

**IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCHES, "SMC" JAIPUR**

**BEFORE SH. SANDEP GOSAIN, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

I.T.A. Nos. 79 to 81/JPR/2024
Assessment Years: 2011-12 & 2012-13

Sh. Devendra Soni,
3/527 Prop. of MDS
Enterprises, Kala Kuan,
Alwar 301001, Raj.

[PAN: ARPPS 4939Q]

(Appellant)

Vs. Income Tax Officer,
Ward-2(1), Alwar

(Respondent)

Appellant by : Sh. P. C. Parwal, CA
Respondent by : Sh. Monisha Chaudhary, Addl. CIT
Date of Hearing : 07.03.2024
Date of Pronouncement : 10 .04.2024

ORDER

Per Dr. M. L. Meena, AM:

These appeals have been filed by the assessee against the orders of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 01.12.2023 & 27.12.2023 in respect of Assessment Years: 2011-12 & 2012-13.

2. At the outset, the Ld. Counsel for the appellant submitted that the AO has passed the assessment order *ex parte* qua the assessee u/s. 144/147 of the act against the law in the facts circumstances of the case and notice issued u/s. 148 is illegal by making addition of Rs.24,46,400.00 u/s.69 of the Act as unexplained cash deposit in bank against the law and facts of the case in two quantum matters and one consequential penalty. He further submitted that the Ld. CIT (A) confirmed the addition even during the course of appellate proceedings by observing that the assessee failed to file any explanation to its unexplained income or any documentary evidence in support of his claim and also failed to rebut the findings of the AO regarding addition of 24,46,400/- under the head 'Income from Other Sources' as unexplained income u/s 69 of the I.T. Act which leads to pass the assessment order u/s. 144 of the I.T. Act. Under such circumstances, in the absence of any explanations, details or documentary evidence forthcoming from the appellant, I am of the considered opinion that the AO rightly made the impugned addition of Rs.24,46,400/- to the Total Income under the head 'Income from Other Sources as unexplained investment and hence no interference of the appellate authority is warranted in this case. The action of the AO is upheld and the ground is dismissed.

3. The Ld. AR contended that the notices were sent by the AO at the old address of Govind colony, Braham Puri, Jaipur and therefore, these notices could not be served upon the assessee to his knowledge. The AO seized the bank account for recovery of Tax demand, so the assessee came to know about the assessment order from the bank and filed its appeal belatedly before the CIT appeal. The AR further submitted that the CIT(A) issued notices at email address dvndrsn303@gmail.com and not at the communicable address provided in serial no 17 of Form 35 where email address and phone number of the Assessee are provided. Therefore, the appellant failed to attend before the learned CIT appeal in compliance to the said notices. The learned council requested that in view of principles of natural justice, the matter may be sent back to the assessing officer to pass *De Novo* assessment as the assessee undertake to present his case before the assessing officer with detailed submissions to explain its source of cash deposit in its bank account.

4. Per Contra, the learned additional CIT (DR) has no objection to the request of the council of the assessee.

5. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the

revenue authorities have passed orders ex parte qua the assessee. The Ld. AR argued that the worthy CIT(A) decided the case ex parte without valid service of notice the address human in column 17 of form no. 35 against the ex parte assessment order passed under section 144/147 of the act and that while deciding the case ex-parte, the Ld. CIT(A) has not appreciated the facts of the case and arbitrary confirmed the assessment order passed u/s 144 r.w.s. 147 of the I.T. Act. It is seen that neither the AO nor the Ld. CIT(A) has addressed the relevant issue on merits of the case. It is seen that neither the AO nor the Ld. CIT(A) has addressed the relevant matter regarding appellants' claim of source of cash deposit in its bank account. He requested that in view of principles of natural justice, the matter may be sent back to the assessing officer to pass De Novo assessment as the assessee undertake to present his case before the assessing officer with detailed submissions to explain its source of cash deposit in its bank account for that the learned additional CIT (DR) has no objection.

6. The Hon'ble Supreme Court of India in the case of Tin Box Company vs. CIT reported in 249 ITR 216 has observed as under:

“Assessment - Opportunity of being heard - Setting aside of assessment - Assessment order must be made after the assessee

has been given reasonable opportunity of setting out his case - Same not done - Fact that the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is assessment order that counts — Assessment order set aside and matter remanded to assessing authority for fresh consideration.”

7. In the present case, the assessee could have placed evidences either before the AO or the first appellate authority, if he has been provided adequate opportunity of being heard. In view of the principles of natural justice, we consider it deem fit to restore back the matter to the file of the Ld. AO to pass de novo assessment after considering the written submission and evidences filed on record and may be filed during the fresh Assessment Proceedings. The AO is directed to grantg sufficient opportunity of being heard to the assessee and that the AO shall issue a Show Cause Notice, and thereafter pass a reasoned order in accordance with law.

9. Accordingly, Assessment order set aside and matter remanded to assessing authority to pass de novo assessment as per law.

10. In the result, the appeal filed by the assessee in I.T.A. Nos. 79 to 81/JPR/2024 are allowed for statistical purposes.

Order pronounced in open court as on 10.04.2024

**Sd/-
(Sandeep Gosain)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

DOC

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The Id. CIT
- (4) The Id. CIT(A)
- (5) The DR, I.T.A.T., Jaipur
- (6) Guard File

By Order,
Asstt. Registrar

		Date	Initial	
1.	Draft dictated on	DOC		
2.	Draft placed before author			
3.	Draft proposed & placed before the Second Member	08.04.24		JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			