

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," A"-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. 287/JPR/2024
निर्धारण वर्ष/Assessment Year : 2021-22

Shri Ramavatar Singhal Prop. M/s Girraj Prasad Kailash Chand, Bajaja Bazar, Old Anajmandi, Kherli, Alwar.	बनाम Vs.	Income Tax Officer, Ward-1(2), Alwar.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AMTPS3626F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rajendra Agarwal (C.A.)
राजस्व की ओरसे / Revenue by: Shri Bhanwar Singh Ratnoo (CIT)

सुनवाई की तारीख / Date of Hearing : 13/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 13/06/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

Assessee-appellant is proprietor of M/s Girraj Prasad Kailash Chand. He is feeling aggrieved by order dated 11.01.2024 passed by Learned CIT(A), whereby, while dismissing his appeal for non prosecution, the assessment order relating to assessment year 2021-22, has been upheld.

2. On 11.03.2022, assessee filed return showing his income as Rs. 5,37,890/-. Said return was selected for scrutiny through CASS for following reasons :-

“Assessee has made substantial purchases from suppliers who are either Non-Filer(s) or have filed non-business ITR (ITR1,2) or reflected a substantially lower turnover in ITR.”

Thereafter, notice u/s 143(2) of the Income Tax Act, 1961 Act (hereinafter referred to as the “Act”) came to be issued. The assessee was required to comply with the directions on or before 13th July, 2022. However, the assessee did not furnish any reply.

3. Notices u/s 142(1) of the Act followed, alongwith questionnaires, to furnish requisite details as regards purchases and the sellers, along with books of account and statements. But, the assessee again did not submit any reply.

4. That is how, show cause notice u/s 144 of the Act came to be issued. Even then the assessee did not furnish any reply.

5. Thereafter, notices u/s 133(6) of the Act were issued to the suppliers, as gathered from the record available with the department. Only 2 of the suppliers appeared before Learned Assessing Officer.

Having regard to all this and the material available, total income of the assessee was determined as Rs. 11,07,56,130/-.

6. Feeling dissatisfied by the assessment order, the assessee filed an appeal on 31.12.2022, but, as noticed above, Learned CIT(A), vide order dated 11.01.2024 dismissed the appeal for non prosecution.

7. Hence, this appeal before this Appellate Tribunal.

8. Arguments heard. File perused.

9. It may be mentioned here that during pendency of this appeal, on 11.06.2024, Ld. AR for the assessee presented a paper book, with a certificate appended to the Index thereof, to the effect that papers from Serial No. 3 to 32 were being submitted before this Appellate Tribunal for the first time. In other words, papers available only at serial No. 1 and 2 were submitted before Learned CIT(A).

10. Today, in the course of arguments, on being pointed out by this Bench that the assessee has not filed any application seeking permission to lead additional evidence in the form of 30 documents i.e. from Sr. No. 3 to 32, as shown in the index of the Paper Book, Ld. AR for the assessee has an presented an application seeking permission to place on record only one document i.e. copy of response dated 27.12.2023 to the notice issued by the Learned CIT(A), on 19.12.2023.

11. Copy of the application has been supplied to Learned DR for the Revenue.

12. As regards relevancy of the above the said reply dated 27.12.2023 from the assessee to Learned CIT(A), Ld. AR for the assessee has submitted that the same was submitted on the portal of the department on 27.12.2023, thereby seeking adjournment in the appeal pending there.

The contention is that the appeal was listed before Learned CIT(A) for hearing on 28.12.2023 and since the request for adjournment was submitted on 27.12.2023, Learned CIT(A) should have dealt with the same in accordance with law, and in case of its rejection, he should have adjourned the appeal so as to provide reasonable opportunity to the assessee of being heard on merits, but, the appeal was subsequently dismissed for non prosecution.

Therefore, Ld. AR for the assessee has urged that the impugned order deserves to be set aside, and that the matter be remanded to Learned CIT(A) for decision afresh after providing reasonable opportunity to the assessee-appellant.

13. Learned DR for the Department does not dispute the submission put forth on behalf of the assessee as regards submission of request to Ld. CIT(A) for adjournment of the appeal, sent by the assessee on 27.12.2023.

Learned DR also admits that in the impugned order, there is no mention that any such request for adjournment was never received by the office of the Learned CIT(A) on 27.12.2023, what to say of reasons for its rejection.

In the given situation, having regard to the relevancy of the only document, we deem it a fit case to allow the assessee to place on record copy of request dated 27.12.2023 stated to have been uploaded online on the portal of the department.

14. As regards procedure to be followed by Appellate Authorities, it is of fundamental importance that the parties to litigation are allowed to exercise right to be heard, which is one of the essential characteristics of what is often called "natural justice". In the Income Tax Act, this right to be heard has been enshrined in the form of sub-section (2) of section 250 of the Act, which provides procedure in an appeal before Learned First Appellate Authority.

15. It is true that before issuance of the last mentioned notice dated 19.12.2023, Learned CIT(A) had issued three notices dated 03.08.2023 for 09.08.2023; notice dated 28.11.2023 for 07.12.2023 and notice dated 08.12.2023 for 18.12.2023.

Of course, the assessee should have responded to the said three notices dated 03.08.2023, 28.11.2023 and 07.12.2023. No justification has been shown for no response on behalf of the assessee to any of the said three notices.

16. As noticed above, Learned CIT(A) had listed the matter for 28.12.2023, as per notice dated 19.12.2023. It is not being disputed on behalf of the department that the assessee had sent request dated 27.12.2023 seeking adjournment instead of arguing the matter on 28.12.2023.

Even in case of rejection of such a request seeking adjournment, while the appeal was coming up on the next day, Learned CIT(A) should have informed the assessee or his Ld. AR about the factum of rejection of the request, and further that the appeal was going to be taken up on such and such date, which could be a very short date.

There is nothing to suggest that Learned CIT(A) apprised the assessee of rejection of the request dated 27.12.2023. Learned AR for the assessee states at Bar that there was no such communication from Learned CIT(A) to him or the assessee. So, we find that the assessee did not get reasonable opportunity of being heard on 28.12.2023 i.e. the date of hearing in the appeal.

17. As noticed above, the appeal was coming up on 28.12.2023 for hearing. For the same date, request for adjournment was sent by the assessee. In such a situation, even if Learned CIT(A) was not satisfied with the request for adjournment and was of the view that the appeal deserved to be dismissed for non prosecution, Learned CIT(A) should have passed order regarding dismissal of the appeal for non prosecution on the same date i.e. 28.12.2023. However, record reveals that the order regarding dismissal of the appeal for non prosecution was not passed on the same day i.e. 28.12.2023, and rather, it was passed on 11.1.2024.

This goes to show that on 28.12.2023, Learned CIT(A) opted not to dismiss the appeal for non prosecution. Having so opted, Learned CIT(A) should have preferred to adjourn the appeal to 11.1.2024 for hearing, and in case of non appearance on behalf of the appellant even on that day, proceeded to dispose of the appeal in accordance with law. But, there is nothing to suggest that the appeal was adjourned from 28.12.2023 to 11.1.2024. All this reflects that just and proper procedure has not been followed by Learned CIT(A) while dealing with the appeal.

18. In view of the observations made by Learned Assessing Officer, while passing impugned order, Learned CIT(A) should not have disposed of the appeal for non prosecution, and rather, he should have adjourned

the appeal, even though for a very short date, and then dealt with all the significant aspects involved for determination, and disposed of the appeal.

As noticed above, Learned CIT(A) dismissed the appeal filed by the assessee for non prosecution.

Result

19. In view of the above discussion, this appeal is hereby disposed of for statistical purposes. The appeal before Learned CIT(A) 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 13/06/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 13/06/2024
*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Sh. Ramavatar Singhal, Kherli, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Alwar.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 287/JPR/2024)

Sd/-

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

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar