

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B-Bench" 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. 262/JPR/2024
निर्धारण वर्ष / Assessment Year : 2017-18

CKS Medicare Private Limited F-98-A, Road No. 6 V.K.I. Area, Sikar Road, Jaipur.	बनाम Vs.	ACIT, Circle-4, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACJ8745L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Deepak Sharma (Adv.) (V.C.)
राजस्व की ओरसे / Revenue by: Shri Anil Dhaka (CIT)

सुनवाई की तारीख / Date of Hearing : 30/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 30/05/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

This appeal was presented on 05.03.2024. Assessee-appellant named above, has challenged order dated 09.01.2024.

Impugned order has been passed by Learned CIT(A). It relates to assessment year 2017-18.

The matter came up before Learned CIT(A) when the assessee challenged order dated 11.12.2019, which was passed by Learned

Assessing Officer u/s 143(3) of the Income Tax Act (hereinafter referred to as the "Act").

Vide said assessment order, Learned Assessing Officer had assessed income of the assessee for the said year, at Rs. 94,98,380/- i.e. Rs. 39,52,500/- being "income from other sources" and Rs. 55,45,875/- u/s 56(2)(viib) of the Act.

As noticed above, Learned CIT(A) upheld the assessment order. Dismissal of the appeal brings the assessee before this Appellate Tribunal.

2. It may be mentioned here that initially request for adjournment was received from Ld. AR for the assessee, but ultimately the said request has not been pressed.

3. So, arguments have been advanced. We have gone through the record.

4. Only one contention has been raised by Ld. AR for the assessee. It is to the effect the impugned order has been passed by Learned CIT(A) without affording reasonable opportunity to the assessee of being heard.

In this regard, Ld. AR for the assessee has drawn our attention to column-17 of Form 35 submitted at the time of filing of appeal before Learned CIT(A), to highlight e-mail address of the assessee mentioned therein i.e. gmmehataca@gmail.com, for correspondence.

Then, he has drawn our attention to page Nos. 5 to 7 of the impugned order, wherein Learned CIT(A) has pasted screen shots taken from the portal of the department, in proof of delivery of the notice issued to the assessee u/s 250 of the Act.

The submission is that out of these 8 notices, the screen shots whereof are available on the abovesaid pages, it transpires that the first 7 notices are stated to have been sent at some other e-mail addresses. In other words, only one notice i.e. the last one, is said to have been sent at the correct e-mail ID address of the assessee.

Further, the submission is that sufficient time was not provided to the assessee to present its case in the appeal, the last notice having been issued on 20.12.2023.

So, it has been urged that the impugned order deserves to be set aside, and matter be restored to the files of Learned CIT(A) for decision afresh.

5. Learned DR for the department has very candidly admitted that only the last mentioned notice issued on 20.12.2023 appears to have been sent to the assessee at the correct e-mail ID, and further submitted that he has no objection to the setting aside of the impugned order and remanding of the matter to Learned CIT(A) for decision afresh.

6. From the above mentioned regard, it stands established that out of the 8 notices only the last one i.e. 20.12.2023 was sent at the correct e-mail ID of the CA of the assessee.

The impugned order came to be passed on 09.01.2024 i.e. 18 days after issuance of the abovesaid notice. Does it not amount to breach of principles of natural justice? On this point, in ***Kesar Enterprises Ltd. v. State of U.P., (2011) 13 SCC 733***, Hon'ble Apex Court, observed that the underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action.

As observed by Hon'ble Apex Court Court in ***A.K. Kraipak v. Union of India*** [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it.

Also see ***ITO v. Madnani Engg. Works Ltd.*** [(1979) 2 SCC 455 .

In ***Swadeshi Cotton Mills v. Union of India*** [(1981) 1 SCC 664], Hon'ble Apex Court very lucidly explained the meaning and scope of the concept of "natural justice". Referring to a catena of decisions, it was observed thus:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental

maxims of natural justice viz. (i) audi alteram partem, and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle—as distinguished from an absolute rule of uniform application—seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

Here, in the given situation, it can safely be said that the assessee was not provided a reasonable opportunity of being heard before passing

of the impugned order. Hence, this a case of violation of principles of natural justice.

Result

7. In view of the above discussion, this appeal is hereby allowed for statistical purposes. The matter is restored to the files of Learned CIT(A) with the direction to provide to the assessee a reasonable opportunity of being heard, and then to decide the appeal afresh, in accordance with law.

Order pronounced in the open court on 30/05/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 30/05/2024
*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- CKS Medicare Pvt. Ltd., Jaipur.
2. प्रत्यर्था / The Respondent- ACIT, Circle-4, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 262/JPR/2024)

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar