

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 291/JPR/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Arvind Singh Chauhan Prop. M/s Tirupati Associates, Shop No. 7-8, Khatipura Road, Jaipur	बनाम Vs.	DCIT, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATPC 8622 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal, CA
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 05/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 05/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M

Present appeal challenges order dated 24th Jan, 2024 passed by Id. CIT(Appeal), u/s 250 of Income Tax Act (hereinafter referred to as "the Act").

2 . Vide impugned order, Id. CIT(Appeal) considered challenge to the assessment order dated 27.12.2016 passed u/s 143(3) of the Act.

The assessment order relates to the Assessment Year 2014-15 whereby income of the assessee was computed and assessed at Rs. 1,90,78,350/-. In addition thereto, penalty proceedings u/s 271(F) of the Act were initiated.

3. Arguments heard. File perused.
4. The assessee had filed his return of income on 08.09.2015 declaring total income of Rs. 1,36,27,850. He also declared his agricultural income as Rs. 9,54,948/-.

However, the department selected his case for scrutiny. Thereupon, notices came to be issued to the assessee. He participated in the assessment proceedings through his authorized representative.

5. When the assessment order was challenged in appeal before Id. CIT(A), notices are stated to have been issued by the said office to the assessee on 21.08.2023 for 28.08.2023; on 05.09.2023 and 09.10.2023; and ultimately on 19.10.2023 by way of final opportunity, to enable the assessee to submit his case.

6. In para 6.1.1 of the impugned order, Id. CIT(Appeal) recorded that the assessee did not submit any response to the above mentioned notices.

Accordingly, Id. CIT(Appeal) proceeded to decide the appeal, while taking into consideration whatever was available before him.

7. As noticed above, final notice was issued by Learned CIT(A) to the assessee on 19.10.2023.

Learned AR for the assessee has opened his arguments by submitting that as per impugned order, final opportunity was given to the assessee, by Id. CIT(Appeal) vide letter dated 19.10.2023, but, this is factually incorrect. In this regard, AR for the assessee has submitted copy of notice dated 5.12.2023, issued by Id. CIT(A), whereby the assessee was required to furnish his written submission on or before 12.12.2023.

Copy of said notice is accompanied by copy of an Annexure. Subject of this Annexure specifies that this was the final show cause notice issued to the assessee. It also contains details of four notices earlier issued to the assessee i.e. during the period from 21.08.2023 to 19.10.2023.

8. In the course of arguments, Id. DR for the department admits issuance of the above mentioned final show cause notice dated 05.12.2023 to the assessee by the Id. CIT(A).

9. In view of the above submissions and recorded, Id. AR for the assessee has rightly submitted that the final show cause notice was issued on 05.12.2023 for 12.12.2023 and that in the impugned order it has not been correctly recorded that final show cause notice was issued to the assessee vide letter dated 19.10.2023.

10. The issuance of final show cause notice dated 05.12.2023 is of much significance, the reason being that in reply thereto, the representative of the assessee submitted to the office of Id. CIT(A), a request seeking adjournment. The ground for seeking adjournment was that assessee was busy in some litigation with his partners, and further that he required time to prepare reply to the final show cause notice.

11. Surprisingly, in the impugned order, there is no mention about submission of the above said response from the assessee to the notice dated 05.12.2023, whereby he had sought adjournment.

Once adjournment was sought by the assessee in the appeal, for filing of reply, Id. CIT(A) was required to consider as to whether to allow or disallow the request.

All this goes to show that the assessee was not provided reasonable opportunity of being heard, before the impugned order came to be passed.

Right to be heard is one of essential characters of the principles of natural justice, the other right being of impartiality. We find merit in the contention raised by Id. AR for the assessee that the right provided to the assessee under the Act of being heard, has been infringed and his appeal has been dismissed without being given a reasonable opportunity of being heard.

12. In the given situation, even Id. DR for the department is in agreement that the impugned order deserves to be set aside.

Conclusion

13. In view of the above discussion, we find that the matter deserves to be restored to Learned CIT(A) for decision afresh,

after providing to the assessee a reasonable opportunity of being heard.

Result

14. As a result of the above findings, this appeal is disposed of for statistical purposes, and while setting aside the impugned order, the matter is restored to the appeal files of Learned CIT(A) with the directions to decide it afresh, after providing to the assessee a reasonable opportunity of being heard, and that too in accordance with law.

Order pronounced in the open court on 05/06/2024

Sd/-

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/06/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Sh. Arvind Singh Chauhan, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Cricle-07, 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 Nos. 291/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar