

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

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

आयकर अपील सं./ITA No. 278/JPR/2024
निर्धारण वर्ष / Assessment Years : 2012-13

Smt. Bugli Devi 151 Balaiyo Ka Mohalla Nangal Jaisa Bohra, Jaipur	बनाम Vs.	The ITO, Ward-7(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: EUVPB1541N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri P.C. Parwal (C.A.)
राजस्व की ओरसे / Revenue by : Shri Ajey Malik (CIT) (Th. V.C.)

सुनवाई की तारीख / Date of Hearing : 12/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 28/06/2024

आदेश / ORDER

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

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 31.01.2024, National Faceless Appeal Centre, Delhi [herein after referred to as "CIT(A)/NFAC"] for the assessment year 2012-13, which in turn arise from the penalty order dated 02.02.2022 passed under section 271(1)(c) r.w.s. 274 of the Income Tax Act,1961 (hereinafter "Act") by the ITO, Ward-7(2), Jaipur.

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

"1. The Ld. CIT(a), NFAC has erred on facts and in law in dismissing the appeal ex-parte on the ground that assessee does not wish to pursue the appeal without providing adequate opportunity of hearing.

2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the levy of penalty of Rs. 1,06,82,017/- u/s 271(1)(c) of IT Act, 1961.

3. The appellant craves to alter, amend and modify any ground of appeal.

4. necessary cost be awarded to the assessee."

3. Brief facts of the case are that no return was filed by the assessee u/s 139(1) of the I.T. Act 1961 for the relevant period. On possession of information regarding purchase of immovable property during the year by the assessee, the case was re-opened and notice u/s 148 of the I.T. Act 1961 was issued on 31.03.2019 after recording necessary reasons and getting necessary approval. Ultimately, the case was assessed u/s 144/147 as ex-parte on 02.12.2019 at total income of Rs.3,50,66,300/- making addition of entire amount on account of unexplained investment made in purchase of property. Upon completion of assessment, penalty proceedings u/s 271(1)(c) of the I.T. Act 1961 was initiated and notice was issued on 02.12.2019 and ultimately penalty of Rs. 1,06,82,017/- was levied.

4. Aggrieved from the order of the assessing officer, assessee preferred an appeal before the Ld. CIT(A)/NFAC. Apropos to the grounds of the appeal so raised

by the assessee, the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4. Decision:

44.1 The grounds of appeal, statement of acts and penalty order passed u/s 271(1)(c) r.w.s. 271 of the Act dated 02.02.2022 have been perused carefully. At the outset it is worth mentioning that during the pendency of the appeal, appellant was issued various notices of hearing u/s 250 of the Act dated 09.10.2023, 26.10.2023 19.01.2024. For all these hearing notices, appellant did not make any submission in spite of availing sufficient time and opportunities. From the fact of appellant's non- response to various notices, it is clear that apparently, appellant has no specific submission to file to pursue the pending appeal. As appellant failed to avail the opportunities offered on various occasions from time to time, it is understood that appellant is not keen to pursue the appeal as per law and accordingly, appeal filed by the appellant is liable to be dismissed for non-prosecution by the appellant. The following citations/decisions of Hon'ble Adjudicating Authorities clearly envisage for dismissal of appellant's appeal for appellant's failure to prosecute/pursue the pending appeal in spite of availing sufficient time and opportunities and accordingly, is not maintainable. The relevant citations are briefed as under for placing reliance to adduce appellant's non-prosecution of appeal as not maintainable.

1. In the case of CIT Vs. B.N. Bhattachargee & Another 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that "the appeal does not mean merely filing of appeal but effectively pursuing it.
2. In the case of Estate of Late Tukoji Rao Holker Vs. CWT 223 IR 480 (MP) while dismissing the reference made at the instance of assessee in default made following observations in their order. "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, this court is not bound to answer the reference".

3. In the case of CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Del). The appeal filed by the revenue before the Tribunal which was fixed for hearing but on the date of hearing nobody represented neither the revenue applicant nor any communication for adjournment was received. There was no communication or information as to why revenue choose to remain absent on that date The Hon'ble Tribunal laid down the principle that on the basis of inherent power the appeal filed by the appellant can be treated as un-admitted.

4.1.1 Keeping in view the above facts of appellant's non-prosecution of this pending appeal and also placing reliance on above citations, appellants appaal is to be treated as not maintainable.

4.1.2 In this case assessment order u/s 147/144 was passed by the AO on 02.12.2019. The same was confirmed by the CIT (A), vide order u/s 250 of the Act dated 25.09.2023. Therefore, the assensee doesn't deserve any relief on merit also The approach of the assessee amply shows that she is not interested in prosecuting the appeal. Therefore, having considered the entire facts of the case and evidence available on record, the appeal so filed is dismissed.

5. In the result, the appeal is dismissed.”

5. Aggrieved from the order of Id. CIT(A), assessee preferred an appeal before us. During the course of hearing, the Id. AR for the assessee submitted that the quantum appeal has been heard on 06.06.2024 by the ITAT in ITA No. 48/JP/2024 dated 10/06/2024. In that order the assessment order in quantum proceeding set aside to be framed afresh and therefore the levy of penalty if any to be decided in that proceedings.

6. Per contra, the Id. DR made no objection.

7. We have heard the rival contentions and perused material available on record. As the quantum proceeding is set aside to the file of AO the levy of penalty on that afresh proceeding be also rest with that Id. AO to be decided afresh. Hence, the appeal of the assessee in penalty proceeding becomes in fructuous when the quantum order is set aside.

In the result, the appeal of the assessee is disposed off as indicated herein above.

Order pronounced in the open court on 28/06/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Bugli Devi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 278/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar