

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 766/JPR/2023
निर्धारण वर्ष / Assessment Years : 2014-15

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|---|-------------|-------------------------------|
| Hansika Jain J-13, Himmat Nagar, Tonk Road, Jaipur. | बनाम Vs. | ITO, Ward-5(4), Jaipur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ATBPJ 3164 A | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assesseeby : Shri H.M. Singhvi (C.A.)
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 20/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 27/02/2024

आदेश / ORDER

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

This appeal is filed by the assessee is directed against the order of the Ld. CIT(A) dated 17.10.2023, National Faceless Appeal Centre, Delhi[herein after referred to as "CIT(A)/(NFAC)"] for the assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

- "1. That the Learned CIT(A) went wrong in not giving the opportunity to discuss the case.*
- 2. That the Learned CIT(A) went wrong in confirming the initiation of proceedings u/s 147/148 as valid which is band in law.'*

3. That the Learned CIT(A) went wrong in confirming the long term capital gain of Rs. 3945086/- claimed as exempt u/s 10(38) as non-genuine and treating it as unexplained credit u/s 68 which is arbitrary and illegal.

4. That the Learned CIT(A) went wrong in confirming the addition of Rs. 236705/- made by AO u/s 69C on account of commission paid for acquiring accommodation entry of shares which is based on assumption and presumption.

5. That the Learned CIT(A) went wrong in not giving the opportunity of cross examination of the broker, promoters and other persons whose statements have been recorded at the back of the assessee and these statements have been used against the assessee inspite of written request.

'6. That the appellant craves leave to add, alter amend or withdraw any of the grounds of appeal before or at the time of hearing.'

3. Brief facts of the case are that the assessee is an individual and deriving income from other sources and filed her return of income u/s 139(1) on 30.07.2014. The return of income was processed u/s 143(1) and the same was selected for scrutiny and the assessment was completed u/s 143(3) on 07.11.2014. The books of accounts with vouchers etc were produced before the ld. AO and all the details asked for in the notice u/s 142(1) of the Act and the same were replied. The ld.AO issued notice u/s 148 of the Act on the basis of information from D.I. Wing, Kolkatta. Based on the detailed finding recorded in the order of the assessment running to 52 pages wherein the after recording a detailed finding the ld. AO held that the long term capital gain claimed by the assessee for an amount of Rs. 39,45,086/- claimed u/s. 10(38) is not genuine and added as income the ld. AO also added a sum of Rs. 2,36,705/- being the commission paid for acquiring the accommodation entry of Bogus Long term capital gain.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“Notices of hearing were issued fixing dates of hearing on 27.01.2021, 13.06.2023, 25.09.2023 and 11.10.2023. Except one request for adjournment received on 12.06.2023 for hearing fixed for dated 13.06.2023, there has been no compliance on the part of the appellant. Neither any request for seeking further time for furnishing written submissions nor any written submissions in support of grounds of appeal have been filed. ME TAX DEPAR

I have gone through the impugned order, grounds of appeal and statement of facts as per Form No. 35.

In the absence of any written submissions on the part of the appellant, the appeal is decided on the basis of material on record.

Ground No.1. The Ld. AO has erred on facts and in law in issuing notice u/s 148 on reasons which are vague and are not based on any tangible material. The AO has issued the notice mechanically on the basis of information received from Investigation Wing without proper application of mind and independent analysis.

As neither any written submission nor any documentary evidence has been filed in support of ground of appeal, I do not find any infirmity or illegality in the assessment order and hence this ground of appeal is dismissed.

Ground No.2. The Ld. AO has erred on facts and in law in making an addition of Rs. 3945086/- u/s 68 brushing aside all the evidence put forth by the assessee in support of exempted LTCG accruing to it. The LTCG is exempt u/s 10(38) as per the amendment made by the Finance Act, 2017,

The Assessing Officer has discussed the issue in detail at pages 1 to 50 of assessment order and the same is not being reproduced here for sake of brevity. The issue relates to claim of bogus long term capital gains as exempt income.

As neither any written submission nor any documentary evidence has been filed in support of ground of appeal, I do not find any infirmity or illegality in the assessment order and hence this ground of appeal is dismissed.

Ground No.3. The Ld. AO has erred in facts and in law in adding an amount of Rs. 236705/- u/s 69C, as commission paid for acquiring accommodation entry, without any direct evidence in this regard.

The Assessing Officer has discussed the issue in detail at pages 1 to 50 of assessment order and the same is not being reproduced here for sake of brevity. The issue relates to claim of bogus long term capital gains as exempt income and complete modus operandi has been discussed in detail. It is also the finding therein that the beneficiaries have paid commission income on acquiring accommodation entries and hence the addition of Rs. 236705 u/s 69C has been made.

As neither any written submission nor any documentary evidence has been filed in support of ground of appeal, I do not find any infirmity or illegality in the assessment order and hence this ground of appeal is dismissed.

Ground No.4. That the Learned AO has not produced the witnesses viz. brokers and promoters whose statements have been recorded at the back of the assessee and these statements have been used against the assessee, inspite of written request.

As neither any written submission nor any documentary evidence has been filed in support of ground of appeal, I do not find any infirmity or illegality in the assessment order and hence this ground of appeal is dismissed.

Ground No.5. That the assessee craves to amend, alter and modify any of the grounds of appeal.

This ground is general in nature and not required to be adjudicated. There was no change in grounds of appeal during the appellate proceedings.

During the appellant proceedings, no written submissions or any documentary evidence were filed by the appellant in support of grounds of appeal and hence I am unable to grant any relief to the appellant and hence the appeal of the assessee is dismissed.

5, निष्कर्ष/ Conclusion:

In the result, the appeal of the appellant is dismissed.”

5. Aggrieved from the order of the ld. CIT (A) the assessee has preferred this appeal before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed reliance on the written submission which is kept on record.

6. During the course of hearing, the ld. AR for the assessee prayed that the Id. CIT(A) has 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. CIT(A) in the interest of equity and justice.

7. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue her case and thus the order passed by the ld. CIT(A) should be sustained.

8. We have heard both the parties and perused the materials available on record. From the ld. CIT(A)'s order, it is noted that the appeal of the assessee is

dismissed by the ld. CIT (A) for want of non-prosecution of the appeal. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that the ld. CIT(A) has on the grounds raised by the assessee merely stated that

As neither any written submission nor any documentary evidence has been filed in support of ground of appeal, I do not find any infirmity or illegality in the assessment order and hence this ground of appeal is dismissed.

Thus, the ld. AR of the assessee prayed that he may be granted one chance to represent the facts before the ld. CIT(A). The object of the Bench is to provide justice. Considering the overall facts of the case and looking to the facts /grievance of the assessee as raised hereinabove, the Bench feels that one more chance should be given to the assessee to contest the case before the ld. CITA) and submit the necessary reply to resolve the issue raised in the appeal before him. Thus the appeal of the assessee is restored to the file of the ld. CIT(A) for afresh adjudication of the case but by providing one more opportunity in this case.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. 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 the Id. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 27/02/2024.

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:- 27/02/2024

*Santosh

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

1. The Appellant- Hansika Jain, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(4), 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. 766/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar