

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

श्री मनीष बोराड, लेखा सदस्य एवं डा० एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: SHRI MANISH BORAD, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA No. 655/JPR/2023
निर्धारणवर्ष / Assessment Years : 2012-13

Ramji Lal Prop. Baberwal Iron Store Neem Ka Thana Bypass, Babal, Tehsil -Kketri, Jhunjhunu.	बनाम Vs.	Income Tax Officer Ward-5(5), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AEVPL3496A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Sh. Saurav Harsh (Adv.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Chaudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27/03/2024
उदघोषणा की तारीख / Date of Pronouncement: 11/06/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre, Delhi dated 07.09.2023[herein after referred to as "CIT(A)/NFAC"] for the assessment year 2012-13, which in turn arise from the order dated 15.10.2019 passed under section 144 r.w.s. 147 of the Income Tax Act (here in after "Act") by the AO.

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case the ld. CIT(Appeals) grossly erred in passing ex-parte order without providing sufficient opportunity of being heard to the assessee appellant.

2. That on the facts and in the circumstances of the ld. Lower authorities grossly erred in making addition of Rs. 23,59,000/- on account of total cash deposits made by assessee in his firm's bank accounts during the year under consideration in regular business transaction and assessed income of the assessee appellant at Rs. 23,59,000/-.”

3. Brief facts of the case are that the assessee is an individual and runs his in the Iron, Steel store through its proprietorship firm named M/s Baberwal Iron Store. The Ld. AO was in receipt of AIR/CIB information that the assessee had made cash deposits of Rs. 16,90,000/- in his bank account maintained with the SSBJ (now SBI) Khetri, Jhunjhunu during the F.Y. 2011-12 relevant to A.Y.2012-13. Since the assessee had failed to file the return of income for the said A.Y. u/s. 139(1) of the Act, the ld. AO initiated proceedings u/s. 147 of the Act by issue of notice u/s 148 of the Act on 25.03.2019 after recording the reasons and obtaining necessary approval from the Pr. Commissioner of Income Tax, which was duly served upon the assessee. In response to the said notice, no return of income was filed by the assessee. The assessee did not respond to the subsequent statutory notices issued by the ld. AO. The ld. AO called for information u/s.133(6) from the bank as per which the total cash deposits in the bank were Rs.23,59,000/-. Thereafter, the ld. AO issued a final show cause which was also not responded to by the assessee. Therefore, in view of non- cooperative attitude of the assessee, the

ld. AO had no other alternative but to complete the assessment proceedings as per material/information available on record and pass an order ex-parte order u/s 144 of the Act. Accordingly, the ld. AO on the basis of information available with the department that the assessee had made cash deposits of Rs.23.59,000/- in his bank account on different dates during the year under consideration maintained with the SSBJ (now SBI) Khetri, Jhunjhunu during the F.Y. 2011-12 relevant to the A.Y.2012-13 and assessed the income of the assessee at an income of Rs. 23,59,000/- for the A.Y 2012-13.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). Since the assessee has not complied with the notices issued the ld. CIT(A) dismissed the appeal of the assessee ex-parte order.

The extract of the finding of the ld. CIT(A) is reproduced as under:-

“5. Decision: I have very carefully considered the facts of the case, assessment order of the AO the grounds of appeal and the submissions of the assessee as mentioned in Form No. 35. The hearing in this case was fixed on a number of occasions as mentioned in the para 1 above but no written submissions were filed by the assessee. From the above discussion and the conduct of the assessee, it appears that the assessee does not wish to pursue appeal filed by him. The appeal being very old, it cannot be kept pending indefinitely. Accordingly, I proceed to pass the order ex-parte on the basis of material available on record.

5.1 In this case, the AO was in receipt of AIR/CIB information that the assessee had made cash deposits of Rs. 16,90,000/- in his bank account maintained with the SSBJ (now SBI) Khetri, Jhunjhunu during the F.Y. 2011-12 relevant to A.Y. 2012-13. Since the assessee had failed to file the return of income for the said A.Y. u/s 139(1) of the Act, the AO initiated proceedings u/s 147 of the Act by issue of notice u/s 148 of the Act on

25.03.2019 after recording the reasons and obtaining necessary approval from the Pr. Commissioner of Income Tax, which was duly served upon the assessee. In response to the said notice, no return of income was filed by the assessee. The assessee did not respond to the subsequent statutory notices issued by the AO. The AO called for information u/s. 133(6) from the bank as per which the total cash deposits in the bank were Rs.23,59,000/-. Thereafter, the AO issued a final show cause which was also not responded to by the assessee. Therefore, in view of non-cooperative attitude of the assessee, the AO had no other alternative but to complete the assessment proceedings as per material/information available on record and pass an order ex-parte order u/s. 144 of the Act. Accordingly, the AO on the basis of information available with the department that the assessee had made cash deposits of Rs.23,59,000/- in his bank account on different dates during the year under consideration maintained with the SSBJ (now SBI) Khetri, Jhunjhunu during the F.Y. 2011-12 relevant to the A.Y.2012-13 and assessed the income of the assessee at an income of Rs.23,59,000/- for the A.Y 2012-13.

5.2 On the other hand, it is the contention of the assessee that the amount of cash deposited was from the regular business. I find that the assessee has admitted to have deposited an amount of Rs.23,59,000/- in his bank account as determined and held by the AO in his assessment order, by stating in the statement of facts filed along with Form No.35. Therefore, the factum of deposit of cash of an amount of Rs.23,59,000/- in the assessee's bank account is an undisputed fact. However, no proof of business transactions has been furnished by the assessee either before the AO or during the appellate proceedings. The assessee has been non cooperative during the assessment proceedings as well as during the appellate proceedings resulting in ex parte orders at assessment stage as well as at the appellate stage. Ample opportunities were afforded to the assessee by the AO during the assessment stage and a final show cause was also issued by the AO. Similarly, ample opportunities were afforded to the assessee during the appellate stage as well. The assessee chose not to respond to any of the notices.

In view of the foregoing, I have no reason to interfere with the order of the AO in assessing the income of the assessee for A.Y.2012-13 at Rs.23,59,000/- on account of cash deposits in her bank account.

Hence, the grounds of appeal of the assessee are Dismissed.

6. In the result, the appeal of the assessee is Dismissed.”

5. During the course of hearing, the ld. AR for the assessee prayed that the Id. CIT(A) has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the Id. CIT(A) in the interest of equity and justice.

6. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue her case and thus the order passed by the ld. CIT(A) should be sustained.

7. We have heard both the parties and perused the materials available on record. From the ld. CIT(A)'s order, it is noted that the appeal of the assessee is dismissed by the ld. CIT (A) for want of non-prosecution of the appeal. The Bench further noted the grievance from the grounds of appeal of the assessee wherein he submitted that the ld. CIT(A) has on the grounds raised by the assessee merely stated that *“That on the facts and in the circumstances of the case the ld. CIT(Appeals) grossly erred in passing ex-parte order without providing sufficient opportunity of being heard to the assessee appellant.”* Thus, the ld. AR of the assessee prayed that he may be granted one chance to represent the facts before the ld. CIT(A). The object of the Bench is to provide justice. Considering the overall

facts of the case and looking to the facts /grievance of the assessee as raised hereinabove, the Bench feels that one more chance should be given to the assessee to contest the case before the Id. CIT(A) and submit the necessary reply to resolve the issue raised in the appeal before him. Thus the appeal of the assessee is restored to the file of the Id. CIT(A) for afresh adjudication of the case but by providing one more opportunity in this case.

8. Before parting, we may make it clear that our 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 the Id. CIT(A) independently in accordance with law.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(मनीष बोराड)
(Manish Borad)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 11/06/2024

*Santosh

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

1. The Appellant- Ramji Lal, Jhunjhunu.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(5), Jaipur.
3. आयकर आयुक्त / The Id CIT

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 655/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar