

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 746/JPR/2023
निर्धारण वर्ष / Assessment Years : 2017-18

M/s Ramnath Buildhome 345, Chandrakala Balchand Baid Colony, Durgapura, Jaipur.	बनाम Vs.	The DCIT Circle-6, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAPFR3985C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri S.R. Sharma (C.A.)
राजस्व की ओरसे / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 18/01/2024
उदघोषणा की तारीख / Date of Pronouncement: 09/04/2024

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 26.10.2023, 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 on the facts and in the circumstances of the case the impugned appeal order passed by the Id CIT(A), NAFC, Delhi is wrong and bad in law in as much as notice(s) fixing date of hearing of appeal were not served on the appellant properly.

2. That without prejudiced to the ground No(1) above on the facts and in the circumstances of the case the Id CIT(A) is wrong, unjust and has erred in law in upholding the disallowance of cancellation charges of Rs. 2836028/- paid and claimed by the appellant on account of cancellation of flat No. 302 and 201 at 'The Platinum', Chandra kala Bal Chand Baid colony, Indira Nagar, Jaipur due to delay in handing over of possession of those flats in time to the buyer(s).

3. The assessee craves permission to add to or amend to any of grounds of appeal or to withdraw any of them."

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of real estate. The assessee firm has e-filed its return of income for assessment year 2017- 18 on 31.01.2018 declaring total income at Rs. 59,35,000/-. The return was processed u/s 143(1) of Income Tax Act, 1961. Subsequently, the case was selected for scrutiny and notice u/s 143(2) of Income Tax Act, 1961 was issued on 13.08.2018 which stands duly served upon the assessee. Due to change of incumbent, notice u/s 142(1) alongwith questionnaire was issued on 05.09.2019 but no reply was furnish by the assessee within the stipulated time. Another notice dated 12.10.2019 u/s 142(1) was issued and duly served upon the assessee fixing the date for compliance on 17.10.2019. In response to this notice & subsequent notices, online responses on e-proceedings portal were received from time to time. Necessary details and explanations were furnished by the assessee which are placed on record. It is noted that During the assessment proceedings, AO disallowed an

amount of Rs. 25,36,028 debited as cost of cancellation of flat to the Profit and Loss Account which was paid to Macro Infra Contractors Pvt. Ltd. (MICPL) on 30.09.2016. The Id. AO's contention was that the assessee has not furnished the flat purchase agreements executed with MICPL and copies of correspondence made with it for cancellation of flats. Further, the AO also contended that before 30.09.2016, not a single penny was paid by MICPL to the assessee however, on 30.09.2016, account of this company was credited by the assessee by cancellation of flat no. 302 and 201 and cost of cancellation. Further, AO also contended that flat no. 301 and 302 in the platinum, Plot No. 3, 4 and 5, Chandra Kala Bal Chand, Baid Colony, Indira Nagar, Jaipur were never allotted to MICPL but were allotted to shri Manoj Kothari S/o Shri Ratan Chand Kothari and Shri Abhishek Nandawat and Smt. Deepika Chhabra in the FY 2015-16. During the assessment proceedings, assessee submitted that since we have not given the possession in time therefore party has issued the letter to u/s. and we have decided to cancel the flat and as per agreement we have made the payment of cancellation charge amount of Rs. 28,36,028 to the party which can be verified from the ledger account of the party in our books of accounts. However, AO without giving further opportunity of explanation to the assessee to prove the genuinely of the expense and to submit further documents to prove its case, AO disallowed the expense and assessed total income of the assessee at Rs. 87,71,028 by making the addition of Rs. 28,36,028.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) observed that notices were issued on 29.03.2021, 26.05.2023, 08.09.2023 & 12.10.2023 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 by the Id. CIT(A) but he has dismissed the appeal of the ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“On verification of the ITBA portal, it is observed that all the above mentioned hearing notices not delivered to emails: amitvijay12@gmail.com successfully. Against all these notices, assessee is not interested in filing any details during the appellate proceedings and avail the opportunity under the principle of natural justice. In response to the notices issued, even adjournment was not sought. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.

5.2 It has been held by the Hon'ble Supreme Court in the case of B.N.Bhattacharjee and another (118 ITR 461) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in Sunderlal Mannalal Vs. Nandramdas Dwarakadas AIR 1958 MP 260 wherein it was observed:

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses...."

5.3 This appeal has been filed by the appellant with a prayer to this office that the addition of Rs. 28,36,028/- by disallowing cost of cancellation of flat amounting to Rs. 28,36,000 paid to Macro Infra Contractors Pvt. Ltd. be deleted. In such situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support

the claim. The burden of proof is always on the person who has made the claim by filing the appeal. Further, if the appellant claims that the addition made should be deleted, the burden is on the appellant to prove it why it should be deleted. Same is the position in case of all allowances, deduction, exemptions, claims or loss etc. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed or levied fee/interest, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the assessee to discharge its onus. Hence, respectfully following the above mentioned judicial pronouncements and in view of the facts of the case, the appeal is hereby dismissed.”

5. As the assessee did not find any favour from the appeal filed before Id. CIT(A) who filed the present against the said order of the Id. CIT(A) before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

“ The above appeal has been filed by assessee against the ex-parte appeal order dated 26-10-2023 passed by CIT (A), NFAC, New Delhi in appeal No. 2/11119/2019-20. In this connection we have been directed to submit that for the A.Y. 2017-18, the Ld.CIT(A), NFAC, Delhi passed ex parte order confirming the order of the Assessing officer on the ground that no submission filed by appellant firm during the course of appeal proceedings. That all the four notice(s) fixing the date of hearing as mentioned at page no 3 of appeal order were delivered on the email ID amitvijay12@gmail.com. The above said email id pertains to an ex employee/accountant of firm who left the job long back. The appellant having no idea about the said fixation of hearing in the matter of appeal. The appellant came to know about the said appeal order when the previous counsel of the firm opened the e-filing portal and informed about said ex parte appeal order. Thereafter, immediately steps were taken to present the appeal before your honor's by engaging a new counsel. Thus there is no conscious/intentional default on the part of appellant firm in compliance of statutory notice(s) issued. An affidavit of partner of appellant firm certifying the above facts is enclosed herewith. Further the Ld. CIT(A) not considered the documents available/placed on assessment record of appellant at the time

of passing of appeal order. For ready reference the observation of CIT(A) are reproduced herein below:-

"On verification of the ITBA portal, it is observed that all the above mentioned hearing notices got delivered to emails: amitvijay12@gmail.com successfully. Against all these notices, assessee is not interested in filing any details hring the appellate proceedings and avail the opportunity under the principle of natural justice. In response to the notices issued, even adjournment was not sought. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal."

In view of the above facts and circumstances the case the assessee was prevented by sufficient reasons in not complying complying the notice(s) received from CIT (A). Thus, there was no conscious default on the part of appellant in compliance the terms. of the statutory notice issued by the Ld. CIT(A). In the circumstances it is prayed to your honor that the matter may kindly be set aside/remanded back to Ld. CIT(A)."

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 relied on the order of the ld. CIT(A) and submitted that the assessee is not serious about pursuing his case and therefore, the order should be sustained.

8. After hearing both the parties and perusing the materials available on record, it is noted that the assessee has not filed any submissions and evidences relating to the above case before the ld. CIT(A) and thus the ld.CIT(A) has no other

alternative except to confirm the action of the AO. It is also noted that the ld. AR of the assessee prayed for one more chance to contest the case before the ld.CIT(A) while as the ld. DR relied on the order of the ld. CIT(A). The Bench feels that one more chance be given to the Assessee to contest the case before the ld.CIT(A) and the appeal is restored to the file of the ld. CIT(A) for afresh adjudication and the assessee will submit the necessary documents / evidences concerning the above mentioned appeal. 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.

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 ld. CIT(A) 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 09/04/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 09/04/2024

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

***Santosh**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s Ramnath Buildhome, Jaipur.
2. प्रत्यर्धी / The Respondent- DCIT, Circle-6, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No.746/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar