

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

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

आयकर अपील सं./ITA No. 194 & 195/JP/2024
निर्धारण वर्ष/Assessment Year : 2011-12 & 2012-13

Shri Krishan Kumar Yadav C/o Shri Anand K Gupta, Advocate Shikshak Colony, Behror, Alwar	बनाम Vs.	The ITO Behror Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFAPY 7595 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anand Mathur, Advocate
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 03/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 07/05/2024

आदेश / ORDER

PER BENCH:

Both these appeals have been filed by the assessee against two different orders of the ld. CIT(A) dated 03-08-2023 and 22-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment years 2011-12 & 2012-13 raising therein following grounds of appeal respectively.

ITA No. 194/JP/2024 – A.Y. 2011-12

“1. The action of the learned Commissioner of Income Tax (Appeal) (NFAC), New Delhi in passing the order under section 250 of the

Income Tax Act, 1961, against the assessee is unjust, arbitrary and deserves to be quashed

2. That his action of not providing proper opportunity of being heard and dismissing the appeal on the basis that no representation has been made by the assessee, despite the fact that the assessee has not received any notice for hearing on her address. Where it is fact that in form 35 "it is mentioned that any notice and communication may to be send on mail - NO".

3. That the Id. AO has not rejected the evidences given by the assessee in his order and passed illegal order without taken or order sheet of the case.

4. That the action of Ld. Assessing Officer in treating the cash deposit in his saving bank account amounting Rs. 10840000/- as unexplained money in terms of section 69A of the act is unjust, illogical and arbitrary and deserves to be quashed.

5. That the appellant has neither received notice for hearing nor he was aware about the order of appeal. He first time come to know in Feb. 2024, Therefore delay in filling of appeal is for 201 days."

ITA No. 195/JP/2024 – A.Y. 2012-13

"1. The action of the learned Commissioner of Income Tax (Appeal) (NFAC), New Delhi in passing the order under section 250 of the Income Tax Act, 1961, against the assessee is unjust, arbitrary and deserves to be quashed

2. That his action of not providing proper opportunity of being heard and dismissing the appeal on the basis that no representation has been made by the assessee, despite the fact that the assessee has not received any notice for hearing on her address. Where it is fact that in form 35 "it is mentioned that any notice and communication may to be send on mail - NO".

3. That the Id. AO has not rejected the evidences given by the assessee in his order and passed illegal order without taken or order sheet of the case.

4. That the action of Ld. Assessing Officer in holding that the assessee did not comply with the notices served on various were abusive and is totally wrong and his action in passing the order u/s 147/144 of the Act is illegal, arbitrary, void ab initio and deserves to be quashed.

4. That the assessment proceedings of the assessee was also earlier completed u/s 147/143 of the Act for the same and there is no change of opinion or fact in the case.

5. That the action of the AO in treating the cash deposit in his saving bank account amounting to Rs.37,19,000/- as unexplained money in terms of Section 69A of the Act is unjust, illogical and arbitrary and deserves to be quashed.

6. That the appellant has neither received notice for hearing nor he was aware about the order of appeal. He first time came to know in Feb. 2024. Therefore, delay in filing of is for 90 days

treating the cash deposit in his saving bank account amounting Rs. 10840000/- as unexplained money in terms of section 69A of the act is unjust, illogical and arbitrary and deserves to be quashed.

5. That the appellant has neither received notice for hearing nor he was aware about the order of appeal. He first time come to know in Feb. 2024, Therefore delay in filling of appeal for 201 days.”

2.1 At the outset of the hearing, the Bench noted that there is delay of 142 days in filing the appeal for A.Y. 2011-12 and for 91 days for A.Y. 2012-23 by the assessee for which the assessee filed applications for condonation of delay

alongwith affidavit praying that the delay took place in attending the case before the ld. CIT(A) was because of non-communication of notices from his advocate, issued by the ld. CIT(A) and he further submitted that he did not receive any notice from the ld. CIT(A) at his address. He further submitted that he had no intention to disobey or any other reasons for non-compliance of the notices.

2.2 On the other hand, the ld. DR strongly objected to the condonation applications of the assessee but submitted that the Court may decide the issue as deem fit and proper in the case

2.3 After hearing both the parties and perusing the materials available on record, the Bench noted that the applications raised by the assessee alongwith affidavit has merit to condone delay. Hence, the delay occurred by the assessee in filing the above appeals is condoned.

3.1 As regards the appeal of the assessee for the assessment year 2011-12, it is noticed that the ld. CIT(A) has dismissed the appeal of the assessee for the reason that the assessee did not appear before him in spite of sending notices. It is noted from the order of the ld. CIT(A) *that 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.* The ld. CIT(A) took reference in his appeal in the case of CIT vs B.N. Bhattacharya (1979) 118 ITR 461 (SC), CIT vs Multiplan India Pvt Ltd. 38

ITD320 (Del) and Vipul Logistic & Warehousing (P) Ltd. vs ITO (Delhi ITAT)

and thus dismissed the appeal of the assessee. It is also noted that the similar reasoning has been given by the ld.CIT(A) in the case of the assessee for the assessment year 2012-13 by dismissing the appeal of the assessee.

3.2 On the other hand, the ld.DR strongly supported the orders of the ld.CIT(A) and also refuted the arguments raised by the ld. AR of the assessee.

3.3 After hearing both the parties and perusing the materials available on record, it is noticed that the assessee could neither advance his arguments nor submit his written submission in connection with both the appeals before the ld. CIT(A). In such a situation, the Bench feels that one more opportunity of hearing should be provided to the assessee to contest the case before the ld. CIT(A). Hence, we restore the matter back to the file of the ld.CIT(A) to decide it afresh by providing adequate opportunity of being heard to the assessee. The assessee is directed to produce all the relevant papers concerning the issue in question before the ld.CIT(A). Thus both the appeals of the assessee are allowed for statistical purpose.

3.4 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 the ld. CIT(A) independently in accordance with law.

4.0 In the result, both the appeals of the assessee are allowed for statistical purposes

Order pronounced in the open court on 07/05/2024.

Sd/-

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

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07 /05/2022

*Mishra

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

1. The Appellant- Shri Krishan Kumar Yadav, Behror
2. प्रत्यर्धी / The Respondent- ITO, Behror
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 194 & 195/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar