

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 678/JP/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Manoj Harkut, HUF 202-203, Pearl Oasis, Mangal Marg, Bapu Nagar, Jaipur – 302 018	बनाम Vs.	The ITO Ward 5(5) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADHM 3983 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 24/01/2024
उदघोषणा की तारीख / Date of Pronouncement: 31 /01/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 13-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-58 wherein the assessee has raised the following grounds of appeal.

“1. That in law and in the facts and in circumstances of the case, the Id. CIT(Appeals) grossly erred in passing ex parte assessment order without providing sufficient opportunity of being heard as no notices of the hearing was served properly on the assessee appellant.

2. That on the law and in the facts and in the circumstances of the case, the Id. Assessing Officer grossly erred in rejecting Long Term Capital

Gain earned from sale of shares amounting Rs. 37,99,416/- claimed by the assessee appellant as exempt u/s 10(38) of the Act and erred in adding the same as income from other sources u/s 68 of the Act and also erred in holding that the whole transaction done by the assessee appellant in as a SHAM transaction which is illegal and bad in law.

2.1 That the Id. Assessing Officer grossly erred in not sharing evidence/information available with him before making the impugned addition and not providing any opportunity of cross examination which is in gross violation of principle of natural justice.

2.2 That the Id. Assessing Officer grossly erred in relying on data/information/ documents which are wholly unrelated to the shares in which assessee has dealt in and the additions made by the Id. Assessing Officer was on assumption and presumption basis which is illegal and bad in law.

3. That on the law and in the facts and in the circumstances of the case, the Id. Assessing Officer grossly erred in making addition of Rs. 2,35,965/- by treating the same as unexplained expenditure for acquiring accommodation entry.”

2.1 Apropos Ground No. 1 to 3 of the assessee, it is noted that the Id.CIT(A) has dismissed the appeal of the assessee by holding as under:-

“4.2 in view of the facts of the appellant under consideration and various judicious decisions cited above, I am of the considered opinion that the appellant is not willing to pursue the appeal and reserve his only by mere filing of the memo of appeal. Since the appeal has chosen not to respond to the notices issued and sufficient opportunities granted. I am left with no option but to decide the appeal on the basis of material available on record.

5. Decision: In view of the above, considering failure of the appellant to make submissions in support of its appeal, the action of the AO is upheld. As a result, the appeal is treated as dismissed.”

2.2 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.

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

2.4 We have heard both the parties and perused the materials available on record. The Bench noticed that the ld. 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 ld. CIT(A). It is undisputed fact that the assessee was granted several opportunities by the ld. CIT(A) as mentioned in the ld.CIT(A)'s order 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 ld. CIT (A) for proof and thus the appeal of the assessee is restored to the file of the ld. 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 31/01/2024.

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:- 31/01/2024

*Mishra

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

1. The Appellant- Shri Manoj Harkut, HUF, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward 5(5), Jaipur
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. 678/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar