

आयकर अपीलिय 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. 242/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Sh. Kailash Chander Jat 1, Alkapuri, Kachiyagarh, Shrimadhapur.	बनाम Vs.	ITO, Ward-4(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGBPJN0494L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 18/04/2024
उदघोषणा की तारीख / Date of Pronouncement : 01/05/2024

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 06.02.2024 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2017-18, which in turn arise from the order dated 20.12.2019 passed under section 144 of the Income Tax Act, [Here in after referred as "Act"] by the ITO, Ward-4(3), Jaipur.

2. The assessee has marched this appeal on the following

grounds:-

“1.1 The impugned order u/s 144 dated 20.12.2019 as well as the action notices issued by the Id. AO are bad in law, invalid, illegal and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.

1.2. The Id. AO has grossly erred in law as well as on the facts of the case order in passing the Ex-party order u/s 144 rws147 without providing the adequate and reasonable opportunity of being heard to the assessee in gross breach of law and are bad in law, invalid, illegal and on facts of the case, and hence the same may kindly be quashed and the resultant addition may kindly be deleted in full.

2. Rs.2,81,33,457/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.2,81.33.457/- made by the Id. AO u/s 69A on account of cash deposited in the bank account during the year as unexplained money. The Ld. AO and CIT(A) both have also erred in not considering the vital facts and material available on record in their true perspective and sense, Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

3.1 The Id. AO has also grossly erred in law as well as on the facts of the case invoking the provisions of Sec. 115BBE for taxing the income at the higher rate, without issue any show cause notice and also not applicable in the present case. The Ld. AO has also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the provisions of Sec. 115BBE so invoked are also being contrary to the real facts of the case and not according to the provision of law, hence the same is illegal, bad in law, against the principle of natural justice the same may kindly be deleted in full.

3.2 The Id. CIT(A) has also grossly erred in law as well as on the facts of the case in not considering the contention and details that the cash deposited in the bank has already taken in to consideration in the partnership firm which had also been assessed. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

4. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

5. That the appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. The fact as culled out from the record is that notice u/s 142(1) issued on 27.12.2017 calling the assessee to prepare a true and correct return of income in respect of which the assessee is assessable under the Income tax Act, 1961 during the previous year relevant to assessment year 2017-18. As per provisions of Section 142(1) of the Act, the assessee was required to furnish the said return of income as required to be furnished as per the conditions and manner prescribed in Rule 12 of the Income Tax Rules, 1962. But the assessee has failed to furnish return of income for AY 2017-18 either u/s 139 (on or before 31.03.2018) and failed to furnish Income Tax Return (ITR) in response to notice issued u/s 142(1) of the Act. On the basis of data analytics and information gathered during the phase of online verification under 'Operation Clean Money', the Income Tax Department gathered a list of assessee who had deposited substantial Cash in bank

account(s) during the demonetization period (9th November, 2016 to 30th December, 2016), but assessee has not filed Income tax Return for AY 2017-18.

3.1 In order to complete the assessment proceedings. Show cause notice & notice u/s 142(1) of the Income-tax Act, 1961 along with questionnaire was issued on 21.05.2019 vide which it was requested to furnish source of cash deposit, fixing the case for hearing on 31.05.2019, but assessee has not made any compliance on the given date. Since, the assessee failed to furnish details/information and did not furnish any reply, a final show cause notice u/s 144 along with notice u/s 142(1) of the I. T. Act dated 11.12.2019 was issued to the assessee and served on line and through affixture, vide which assessee was requested to furnish the required information latest by 16.12.2019, otherwise the assessment will be completed on the basis of material available on record without any further communication.

3.2 But neither the assessee attended nor submitted any reply on the given day and time. In spite of various notices, the assessee is willfully avoiding the statutory proceedings initiated for assessment of his income for the A.Y. 2017-18. In view of these

facts, the Id. AO left with no option but to complete the assessment ex-parte under section 144 of the Income-tax Act, 1961 after considering the facts and as well as on the basis of material/information available on records.

3.3 The assessee had deposited cash /RTGS/NEFT/Cheque amounting to Rs 2,81,33,457/-in his bank account maintained with the Bank during the F.Y. 2016-17. Notices were issued to the assessee but the assessee has not filed any explanation. Since the assessee has not filed return of income nor any evidence in respect of source of cash deposit / RTGS/ NEFT/ Cheque amounting to Rs. 2,81,33,457/- Therefore cash/ RTGS / NEFT / Cheque amounting to Rs. 2,81,33,457/-is remained unexplained therefore, a sum of Rs. 2,81,33,457/- is added to the total income of the assessee as unexplained money u/s 69A of the I. T. Act liable for tax u/s 115 BBE of the 1. T. Act.

4. Aggrieved from the above order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee by observing that;

“5.1 On perusal of the assessment order passed u/s 144 of the Income Tax Act, 1961, it is observed that the appellant did not file the return of income for the AY. 2017-18. The appellant had deposited Rs.

2,81,33,457/- (it is included cash deposits and credit entries) in the bank account during the FY. 2016-17. Further, the numerous notices were sent to the appellant, but the appellant did not respond. The assessment was completed u/s 144 of the I.T. Act, the total income assessed at Rs. 2,81,33,460/-. For which the appellant has filed the appeal.

6. Decision is being given on merits. The appellant has challenged the disputed demand at Rs. 3.52.07,556/- u/s 144 by the A.O. without submitting any evidence or counterarguments in support of its claims during the proceedings. During the proceeding, the appellant did not comply with the hearing notices issued to him requiring explaining the issue. In response, neither the appellant nor the authorized representative filed any submissions. In spite of numerous opportunities given to the appellant, the appellant did not make use of these opportunities giving the concrete impression to the undersigned that the appellant had nothing to say or no explanation whatsoever. Keeping in view all the stated facts and discussions. I find no reason to alter the additions made by the AO. In view of this, the grounds raised by the appellant are dismissed.

In the final result, the appeal filed by the appellant is treated as Dismissed.”

5. Feeling dissatisfied with the above order of the Id. CIT(A), the assessee has preferred the present appeal. In support of the various grounds so raised by the assessee, the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

“FACTS: 1. The brief facts of the case are that the appellant-assessee is a I.T assessee from last so many years. The appellant assessee is partner in M/s Shree Vinayak Traders having PAN ACDFS6226K which is engaged in the business of distributor of ITC items. The Id. AO has noted that the assessee has not filed his ROI for the year under consideration. Thereafter the Id. AO has issued the notice u/s 142(1) to file the sources of credit and cash deposited in the bank account. The Id. AO has noted that assessee has deposited Rs.21,73,480/- in old demonetization notes in the bank accounts. Thereafter the Id. AO has

issued the notice u/s 144 and alleged that as per your Central Bank of India, Srimadhapur bank A/c No. 3256423762 statement, total amount credited in this account during the FY 2016-17 is of Rs. 2,81,33,457/- (it includes cash deposits & credit entries through RTGS/NEFT/CHEQUE).

You have not filed ITR, not declared its true income and have not paid taxes due thereon. Therefore, source of cash deposited/ credit entries amounting to Rs. 2,81,33,457/- remained unexplained to be considered as unexplained money u/s 69A of the Income Tax Act, 1961. The Total Income to be assessed as above is proposed to be taxed u/s 115 BBE of the Act at the rate of 60%.

But in want of services of notice on the Assessee, the assessee could not file the reply hence the Id. AO completed the assessment ex-parte under section 144 of the Income-tax Act. The Id. AO has stated that the assessee had deposited cash/RTGS/NEFT/Cheque amounting to Rs. 2,81,33,457/- in his bank account maintained with the Bank during the F.Y. 2016-17 and the assessee has not filed any explanation. Since the assessee has not filed return of income nor any evidence in respect of source of cash deposit/RTGS/NEFT/Cheque amounting to Rs. 2,81,33,457/-. Therefore cash /RTGS/NEFT/Cheque amounting to Rs. 2,81,33,457/- is remained unexplained therefore, a sum of Rs. 2,81,33,457/- is added in the total income of the assessee as Unexplained money u/s 69A of the I. T. Act liable for tax u/s 115 BBE of the I. T. Act. (Addition of Rs. 2,81,33,457/).

In first appeal during the course of hearing the assessee has filed the WS and details by stating that assessee is partner in M/s Shree Vinayak Traders having PAN ACDFS6226K which is engaged in the business of distributor of ITC items. The Bank account in which there were deposits and credit entries have already been shown in the Partnership firm M/s Shree Vinayak Traders having PAN ACDFS6226K and the Revenue has also already considered and assessed this bank account transaction in the hands of said firm. In support we are enclosing herewith the copy of assessment order of M/s Shri Vinayak Traders for same A.Y. 2017-18 passed u/s 144 on dt. 28.12.2019, on perusal of the same it is clearly mentioned the same bank account No. same bank name same amount account, the submissions also reproduced in the CIT(A) order.

And also challenged the jurisdiction over the assessee vide our Add. WS(PB). However despite the same the Id. CIT(A) has confirmed the addition summarily by stating that "The appellant has challenged the disputed demand at Rs. 3,52,07,556/- u/s 144 by the A.O. without submitting any evidence or counterarguments in support of its claims during the proceedings. During the proceeding, the appellant did not comply with the hearing notices issued to him requiring explaining the issue. In response, neither the appellant nor the authorized representative filed any submissions. In spite of numerous opportunities

given to the appellant, the appellant did not make use of these opportunities giving the concrete impression to the undersigned that the appellant had nothing to say or no explanation whatsoever. Keeping in view all the stated facts and discussions, I find no reason to alter the additions made by the AO. In view of this, the grounds raised by the appellant are dismissed.

Hence this appeal.

SUBMISSIONS:

1. The allegation of the Id. CIT(A) is incorrect or wrong: At the very outset it is submitted that Id. CIT(A) has alleged that the appellant has challenged the disputed demand at Rs. 3,52,07,556/- u/s 144 by the A.O. without submitting any evidence or counterarguments in support of its claims during the proceedings. During the proceeding, the appellant did not comply with the hearing notices issued to him requiring explaining the issue. In response, neither the appellant nor the authorized representative filed any submissions. In spite of numerous opportunities given to the appellant, the appellant did not make use of these opportunities giving the concrete impression to the undersigned that the appellant had nothing to say or no explanation whatsoever.

In this regard it is submitted that the allegation made by the Id. CIT(A) absolutely incorrect & wrong in his own. As the Id. CIT(A) himself has reproduced our WS. At page 2 of the CIT(A) order, he reproduced facts as mentioned in our WS, at page 3-4 of CIT(A) order he has reproduced WS. We had also filed Assessment order of firm where this account had already considered and we had request to the Id. AO to make the necessary inquiry from the AO. Despite this the CIT(A) has passes order by making the wrong allegations. Hence the order of the CIT(A) may kindly be quashed.

2. Addition wrongly made in the hands of the assessee and already considered and assessed in the hands of the partnership firm: Further on merit it is submitted that the appellant assessee is partner in M/s Shree Vinayak Traders having PAN ACDFS6226K which is engaged in the business of distributor of ITC items. The Bank account in which there were deposits and credit entries were of the partnership firm not of the assessee and have already been shown in the Partnership firm M/s Shree Vinayak Traders having PAN ACDFS6226K and the Revenue has also already considered and assessed this bank account transaction in the hands of said firm. In support we had filled the copy of assessment order of M/s Shri Vinayak Traders for same A.Y. 2017-18 passed u/s 144 on dt. 28.12.2019 to the Id. CIT(A) also enclosed herewith as Annexure- 2(P88-19), on perusal of the same it is clearly mentioned the same bank account No, le 3256423762 of same bank name, same amount account. Copy of Bank Statement is enclosed as Annexure-3 (PB20-30)

Hence the addition wrongly made in the hands of the assessee and liable to be deleted.

Further we had also prayed to the Id. CIT(A) that "if your honor is having any doubt then the Id. AO may kindly be directed to verify and examine the same. Before taking any adverse view if any against the assessee", despite this the Id. CIT(A) has confirmed the additions, even he has not gone through our WS despite WS was reproduced in the his order.

3. Further we had also prayed to the Id. CIT(A) that "if your honor is not satisfied with our above contentions, then kindly adjourned the matter to file the WS on merit and to file the other details with additional WS in the interest of natural justice as the counsel of the assessee was busy in the Return filling and we collected only part details and part details yet to be obtained. In absence of the same we are unable to file our detailed reply, submissions and paper books." despite this the Id. CIT(A) has confirmed the additions, even he has not gone through our WS despite WS reproduced in the CIT(A) order.

All these shows that how the Id. CIT(A) has violated the principals of natural justice which is not permissible in law.

Thus when the bank account as well as the transaction belongs to the Partnership firm M/s Shree Vinayak traders then how the addition can be made in the hands of the assessee (Partner). The bank is enclosed herewith as Annexure-3(PB20-30), Hence the additions are liable to be deleted in full and oblige

4. As the in the present case the notices have been issued and assessment order was passed by the ITO Ward4(3), Jaipur. However the address of the assessee is Srimadhapur District Sikar and he falls within the jurisdiction of ITO. Ward Neemkathan District Sikar, Raj. And it is the settled law that neither the notice nor the assessment order can be passed without having jurisdiction over the assessee. Hence the assessment order is illegal invalid void-ab-initio and liable to be quashed.

5. Hence the addition so made by the AO and confirmed by the Id. CIT(A) may kindly be deleted in full and oblige."

6. While arguing the case, the Id. AR of the assessee invited our attention to the acknowledgement generated while submitting the reply before the Id. CIT(A) on 09-11-2023, the assessee submitted

that the bank account in question has already been considered in the hands of the firm M/s. Shri Vinayak Traders wherein the assessee is a partner and therefore, no addition is required to be made in the hands of the assessee. The Id. AR also submitted that attention of the Id. CIT(A) was drawn to the fact the assessment of the firm has already been passed considering that aspect of the matter for the case of the assessee is assessed. Thus, even though this fact were placed on record the Id. CIT(A) noted that there is no submission made by the assessee and the appeal of the assessee dismissing without discussing the material facts placed on record by the assessee vide submission dated 09-11-2023 even though the order has been passed much after that on 06.02.2024. Based on this evidence he submitted that the addition made is required to be deleted.

7. The Id. DR is heard who has relied upon the detailed order of the lower authority and vehemently argued that what the assessee is arguing before the bench has not been contended before the Id. AO. Even the submission made before the Id. CIT(A) is not as per the proper form as it is required as additional evidence as the order of the Id. AO is ex-parte. Therefore, in that case whatever argued by the Id. AR of the assessee has not been verified by the lower

authority and therefore, straight way the addition may not be directed to be deleted as the contention raised is not verified.

8. 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) by holding that the assessee did not comply with the hearing notices and has not filed any submission. But on the same order the submission made by the assessee has been reproduced vide para 4 of the order of the Id. CIT(A) wherein the assessee has contended the addition made in his case has already been considered in the hands of the partnership firm named M/s. Shree Vinaya Traders and the issue of deposit of cash has already been considered for the same bank account. Even though this submission was placed on record the Id. CIT(A) has not deem it fit to call for the remand report from the assessing officer. Thus, considering that facet of the facts before us we deem it to fit that whatever contended by the assessee before us needs to be verified by the Id. AO, as both the orders of the lower authority are not on merits of the case. The Bench further noted from the grievance from the grounds of appeal of the assessee wherein the assessee contended by raising a specific ground that "*The Id. AO*

has grossly erred in law as well as on the facts of the case order in passing the Ex-party order u/s 144 rws147 without providing the adequate and reasonable opportunity of being heard to the assessee in gross breach of law and are bad in law, invalid, illegal and on facts of the case, and hence the same may kindly be quashed and the resultant addition may kindly be deleted in full.

Thus, in view of the overall facts of the case the Bench feels that the assessee because of the reason could not remain present before the Id. AO. The assessee submitted the relevant details before the Id. CIT(A) but the same has not been verified and the order has been passed without considering the contention of the assessee. Considering the specific ground of the assessee that he should be given one more opportunity to submit the evidences concerning the issue in question and that has merits. Thus, with grounds so raised by the assessee, we set aside the issue to the file of the Id. AO who will decide the issue afresh by providing one more opportunity of hearing to the assessee. Thus, the matter is restored back to the file of the Id. AO who 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 proceedings before the Id. AO.

9. 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 01/05/2024.

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/05/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Kailash Chander Jat, Shrimadhpur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(3), Jaipur.
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. 242/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar