

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. 28/JPR/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Pawan Agarwal 4123 Jagannath Shah Ka Rastha, Ramganj Bazar, Jaipur.	बनाम Vs.	ITO, Ward-5(5), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADPPA 1376 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Saurav Harsh (Adv.)  
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 13/02/2024  
उदघोषणा की तारीख / Date of Pronouncement: 19/02/2024

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 28.11.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] for the assessment year 2017-18.

2. 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 learned lower authorities grossly erred in making an addition of Rs. 1,07,32,000/- under section 69A of the I.T. Act on account of unexplained cash deposit in bank account during the year under consideration.*

*3. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”*

3. Brief facts of the case are that the assessee is an individual and has filed original return of income electronically on 31.10.2017 declaring total income at Rs.3,66,220/-. The case of assessee was selected for scrutiny through CASS. Accordingly, notice u/s 143(2) was issued on 09.08.2018 by the ITO, Ward-5(4), Jaipur, which was duly acknowledged by the assessee. Thereafter, notice u/s 142(1) with detailed questionnaire of the I.T. Act, 1961 was issued online on 17.09.2019 for submit required details on or before 24.09.2019, but the assessee was not made compliance to this notice. Thereafter, a letter was issued on 25.09.2019 for submit required details as per earlier query dated 17.09.2019 on or before 03.10.2019. In response to this letter, the assessee filed his application on 03.10.2019 online for adjournment, on his request case was adjourned to 11.10.2019. On given date, the assessee has filed some details, but not filed all required details. The ld. AO observed that the assessee has filed his ITR for A.Y. 2017-18 on 31.10.2017, in this return, he has shown cash deposit of Rs.

72,21,000/- in bank a/c maintained with Union Bank of India and cash deposit of Rs. 35,11,000/- in bank a/c maintained with Bank of India during demonetization period.

3.1 In case of the assessee, notice u/s 142(1) with questionnaire was issued, but assessee has not filed all required details for source of cash deposits in his bank accounts during the demonetization period. In these circumstances, a show cause notice was issued on 29.11.2019 online to file his submission regarding source of cash deposit of Rs. 1,07,32,000/- (Rs 72,21,000+Rs 35,11,000) during the demonetization period on or before 03.12.2019, in response to this notice, a letter was received on 01.12.2019 on departmental e-mail from AR of the assessee for adjournment, on her request, case adjourned to 05.12.2019. But on the given date, nobody attended nor filed any submission. Nobody attended on 05.12.2019, nor any written reply filed. This shows that assessee is not interested to furnish any evidence explanation in his support/defense. The assessment is time barring and sufficient opportunities have been provided. Therefore, there is no option with the ld. AO but to complete the assessment ex parte is 144 of the IT Act. During the demonetization period during F.Y. 2016-17, the assessee had deposited total amount of Rs.1,07,32,000 in cash in his bank accounts maintained with Union Bank of India and Bank of India. The Ld. AO further observed that the assessee

has not been able to prove the source of cash deposit in his bank accounts during the demonetization period of Rs. 1.07.32.000. The assessee has made cash deposit amounting to Rs. 1,07,32,000/- in the bank accounts of the assessee during the demonetization period in the F.Y. 2016-17 relevant to A.Y.2017-18 remained unexplained. The assessee has not responded to notice u/s 142(1) and show cause notices issued during e-assessment proceedings. The assessee failed to give any explanation about the nature and source of cash deposit, hence, the cash deposit is deemed unexplained money u/s 69A of the I.T. Act, 1961 and added to the total income of the assessee. The tax has been charged as per provisions of section 115BBE of the I T Act. The penalty proceedings u/s 271AAC of the IT Act has been initiated separately on this issue.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) observed that various notices were issued on 26.02.2021, 17.02.2022, 08.06.2022, 24.08.2022, 20.10.2022, 24.04.2023 and 11.08.2023 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 ld. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the ld. CIT(A) is reproduced as under:-

“5.1. Ground No.1: In this ground of appeal, the appellant agitated against the addition made u/s 69A of the I.T. Act of Rs.1,07,32,000/- as illegal, unjustified and against the facts of the case. As observed in the assessment order passed for the Assessment Year 2017-18 under section 144 of the Income Tax Act, the appellant's bank accounts with Union Bank of India and Bank of India recorded cash deposits of Rs. 72,21,000/- and Rs. 35,11,000/-respectively, during the demonetization period. Subsequently, the appellant's income tax return for the same assessment year underwent scrutiny through the CASS. In response, the Assessing Officer (AO) issued multiple notices under section 142(1) to inquire about the sources of these cash deposits. It is evident from the assessment order that the appellant's authorized representative responded to the show cause notice dated November 29, 2019, via email on December 1, 2019, seeking an adjournment. Consequently, the hearing was rescheduled to December 5, 2019. However, no further communication or clarification regarding the sources of the cash deposits was received from the appellant. In the absence of any response regarding the sources for the cash deposits, the AO, in accordance with section 69A of the Income Tax Act, treated these deposits as unexplained money and proceeded with the assessment. Aggrieved with the assessment, the appellant has filed this appeal. Throughout the appellate proceedings, the appellant was given numerous opportunities to present his case. Despite getting multiple chances to submit written explanations along with supporting documents, the appellant failed to provide any documentary evidence regarding the sources of the cash deposits made during the demonetization period. Consequently, the appeal on this ground is dismissed.

6. As a result, appeal filed by the appellant against order section 144 r.w.s.147 for A.Y. 2017-18 is treated as dismissed.”

5. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) and the AO both have passed the ex-parte order and the assessee was not

provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. AO on merits as the orders of the both the authority are ex parte, and the assessee prayed to grant one chance provide the details in connection with the merits of his case as he has already filed the return of income in the interest of equity and justice.

6. Per contra, ld. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the ld. AO and CIT(A) both stage and now there are praying for equity and justice. Therefore, in that case if the Bench feels the matter may be restored to the file of the Assessing Officer then with fine may be sent back.

7. We have heard both the parties and perused the materials available on record. The bench noted from the order of ld. CIT(A) that the appeal of the assessee was dismissed by the ld. CIT (A) for want of non-prosecution of the appeal. The assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessee completed ex-parte assessment u/s 144 of the Act on 08.12.2019. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that *"That in law and in the facts and in circumstances of the case, the ld. 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.*” However, the Bench feels that the assessee because of any reasons assessee could not advance his arguments/submissions to contest the case before the lower authorities and the Id. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee, 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 Id. AO. At the same time we also found force in the arguments of the Id. DR that the time of the revenue officers are also important and the assessee without sufficient reasons have not responded to the opportunity granted therefore, considering that facet of the matter the Bench awards cost of Rs.3000 for not attending the proceeding before the Id. AO and Rs. 5,000/- for not attending the proceeding before the Id. CIT(A). The said cost be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof. In the light of this observation the appeal of the assessee is allowed for statistical purposes.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. 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 Id. AO independently in accordance with law.

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

Order pronounced in the open court on 19/02/2024.

Sd/-  
(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/02/2024

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Pawan Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(5), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 28/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar