

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 210/JPR/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Harsh Macro Buildhome Private Limited Plot No. 8, Harsh Tower, Gopalpura Bypass, Durgapura, Triveni Nagar Mode, Jaipur.	बनाम Vs.	ACIT, Central Circle-2, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAECN1993N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rajeev Sogani (C.A.)
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 24/04/2024
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

Assessee- a private Limited company- has challenged order dated 13.12.2023 passed by Learned CIT(A)-4, Jaipur.

2. Vide impugned order, Learned CIT(A) has upheld the assessment order dated 18.12.2019 passed by Learned Assessing Officer, in respect of assessment year 2017-18.

3. Vide assessment order dated 18.12.2019, total income of the assessee was computed as under:-

<i>Income declared in return of income</i>	3846412
<i>Add: as per para 5, supra (taxable at the rate of 60% as provision u/s 115BBE)</i>	10941680
<i>Add: as above para (taxable at the rate of 60% as provision u/s 115BBE)</i>	27354
Total income	14815446
Rounded off	14815450

Accordingly, total income was assessed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in addition to the directions for initiation of penalty proceedings separately u/s 271AAC(1) of the Act.

4. Abovesaid income of the assessee came to computed on the basis of reasons recorded by Learned Assessing Officer that from the material available on record it was evident that M/s Gemini commerce Pvt. Ltd. was a bogus/shell company, and not involved any business activity, and further that the assessee company made a sham transaction of Rs. 1,09,41,680/- with the said bogus/shell company, under the garb of repayment of

unsecured loan so as to introduce his unaccounted income/unexplained cash credit.

While applying provisions of section 68 of the Act and for the abovesaid reasons, Learned Assessing Officer added the above said amount back to the total income of the assessee, and held that the same was taxable @ 60%, in view of provisions of section 115 BBE of the Act.

5. Feeling aggrieved by the above said assessment order, assessee preferred an appeal before Learned CIT(A).

For the reasons recorded in the impugned order, Learned CIT(A) dismissed the said appeal, and that is how, the assessee is before this Appellate Tribunal by way of present appeal.

6. Arguments heard. File perused.

7. It may be mentioned here that on behalf of the assessee, an affidavit has been filed in support of the submission made to justify non appearance of the assessee on certain dates, during pendency of appeal before Learned CIT(A).

8. Learned AR for the assessee has put forth only one submission i.e. that the impugned order is an ex-parte order having been passed without affording reasonable opportunity to the assessee, and that as such, same deserves to be set aside.

Learned AR for the assessee has submitted that the assessee could not appear before Learned CIT(A) due to financial constraints which arose due to search conducted at the business premises of the assessee on 02.08.2017.

Another reason for non participation of the assessee in the appeal before Learned CIT(A), as submitted by Id. AR for the assessee, is that managing director of the assessee left this world in January, 2022.

Still another ground for non appearance of the assessee before Learned CIT(A) is that there was spread of Covid-2019 during the year.

9. No counter affidavit has been filed on behalf of the department to rebut the deposition contained in the form of affidavit filed on behalf of the assessee, but, Learned DR has submitted that as per record, ample opportunities were provided by Learned CIT(A) to the assessee, by way of notices for various dates, even then the assessee failed to participate in the appeal proceedings, and as such, there is no merit in the contention raised on behalf of the assessee that the impugned order deserves to be set aside.

10. In the first para of the impugned order, it finds mentioned that notices of hearing u/s 250 of the Act were issued to the assessee on 19.01.2021,

13.07.2021, 11.11.2021, 14.12.2021, 04.01.2022, 04.09.2023, 20.09.2023, 12.01.2023 and 22.11.2023.

In para 3 of the impugned order, there is a table with “remarks” column depicting reasons for which certain adjournments were sought on behalf of the assessee in the reply to notices dated 19.01.2021, 13.07.2021 and 04.01.2022, and for postponement from 24.01.2022.

Adjournment was sought on 28.01.2021, because last date for audit was approaching and that reply was yet to be prepared.

On 23.07.2021 adjournment was sought due to Covid pandemic, and due to work load. Final opportunity was sought on 11.01.2022, again due to spread of Covid pandemic”. Ultimately, adjournment was sought on 24.01.2022, once again due to Covid Pandemic which is said to have adversely affected the business of the assessee, and also because father of Shri Charan Singh Khangarot, director of the company had expired on 22.01.2022, after his treatment in ICU for several dates.

11. From the grounds of appeal raised before Learned CIT(A), it transpires that the assessee had raised 4 grounds of appeal, and Learned CIT(A), while rejecting the same recorded the only reason that inspite of several opportunities granted to the assessee, the assessee had chosen not to make any submission or information.

12. Learned CIT(A) further observed that there was substantial evidence on record in support of the assessment order, on the basis of which he did not find any infirmity in the passing of the assessment order.

13. However, we find that Learned CIT(A) did not discuss the grounds of appeal raised on behalf of the assessee. While affirming the assessment order, he dismissed the grounds of appeal, as already noticed above, by simply observing that assessee had not chosen to make any submission or information to substantiate the ground, and that there was substantial evidence on record in support of his assessment order.

Learned CIT(A) was required to describe in the impugned order as to which was the substantial evidence on record in support of the assessment order, and that he was relying on such and such record for arriving at said conclusion or findings.

But, we find that Learned CIT(A) did not describe in the impugned order as to which was substantial evidence on record in support of the assessment order, and as to for what reasons he was relying on the same.

14. In the given facts and circumstances, we deem it fit to restore the matter to the file of Learned CIT(A) to decide the matter afresh.

15. Undisputedly, as available from the above said table, available in para 2 of the impugned order, there was non-compliance on behalf of the

assessee for 12.08.2021, 18.11.2021, 27.12.2021, 14.09.2023, 06.10.2023, 25.10.2023 and 29.11.2023.

It was for the assessee to put forth justification or sufficient reasons for its non appearance or non compliance on its behalf on each of said 7 dates of hearing.

While going through the memorandum of appeal, and the affidavit filed subsequently, we find that the assessee has not alleged specifically any reason for non appearance or non compliance for said dates, what to say of any deposition in the affidavit in respect thereof.

16. In the given facts and circumstances, for non appearance or non compliance on the 7 dates, specified above, we deem it a fit case to burden the assessee with costs of Rs.5,000/-.

Result

17. In view of the discussion and reasons recorded above, in the interest of justice, we hereby allow the appeal for statistical purposes, with costs, set aside the impugned order passed by Learned CIT(A) and restore the matter to the files of Learned CIT(A), who shall decide the matter afresh on all the aspects, Of course, assessee to be afforded reasonable opportunity of being heard.

Assessee to deposit costs in Prime Minister's Relief Fund and produce receipt before the Learned CIT(A) before the proceedings commence there in the appeal on restoration as ordered above.

Order pronounced in the open court on 30/04/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/04/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Harsh Macro Buildhome Pvt. Ltd., Jaipur.
2. प्रत्यर्धी / The Respondent- ACIT, Central Circle-2, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 210/JPR/2024)

Sd/-

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar