a merit in the submission of the assessee and thus in view of the affidavit of the assessee, the delay in filing the appeal by the assessee is condoned.

3.1 Apropos solitary ground of the assessee, it is noted that the ld.CIT(A) has dismissed the appeal of the assessee by holding as under:-

“4.3 I have gone through the facts of the case, the statement of facts filed alongwith Form No.35 and the assessment order passed by the AO. It is noted that the AO, on the basis of NMS information initiates the proceedings u/s 147 of the Act after following the due procedure. During the year under consideration, the appellant deposited cash to the tune of Rs.38,45,960/- in his bank account and also earned an interest of Rs.1149/-. During the assessment proceedings, no compliance to any notices issued by the AO was ever made. Further, even in response to notice u/s 148 no return was ever filed nor any objection to the notice was ever raised. The return under section 139(1) of the Act was also not filed by the appellant. No submission was filed even after the issue of the final show cause notice dated 22.10.2018 by the AO. Even during the appellate proceedings, the appellant did not respond to any notices issued. The appellant only submitted the written submission in the form of 'Statement of Facts' but did not give any documentary evidence to prove the genuineness of the transactions.

4.4 Therefore, in view of the above discussed facts, it is clear that the case of the appeal has been fixed for various dates but no reply has been given by the appellant and the appellant is a habitual non-compliant without any concern/ respect for the law of the land. Even the assessment was completed under Section 144 due to non-compliance. Therefore, it is presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Ld. Assessing Officer. Thus, the action of the AO is confirmed and the grounds of appeal raised by the appellant are dismissed.

5. In result, the appeal is dismissed.”

3.2 During the course of hearing, the ld. AR of the assessee prayed that the assessee was not provided adequate opportunity of hearing by the authorities below and also prayed that one more chance may be provided to contest the case before the ld. CIT(A) in order to settle the issue in question. It may be noted that the ld. AR of the assessee has not filed any written submission before us to counter the order of the ld. CIT(A).

3.3 On the other hand, the ld. DR has objected to the prayer of the ld. AR of the assessee and also relied upon the order of the ld. CIT(A)

3.4 We have heard both the parties and perused the materials available on record. The Bench noticed that the Id. CIT(A) had provided various opportunities to the assessee to advance his submission with a view to settling the dispute in question (supra) but the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the Id. CIT(A). It is undisputed fact that the assessee was granted several opportunities by the lower authorities to argue the case but the assessee remained non-cooperative and negligent in pursuing his 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 AO for proof and 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 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 AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO 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 15 /02/2024.

Sd/-

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/02/2024

*Mishra

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

1. The Appellant- Shri Vijendra, Dholpur
2. प्रत्यर्था / The Respondent- The ITO, Ward 4, Bharatpur
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. 743/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar

