

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 480/JP/2024
निर्धारण वर्ष / Assessment Years : 2017-18

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| Vijay Kumar Saini Ward No. 30, Chandolia Ki Dhani Chomu, Jaipur | बनाम Vs. | Deputy Commissioner of Income Tax, Circle-07, Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BTCPS 1550 B | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Mukesh Soni
राजस्व की ओर से / Revenue by : Shri Anoop Singh, Add. CIT

सुनवाई की तारीख / Date of Hearing : 13/06/2024
उदघोषणा की तारीख / Date of Pronouncement : 18/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2017-18 dated 11.03.2024, which in turn arises from the order passed by the AO passed under Section 147 of the Income tax Act, 1961 (in short 'the Act') dated 25.05.2023.

2. The assessee has marched this appeal on the following

grounds:-

"1. Under the facts and the circumstances of the case and in law, the ex-parte order dated 11.03.2024 passed by the Learned Commissioner of Income Tax (Appeal), (hereinafter referred to as "Ld. CIT (A)") u/s 250 of the Income Tax Act, 1961 ["the Act"] is perverse, arbitrary, without jurisdiction, bad in law

2. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing Impugned order u/s 250 of the Act without providing opportunity of being heard including personal hearing, thereby violating the principle of natural justice.

3. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in confirming the assumption of jurisdiction by Ld. AO u/s 147 of the Act and also erred in upholding the impugned assessment which was initiated without issuance of valid notice u/s 148 of the Act dated 22.05.2021.

4. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in confirming the addition of Rs. 26,48,300/-u/s 69 of the Act.

5. The appellant craves leave to add, amend, alter, revise and modify any of the grounds of appeal on, before or in the course of hearing of the appeal.

3. The brief fact as culled out from the records is that the assessee is a Proprietor of M/s. International Tubewell Company, who was engaged in the civil contract business activity during financial year 2016- 17 relevant to A.Y. 2017-18. The assessee filed return of income u/s. 139 for A.Y. 2017-18 on 06/11/2017 admitting total income of Rs.44,63,360/- which was processed u/s. 143(1)(a) on 18/12/2017. As per the information, during the under consideration the assessee purchased an immovable property for Rs. 24,50,000/-. The payment was alleged to have been made in

cash. The Id. AO contended that the cash payment for purchase of property is permitted under the law as per the amendment made vide Finance Act, 2015, with effect from 01/06/2015. Based on that fact the case was reopened as the source for making payment of financial transaction amounting to Rs. 24,50,000/- remain unexplained. During assessment proceeding the Id. AO proposed the variation in the assessment vide show cause notice dated 09.05.2023 proposing to make the addition of Rs. 24,50,000/- u/s. 69 and Rs. 24,50,000/- u/s. 56(2)(vii) of the Act. The assessee replied vide letter dated 11/05/2023. The assessee contended that Rs. 24,50,000/- is the consideration of the property and Rs. 1,98,300/- consists of stamp duty and other incidental expenses totaling to Rs. 26,48,300/- The consideration alleged to have been paid by Shri Rakesh Kumar Saini Rs. 5,00,000/- , Shri Vijay Kumar Saini Rs. 2,50,000/- and Rs. 18,93,300/- paid by Ram Ratan Varma. As the ownership of the property with the brother of the assessee $\frac{1}{2}$ share of the assessee therefore, he justified the payment. As regards the stamp duty difference proposed to be added u/s. 56 the assessee contended that the same is not correct fact and submitted document saying that proposed addition u/s. 56 is unwarranted. The Id. AO noted that though the share of the

assessee is 1/2 but in the absence of any documentary evidence towards the identity, genuineness and creditworthiness of assessee's brother, it is not known whether the co-owner of the property disclosed the source and no assessment proceeding have been completed on this issue in the hands of co-owner the Id. AO made the addition of Rs. 26,48,300/- being the total amount of investment as unexplained investment u/s. 69 of the Act.

4. Aggrieved from the order of the National Faceless Assessment Center, assessee preferred and appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“The conduct of the Appellant, as inferred from the last column of the aforesaid table/evidences that the Appellant is not interested in pursuing the Appeal: the law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

1. The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhavar, Kolkata vs. D.C..T., C.C.-XX) (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asst. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.

2. The Hon be Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 IJR 480) held as under:

"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

1. Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 IT 495) returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

2. Their Lordships of Hon'ble Supreme Court in the case of CIT vs. B.Bhattacharjee & Another (118 IT 461 at page 477-478) held that appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same.

In the judgment, their Lordships averred as follows:

".....This turns on the meaning of the words "preferred an appeal". "Preferred" is a word of dual import. Its semantics depend on the scheme and the context; its import must help, not hamper, the object of the enactment even if liberty with language may be necessary. There is good ground to think that an appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests.

Black's Law Dictionary gives the following meaning: 'PREFER: To bring before; to prosecute; to try to proceed with'. Thus, preferring an indictment signifies prosecuting or trying an indictment. It means to give advantage, priority, or privilege; to select for/first payment, as to prefer one creditor over others. Thus, it may mean prosecute or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it...."

In view of the above, it is clear that the Appellant is not aggrieved with the reassessment order impugned herein and is not interested in pursuing the same. Accordingly, the additions/disallowance as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

Last ground appeal is always reserved of adding/altering/amending and/or substituting any or all grounds of appeal before the taking place

of actual hearing or even in course of the hearing , if the situation so warrants. Since the appellant has nothing to say on this, This ground of appeal is dismissed as "not pressed",

In view of the appellant's total non-compliance during appeal proceedings, I find it extremely difficult to adjudicate on the appeal for want of adequate submission and clarification, counter-clarification.

In the result, the appeal is dismissed.”

5. The Id. AR of the assessee argued that he has challenged the validity of notice issued u/s 148 of the Act. Though, the appeal of the assessee remained ex-party before Id. CIT(A) but Id. CIT(A) has given only two short date of hearing. He has also not adjudicated the legal ground raised by the assessee. Considering the submission already placed on record, the Id. AR of the assessee prayed to considered the legal ground raised by the assessee even though the same has not been decided by the Id. CIT(A) and prayed to decide that ground of the assessee.

6. Per contra, the Id. DR opposed the argument of Id. AR of the assessee. He submitted that since there is no compliance on the part of the assessee the appeal of the assessee is required to be dismissed. Alternatively, if at all the prayer of the assessee to be accepted then in that case the appeal may not be decided by the

bench on the legal ground raised by the assessee and the matter be restored to the file of the Id. CIT(A) assessee may appear before Id. CIT(A), who will decide the all aspect of the matter raised by the assessee.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee has not responded to the notices issued by the Id. CIT(A). At the same time Id. CIT(A) has given only two opportunities to the assessee and that too having shorter period. Thus, we note that though the assessee has made the written submission but the same has not considered will deciding the appeal of the assessee. Based on these set of facts we are of the considered view that in this case the principle of natural justice is violated and the appeal of the assessee is required to be decided on merits by granting the proper opportunity to the assessee. Thus, we set aside the matter to the file of the Id. CIT(A) who will decide the appeal of the assessee after providing the proper opportunity of being heard to the assessee and pass speaking order in the matter in accordance with the law. At the same time the assessee is directed to

represent and present all the facts before the Id. CIT(A) and should not ask for the adjournment on frivols grounds.

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

Order pronounced in the open Court on 18/06/2024

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/06/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Vijay Kumar Saini, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-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 No. 480/JP/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar