

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 329/JP/2024  
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Naresh Kumar S/o Shri Trilok Chand Scheme No. 03, House No. 171, Basant Vihar, Alwar 301 001	बनाम Vs.	The ITO Ward- 1(1) Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BDXPK 3789 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 01/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 18/06/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 30-01-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2012-13 raising therein following grounds.

“The Id. CIT(A) has erred on facts and in law in dismissing the appeal filed by the assessee by holding that since the assessee has not filed return of income as well as not paid an amount

equal to the amount of advance tax which was payable by it, the appeal is not liable to be admitted by incorrectly interpreting the provision of Section 249(4)(b) of the I.T. Act, 1961'

2.1 Brief facts of the case are that the assessee has not filed the return of income and, therefore, on the basis of information to the effect that the assessee had made cash deposit of Rs. 14.40 lacs in his saving bank account and also made time deposit of Rs.10.00 lacs. The AO initiated proceedings by issuing notice u/s 148 of the Act and after providing opportunity to the assessee, the AO made addition u/s 69A of the Act.

2.2 On appeal, the ld CIT(A) dismissed the appeal by referring to Section 249 (4) treating it as infructuous.

2.3 At the outset, the ld. AR while relying upon his written submitted that no proper opportunity was granted to the issue by the AO as no notice dated 1-11-2019 was ever served upon or generated. In this regard, the Bench attention was drawn to the screen shot of "view notice for e-proceedings". It was also submitted that provisions of Section 249(4) of the Act are not applicable as there was no tax liability to the assessee.

2.4 On the contrary, the ld DR strongly relied upon the order passed by the Revenue Authorities and submitted that proper opportunity at all stages was granted to the assessee. Therefore, appeal filed by the assessee may be dismissed.

2.5 After hearing both the parties and perusing the materials available on record and also having gone through the orders passed by the Revenue Authorities , the Bench finds that at the stage of assessment required notices were already issued to the assessee. However, the assessee did not file his income tax return for the relevant period and did furnish certain information/ documents as called for. Although one of the notice dated 1-11-2019 might have not been served upon the assessee but the previous and subsequent conduct of the assessee reveals his non-cooperative attitude in pursuing the assessment proceedings or pursuing his appeal before the Id. CIT(A). However, while considering the interest of justice, the Bench is of the view that one more opportunity may be granted to the assessee to put forth his explanation/ defence with supportive documents before the AO so that end of justice could be met subject to cost of Rs.2,000/- and the same may be deposited in Prime Minister Relief Fund and copy of the same shall be furnished before the AO as proof and thus the appeal of the assessee is restored to the AO with direction to decide it afresh by providing one more opportunity of hearing. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purpose.

2.6 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

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

Order pronounced in the open court on 18/06/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18 /06/2024

**\*Mishra**

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

1. The Appellant- Shri Naresh Kumar, Alwar
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(1), Alwar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 329/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar