

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 23/Ind/2024
(Assessment Year: 2017-18)

Dule Singh Reghuvanshi, Village Kilkoi, Dhar	Vs.	ITO Dhar
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: BVDPR0209M		
Assessee by	Shri Miland Wadhvani, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	29.05.2024	
Date of Pronouncement	31.05.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by the assessee is directed against order dated 16.11.2022 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for the Assessment Year 2017-18.

The assessee has raised following grounds of appeals.

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs.13,85,000/- to the income of assessee on account of unexplained money u/s 69A.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Assessing Officer in treating agriculture income as unexplained money.*
3. *On the facts and in the circumstances of the case and in law, the assessment order is illegal, bad in law and without jurisdiction.*
4. *On the facts and in the circumstances of the case and in law, the provisions of Section 69A cannot be invoked.*
5. *On the facts and in the circumstances of the case and in law, the provisions of Section 115BBE cannot be invoked.*
6. *The appellant craves leave to add, amend, alter vary and or withdraw any or all the above grounds of appeal.*
7. *PRAYER:- For these grounds and such other grounds that may be urged before or during the hearing of the appeal, it is most humbly prayed that this Hon. Tribunal may be please to:*
 - a. *Quash the order of assessment;*
 - b. *Delete the addition of Rs.13,85,000/-;*
 - c. *set aside the issue to the file of Ld. Assessing Officer to pass the assessment order afresh'*
 - d. *Allow the claim of the assessee;*
 - e. *Pass such other orders as this respected authority may deem fit*

2. At the time of hearing Ld. AR of the assessee has submitted that Ld. CIT(A) has dismissed the appeal of the assessee for non-prosecution despite the fact that the assessee has duly replied to the first notice issued by CIT(A) dated 9.01.2021 vide acknowledgement of e-proceedings dated 20.03.2021. He has filed a copy of screen shot of e-proceedings portal to show that the assessee has duly responded to the notice of CIT(A) and filed written submissions with all required annexures.

3. Ld. AR has submitted that the Ld. CIT(A) has dismissed the appeal of the assessee and passed the impugned ex-parte order without considering the reply filed by the assessee. He has further pointed out that the addition was made by the Ld. A.O on account of unexplained cash deposited in the bank account for want of

details and explanation while passing the order u/s 144 of the Income Tax Act and therefore the impugned order of Ld. CIT(A) may be set aside and the matter may be remanded to the file of Ld. A.O for deciding the same afresh after considering the relevant details and explanation filed by the assessee before Ld. CIT(A).

4. On the other hand Ld. DR has not objected to the prayer of the assessee for remanding the matter to the record of Ld. Assessing Officer for afresh adjudication after verification and examination of relevant records.

5. We have considered the submissions of both the parties and perused the impugned orders of lower authorities below. The Ld. A.O has passed the order u/s 144 of the Income Tax Act and made addition of Rs.13,85,000/- on account of unexplained cash deposited in the bank account of the assessee when there was no response on behalf of the assessee to the notices issued by the Ld. A.O. Before the Ld. CIT(A) assessee has filed his reply and written submissions to the notice dated 09.01.2021. However, the Ld. CIT(A) has made the remarks that the said notice was sent to the assessee through ITBA portal but no reply has been received. Thereafter three more notices were issued by Ld. CIT(A) but the assessee did not respond to the same. Finally Ld. CIT(A) has observed in para 7 of the impugned order as under:-

*"7. In light of the above details of non-compliance and non-pursuance of appeal, reference is made to the following judicial ruling of the Hon'ble Apex Court. In **CIT vs. B.N. Bhattacharya (1977) 118 ITR 461(SC)**, the Hon'ble Supreme Court while dealing with the issue of pursuing of appeal has stated that "preferring an appeal means more than formally filing it but effectively pursuing it". The Hon'ble ITAT, Delhi, in **CIT vs. Multiplan India Pvt. Ltd, as reported in 38 ITD 320 (Delhi)**, when faced with a similar situation of non-pursuing of appeal dismissed the appeal of Revenue. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus jura subveniunt". In view of the above, it is clear that the appellant is not interested in pursuing this appeal. Therefore, the appeal filed by the appellant is **dismissed**.*

6. Thus Ld. CIT(A) has passed the impugned order ex-party and dismissed the appeal of the assessee for want of explanation whereas it is found from the record that the assessee has duly replied to the notice dated 19.01.2021. Accordingly in the facts and circumstances of the case and in the interest of justice, the impugned order of the Ld. CIT(A) is set aside and the matter is remanded to the record of Ld. A.O for fresh adjudication after proper verification and examination of the relevant details and explanation to be furnished by the assessee. The appeal of the assessee is allowed for statistical purpose.

9. In the result the appeals of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 31.05.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 31.05.2024

Dev/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*