

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 96/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18

Subodh Public School Shikshan Sansthan Jhunjhunu	बनाम Vs.	The ITO Ward 1(1) Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAQAS 1139 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Smt. Perna Sharma, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Chaudhary Addl. CIT

सुनवाई की तारीख / Date of Hearing : 13/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 13 /05/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 21-01-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 raising the ground of appeal in Form No. 36.

2.1 At the outset of the hearing, the Bench noted that the ld. CIT(A) dismissed the appeal of the assessee by passing an ex-parte order as under:-

“2 In this case, the appellant is an AOP. On the basis information received from ITS data available on record with the department. The appellant has filed his return of income for A.Y 2017-18 on 31.03.2018 declaring total income of Rs. NIL The appellant had made cash deposit of Rs. 22,40,500/- in his saving bank account with State Bank of Bikaner and Jaipur now State Bank of India during demonetization period. During the proceedings, the appellant had failed to explain the source of cash deposit and various credit entries in said bank accounts. Therefore, the case was re-opened by u/s 147 of the Act and accordingly notice u/s 148 of the Act, was issued and served upon the appellant. In response the appellant, no any compliance had received from the appellant and also the notices u/s 142(1) of the I.T. Act, along with detailed questionnaire was issued to the appellant. But the appellant had not furnished reply nor any documents furnished. However, in the interest of natural justice, a final opportunity was provided to the assessee by issuing show cause notice giving opportunity to submit His reply, which has also not been responded by the assessee. Thereafter, the AO completed the assessment order u/s 147 r.w.s 144 r.w.s.144B of the Act on 25.03.2022 assessing the total income at Rs. 22,40,500/-. Wherein addition was made on account of unexplained money u/s 69 of the I.T. Act, 1961. Aggrieved by this order the appellant is in appeal.

3. The appellant, being aggrieved against the said order under section 147 r.w.s. 144 r.w.s.1448 of the IT Act, 1981 has appellant has taken the following ground presented this appeal, wherein the

1. The Ld. AO has erred on facts and in law in making addition of Rs. 22,40,500- u/s 69 by treating the cash deposited during the demonetization period as unexplained

1.1. The Ld. A.O. has further erred on facts and in law in not considering the fact that the same represents school fees duly declared in the return.

2. The assessee crave the right to add, alter and amend the above ground of appeal"

4 Several notices were issued giving opportunities of being heard to the appellant, which were duly served upon the appellant through registered email. No response is received till date. The particulars of notices issued are as under:

S.N.	Date of Notice	Date of hearing	Remarks
1.	14-08-2023	29-08-2023	Delivered on the registered e-mail address given by the appellant but no response received till date. The appellant had filed petition for adjournment
2.	28-11-2022	07-12-2023	Again delivered on the registered e-mail address given by the appellant , the appellant had filed adjournment petition and no response received.
3.	21-12-2023	28-12-2023	Again notice issued and delivered on the registered e-mail address given by the appellant , but no response received.
4.	29-12-2023	05-01-2024	Delivered on the registered e-mail address given. No response received till date and again the appellant has petition for adjournment. Hence, the appellant petition is hereby rejected.

4.1 In view of the above, it appears that the non-appearance to notices is deliberate as all the notices have been duly served upon the

appellant on the registered email account. No response has been received from the appellant till date. It is reasonable to infer from the continued non-compliance that the appellant is not serious to pursue its appeal.

4.2 Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and Another, 118 ITR 461(SC) observed that preferring an appeal means more than formally filing it but effectively prosecuting it. Hon'ble M.P. High Court in the case of Estate of Late Tukojirao Holkar vs. CWT, (1997) (223 ITR 480) (M.P.) dismissed the reference in default and for not taking necessary steps. Similar view has been taken by I.T.A.T. Delhi Bench in the case of CIT Vs. Multiplan India (P) Ltd. (1991) (38 ITD 320). Considering the above, it appears that the appellant is not interested in prosecuting its appeal. Therefore, the appeal filed by the appellant is dismissed for non-prosecution.

5. In the result, the appeal is dismissed.”

2.2 After hearing both the parties and perusing the materials available on record, it is noted from the orders of the Id. CIT(A) that the assessee was four times provided opportunities to contest the case before him but in spite of providing the opportunities the assessee did not attend the case before him who ultimately dismissed the appeal by holding that “*it appears that the appellant is not interested in prosecuting its appeal. Therefore, the appeal filed by the appellant is dismissed for non-prosecution*’. The bench noticed from the records that the assessee is non-cooperative and negligent in pursuing its appeal. It is also noted that the Id. AR of the assessee is seeking date in the case but seeking date is not a

right of the assessee unless and until some sufficient cause is shown in its case In view of the above facts and circumstances of the case, the Bench feels that one more chance may be given to the Assessee to contest the case before the Id.CIT(A) and the appeal is restored to the file of the Id. CIT(A) for afresh adjudication and the assessee will submit the necessary documents / evidences concerning the above mentioned appeal. Since, for lethargic and negligent action on the part of the assessee, therefore a cost of Rs.2,000/- is imposed upon the assessee and the same shall be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the Id CIT(A) for proof and thus the appeal of the assessee is restored to the file of the Id. CIT(A) to decide it afresh by providing one more opportunity of hearing, 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.

2.3 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the Id. 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 Id. CIT(A) independently in accordance with law.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes

Order pronounced in the open court on 13/05/2024.

Sd

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13 /05/2024

*Mishra

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

1. The Appellant- Subodh Public School Shikshan Sansthan, Jhunjhunu
2. प्रत्यर्थी / The Respondent- ITO, Ward -1, Jhunjhunu
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.96/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar