

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 190/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Guddu Kanwar, 102 NH 11 Ke pas, Khudi Chhoti Lakshmangarh, Sikar.	बनाम Vs.	ITO, Ward-3, Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: EIHPK1167H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dheeraj Borad (C.A.)
राजस्व की ओर से / Revenue by : Shri Ajay Malik (CIT) &
Shri Anup Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 02/04/2024
उदघोषणा की तारीख / Date of Pronouncement : 03/04/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 26.12.2023 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2017-18, which in turn arise from the order dated 23.12.2019 passed under section 144 of the Income Tax Act, [Here in after referred as "Act"] by the ITO, Ward-3, Sikar.

2. The assessee has marched this appeal on the following grounds:-

“1. That on the facts and in law, the impugned order dated 26/12/2023 passed u/s 250 of the I.T. Act, 1961 by the Id. Commissioner (Appeals), sustaining total addition of Rs. 99,77,419/- (addition u/s 68 r.w.s 115BBE Rs. 47,52,922 + addition as Income from other sources Rs. 52,24,497) is most arbitrary, unjust and untenable and liable to be cancelled.

*2. That on the facts and in law, the Ld. Commissioner (Appeals) erred in passing ex-parte appellate order dated 26/12/2023 u/s. 250 without providing to the appellant opportunity of being heard as prescribed u/s 250(1) of the I.T. Act, **which passing of ex-parte appellate order without providing to the appellant opportunity of being heard, is most arbitrary, unjust, not maintainable and liable to be vacated.***

3. That the Ld. Commissioner (Appeals) failed to comply with the provisions of section 250(4) of the I.T. Act which says that the Joint Commissioner (Appeals) or the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the assessing officer to make further inquiry and report the result of the same to the Joint Commissioner (Appeals) or the Commissioner (Appeals).

4. That the Ld. Commissioner (Appeals) erred in sustaining the assessment order dated 23/12/2009 passed ex-parte by the AO u/s 144 of the I.T. Act without providing to the assessee opportunity of being heard and thereafter further erred in sustaining addition u/s 68 r.w.s. 115BBE of the I.T. Act of Rs 47,52,922 (addition of Rs. 22,43,425 being opening cash balance on the first day of F.Y. 01/04/2016 to 31/03/2017 relevant to A.Y. 2017-18 which is year under appeal + addition for cash receipt of Rs. 25,09,497) made by the AO in the total Income, which sustaining of the ex-parte assessment order passed by the AO u/s 144 and thereby sustaining additions of Rs.47,52,922 made by the AO in the total Income of the assessee u/s 68 r.w.s 155BBE, are without any basis, based on surmises and conjectures, unjust, untenable and bad in fact and in law and in the alternative excessive with reference to facts and circumstances of the case.

5. That the Ld. Commissioner (Appeals) erred in sustaining the assessment order dated 23/12/2009 passed ex-parte by the AO u/s 144 of the I.T. Act without providing to the assessee opportunity of being heard and thereafter further erred in sustaining addition of Rs 52,24,497 made by the AO in total Income as Income from other sources, which sustaining of the ex-parte assessment order passed by the AO u/s 144 and thereby sustaining additions of Rs.52,24,497 made by the AO in the total Income of the assessee, are without any basis, based on surmises and conjectures, unjust, untenable and bad in fact and in law and in the alternative excessive with reference to facts and circumstances of the case.

6. That the Ld. Commissioner (Appeals) ought to have appreciated that while making abovementioned additions of Rs. 99,77,419 (addition u/s 68 r.w.s 115BBE Rs. 47,52,922 + addition as Income from other sources Rs. 52,24,497) the AO failed to discharge burden of proof which squarely lay upon him.

7. That the appellant craves leave to add, alter, amend or substitute one or more grounds of appeals as and when necessary.”

3. The fact as culled out from the record is that the assessee has filed his e-return of income on 19.02.2018 declaring total income of Rs. 6,11,210/-. The case was selected for scrutiny and notice u/s 143(2) was issued to the assessee on 29.09.2018 through online portal ITBA, which was duly served upon the assessee. On the change of the incumbent, notice u/s 142(1) of the Income-tax Act, 1961 was issued on 22.11.2019 and further hearing held subsequently. The assessee has not filed response to any of the notices u/s 142(1) of the Act. Various notices were issued to the assessee but no detailed reply has been submitted

by the assessee and the assessee is showing non cooperative attitude in the assessment proceedings.

3.1 In view of above circumstances, the assessment proceedings are completed ex parte and as per best judgement. The assessee was running a wine shop during period under consideration. This wine was allotted to the assessee through lottery system for FY 2016-17. The assessee submitted copy of cash books for period under consideration in which proper entries of cash receipt from sales have been made. The assessee has shown opening cash balance of Rs. 22,43,425/- as on 01.04.2016. Despite giving several opportunities, the assessee has not submitted source of opening cash in hand. Moreover, the assessee was non filer in previous years i.e. the assessee has filed its return of income for first time in current year. Therefore, cash of Rs. 22,43,425/- is added to the total income of the assessee u/s 68 of the Act as cash credits in the books of accounts from undisclosed sources.

3.2 The assessee received unsecured loans from 5 concerns of Rs. 70,15,494/- during period under consideration. The assessee was asked to submit the confirmations of these unsecured loans and prove creditworthiness of loan providers. The assessee in its

reply submitted PAN of only 2 concerns out of total five concerns. The PAN of these two concerns lies in the jurisdiction of the Id. AO and on perusal of their ITR it was noted that they file their return of income on regular basis and they have considerable income to prove their creditworthiness. PAN of the rest three concerns was not provided by the assessee and no confirmation was submitted as well. Therefore, unsecured loan of Rs. 52,24,497/- is added to the total income of the assessee as income from other sources.

3.3 On perusal of cash book submitted by the assessee, it was noted that the assessee has marked certain entries as cash receipt from Kripal Singh, Harsh Dairy and Ram Swaroop. The total amount of these cash receipt is Rs. 25,09,497/-, The assessee neither submitted reason of these receipts nor submitted the head in which the cash was received. Further, it is worth mentioning here that names of these three entities is same as the name of three concerns who have provided unsecured loan to the assessee and the amount of loan received from them has already been added to the total income of the assessee as income from other sources. On perusal of audit report, it has been gathered that the assessee has received unsecured loans through banking channel/ECS/demand draft whereas the above mentioned cash

receipts have been shown by the assessee in its cash book, therefore, the undersigned is of the view that this amount is separate from amount mentioned in unsecured loans. Thus, this cash of Rs. 25,09,497/- is added to the total income of the assessee u/s 68 of the Act.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that various notices were issued on 18.01.2021, 07.11.2023 & 29.11.2023 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 Id. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the Id. CIT(A) is reproduced as under:-

“3. The National Faceless Appeal Centre (NFaC) also in November, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but has not chosen to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO and in support of the grounds taken in appeal. It is also seen from record that during the assessment proceedings also, there has been non-compliance on part of the appellant, and AO was constrained to issue order u/s 144.

4.1 Reference is made to the decision of Hon'ble Supreme Court in the case of CIT Vs. BN Bhattacharya (1997) 118 ITR 461 (SC), in which the Hon'ble Apex Court while dealing with the issue of prosecution of appeal has stated that-

"Preferring an appeal means more than formally filing it but effectively pursuing it".

4.2 The Delhi Tribunal in CIT Vs. Multiplan India Pvt. Ltd as reported in 38 ITD 320 (Delhi) when faced with a similar situation of non-prosecution of appeal, dismissed the appeal of revenue.

4.3 Reliance is also placed in the case of Vipul Logistic & Warehousing (P) Ltd Vs. ITO, wherein the Hon'ble Delhi ITAT has confirmed even the order of CIT(A) who dismissed the appeal of the taxpayer when there was no response to the notices issued. The observations and decision of the Hon'ble ITAT are as under:

"We have heard rival submissions and have gone through the entire material available on record. In the grounds filed before us, assessee has not raised any such ground about the assessment being time barred. Therefore, since the plea raised by the assessee does not arise out of its grounds of appeal, the same is dismissed. We see no infirmity on the order of CIT(A) which is passed ex-parte due to deliberate non-cooperation of the assessee. Therefore, the assessee's appeal is dismissed."

4.4 In view of these facts, I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed.

5. As a result, the appeal filed by the appellant is 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 Id. AO on merits as the orders of the both the authority are ex parte, and the assessee prayed to grant one chance to provide the details in connection with the merits of his case and the additional evidence to support the contention will reduce the liability of tax substantially and therefore, in the interest of equity and natural justice the assessee praying for the one chance before the Id. AO advanced the merits of the case.

6. Per contra, Id. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the Id. 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 to the file of the Id. AO.

7. We have heard both the parties and perused the materials available on record. The bench noted from the order of Id. CIT(A) that the appeal of the assessee was dismissed by the Id. CIT (A) for want of non-prosecution of the appeal. The assessee filed part reply to the notices which were issued by the Id. AO during the assessment proceedings, finally the assessment

was completed ex-parte assessment u/s 144 of the Act on 23.12.2019. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that *“That on the facts and in law, the Ld. Commissioner (Appeals) erred in passing ex-parte appellate order dated 26/12/2023 u/s. 250 without providing to the appellant opportunity of being heard as prescribed u/s 250(1) of the I.T. Act, which passing of ex-parte appellate order without providing to the appellant opportunity of being heard, is most arbitrary, unjust, not maintainable and liable to be vacated.”*

On perusal of the order of the Id. CIT(A) we note that the Id. CIT(A) has merely relying on the decision of CIT Vs. Multiplan India Private Limited dismissed the appeal of the assessee and has not decided the appeal of the assessee on merits which the Id. CIT(A) ought to have decided on merits of the case. Looking to these aspect of the matter the Bench feels that the assessee could not advance their arguments / submissions to contest the case before the Id. CIT(A) 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. Considering that aspect of the matter we hold to remand back the matter to the

file of the Id. AO as the order of assessment is also exparte. Thus, the Id. AO will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the Id. AO.

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 filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/04/2024.

Sd/-

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/04/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Guddu Kanwar, Sikar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3, Sikar.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 190/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar